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VAT IN THE EUROPEAN COMMUNITY

**VADEMECUM FOR THE ELECTRONIC
REFUND PROCEDURE FOR TAXABLE
PERSONS NOT ESTABLISHED IN THE
MEMBER STATE OF REFUND BUT
ESTABLISHED IN ANOTHER MEMBER
STATE**

NOTE

**THIS DOCUMENT CONTAINS SOME BASIC
INFORMATION ON THE APPLICATION BY
MEMBER STATES OF
COUNCIL DIRECTIVE 2008/9/EC (REFUND
OF NON-ESTABLISHED TAXABLE
PERSONS). THIS INFORMATION HAS BEEN
OBTAINED FROM THE RELEVANT TAX
AUTHORITIES.**

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FRANCE

VADEMECUM FOR THE ELECTRONIC REFUND PROCEDURE FOR TAXABLE PERSONS NOT ESTABLISHED IN THE MEMBER STATE OF REFUND BUT ESTABLISHED IN ANOTHER MEMBER STATE

General

1. Where could a non-established taxable person find information on your laws and guidelines?

Council Directive 2008/9/EC was transposed into French law by Article 102 of the 2010 Finance Act. The main provisions of the refund procedure for taxable persons not established in the Member State of refund are now laid down in Article 289D of the Code Général des Impôts (General Tax Code, CGI) and Articles 242-0M to 242-0Zb of Annex II to the CGI concerning taxable persons not established in France.

The administrative comments are available in the online tax documentation at www.impots.gouv.fr (BOI-TVA-DED-50-20-30-20).

Practical information can be found on the impots.gouv.fr tax portal, under Professionnels > Vos préoccupations > Remboursement de TVA étrangère (Business users > Your concerns > Refund of foreign VAT).

2. Eligibility for refund

In order to be eligible for a refund, applicants must be taxable persons established in the EU making taxable supplies in their own Member State (Member State of establishment). They must have incurred the VAT on expenses in a Member State in which they are not established (Member State of refund) and must not have made any supplies within that Member State during the refund period, except reverse charge supplies and some exempt transportation services.

3. What can be refunded

VAT on business activities conducted outside the Member State of refund where these activities would have been taxable or exempt with a right of deduction in the Member State of refund if they had been conducted there, and VAT on supplies for which the reverse charge is applied in the Member State of refund.

Clarifications: Pursuant to Article 271(i)(2) of the CGI, French VAT for which a refund can be requested is that which has become chargeable to the supplier or service provider liable for the tax, namely:

- VAT charged on the purchase of goods or services invoiced during the refund period, provided that it became chargeable before or at the time the invoice was issued, or VAT that became chargeable during the refund period, provided that the purchases were invoiced before the date on which the VAT became chargeable;
- VAT charged on imports of goods carried out during the refund period;
- VAT indicated on invoices or import documents that have not been the subject of prior refund applications, provided they relate to transactions carried out during the same calendar year.

4. What cannot be refunded

VAT incurred relating directly to exempt activities with no right of deduction. VAT incurred on expenses that include restrictions on the right of deduction in the Member State of refund.

The following categories of French VAT cannot be refunded:

a) VAT charged on the purchase of goods or services for which the rules exclude or limit the right of deduction.

This applies to expenditure for which the admission coefficient is less than one, pursuant to Chapter IV, paragraphs 2, 3 and 4, of Article 206 of Annex II to the CGI:

- goods and services that are not necessary for the purpose of running the business;
 - expenditure relating to vehicles and equipment designed to transport people or for mixed use;
 - expenditure on petrol, jet fuel, petroleum gas and other hydrocarbons present in a gaseous state, kerosene, diesel fuel and super ethanol E85;
 - expenditure relating to the supply of accommodation to company managers or staff;
- b) VAT invoiced in error with respect to the provisions of national law.

5. Proportional deduction

Where taxable persons may deduct only a portion of their input tax because they make taxable and exempt supplies, the amount of the refund they may obtain is determined by the rules on proportional deduction applicable in their Member State.

Procedures in the Member State of establishment

6. What is the application procedure?

To benefit from a VAT refund in another Member State, taxable persons established in France must submit their application via the online tasks service accessible through the 'espace abonné' (online account) section of the tax portal impots.gouv.fr, via 'Professionnels' (Business Users).

a) Step one: creating an online account

Accounts can be created online via *Professionnels > Abonnez vous à votre espace* (Businesses > Create your online account) and are accessed with a username and password.

Once the requested information has been entered, the system issues a registration number, which is indicated on the registration confirmation document provided for you to view and keep.

b) Step two: signing up to online services

After completing step one, the user has a secure account page and can sign up to a range of online services for the company he or she represents.

For the VAT refund procedure in the EU, the user should be signed up to the 'Effectuer une démarche' (Submit an application) and 'Suivre une démarche' (Track an application) services.

After selecting the desired services, the user must then sign the registration form and

send it by post to the tax office responsible for handling the company's file, which checks it and either approves or rejects the application. The access rights requested by the business user are then either activated (if the registration request is accepted) or refused (if the request is rejected).

This registration process by the tax department activates (or not, as the case may be) the access rights requested by the user as the 'administrateur titulaire' (main administrator). This user is notified that the form has been registered and the service can be accessed via 'Mes messages' (My messages) on the online account page. The company's legal representative receives an e-mail confirming acknowledgement of the registration.

Registration for online services must be carried out by a person authorised to act on behalf of the company as a legal representative or authorised individual. In the latter case, an authorisation document must be attached to the registration form (see Section 7 for further details).

c) Submitting a refund application: 'Effectuer une démarche' (Submit an application)

To submit a VAT refund application to another Member State, applicants must follow this procedure via the impots.gouv.fr web portal:

- Click on 'Professionals' (Business Users), then 'Accéder à votre espace' (Access your online account page);
- Click on 'Accéder à mes services' (Access my services), then 'Effectuer une démarche' (Submit an application);
- Select 'Remboursement de TVA dans l'Union européenne' (Refund of VAT in the EU);
- Select the Member State of refund and complete the electronic form.

Procedure for completing the electronic form and for the registration of the application by the Directorate General of Public Finances:

The electronic form is completed online with the following information:

- the applicant's personal details and bank details and, where applicable, the personal details of the authorised representative;
- the purchase/import record with a description of the nature of the goods/services acquired, using codes.

After entering the information, the applicant can attach one or more digital copies of invoices, the total size of which must not exceed 5 megabytes. The accepted file formats are pdf, jpeg and tiff, but it is recommended that black and white invoices be scanned in pdf format.

The completion of the form is made easier by mandatory properties corresponding to the provisions of Article 15 of the Directive (mandatory information, data format, etc.) and mandatory information requirements (minimum amount requested, period covered, etc.). In accordance with the Directive, applicants may enter a bank account number in France or any another Member State.

The system also carries out an automatic check to verify the applicant's status as a taxable person within the meaning of Article 18 of Council Directive 2008/9/EC.

Following these checks, the system issues the applicant with an acknowledgement of receipt confirming that the application has been registered by the Directorate General of Public Finances (DGFIP) and the application is immediately sent to the relevant Member State of refund.

An alternative feature allows users to attach purchase/import records in XML format

produced by their company's accounting software.

5) Tracking the application: 'Suivre une démarche' (Track an application)

The procedure for accessing the 'track an application' service via the impots.gouv.fr web portal is the same:

- Click on 'Professionals' (Business Users), then 'Accéder à votre espace' (Access your online account);
- Click on 'Accéder à mes services' (Access my services), then 'Suivre une démarche' (Track an application);
- The last few applications submitted by the company are displayed by default, but it is also possible to click on the 'Accéder à toutes mes démarches' (View all of my applications) menu;
- To view the details of an application, click on its description.

N.B.: the information provided by the DGFIP via this service depends on the messages sent by the various Member States of refund.

7. Are there any particular requirements for an agent to be able to submit a claim on behalf of the applicant?

The refund application is generally submitted by the applicant, but it may also be submitted by a third party on behalf of the taxable person. Access to online services is reserved for the user who carried out registration on behalf of the company (the 'main administrator'), but access rights can be delegated at several levels.

Prerequisites: persons who wish to access online services for themselves or on behalf of another taxable person must create an 'espace abonné' (online account).

Example 1:

A French company created an online account before signing up to the 'Effectuer une démarche' (Submit an application) and 'Suivre une démarche' (Track an application) online services. The company's legal representative or one of its employees is the 'administrateur titulaire' (main administrator) and can delegate access to these services to a third-party agent of the company (accountant, authorised representative, etc.) who has provided their subscriber number. The three possible levels of delegation are:

- 'Acteur ' (Deputy Administrator): can submit refund applications and consult account details, but cannot delegate these tasks to another user.
- 'Acteur délégant' (Delegating Administrator): can perform online operations and/or designate other users to carry them out on their behalf.
- Backup Administrator: main administrators can designate a person of their choice and grant them rights identical to their own.

These rights are granted via an online procedure carried out by the 'main administrator', with no approval required from the tax office. This designation is a management decision and is carried out under the full responsibility of the company's legal representative, where applicable, under the authorisation granted to a third party.

Example 2:

The legal representative of the French company can delegate registration to online services and exclusive access to the VAT refund procedure to an agent.

During the online registration procedure, the agent selects and signs up to the online services 'Effectuer une démarche' (Submit an application) and 'Suivre une démarche' (Track an application) on behalf of the company. Following this procedure, **the agent**

prints out the registration form, signs it and sends it by post to the tax office responsible for handing the company's file, accompanied by an authorisation document (see 'Authorisation document template for online services' available in the section of the tax portal entitled 'En savoir plus sur l'abonnement' (Find out more about registration)).

Important: this authorisation applies only to the request for registration to online services and is entirely separate from any authorisation documents that may be required by other Member States for the VAT refund procedure for non-established taxable persons.

The tax office handling the company's file approves the registration and informs the agent that the form has been registered and the service can be accessed via 'Mes messages' (My messages) in the user's online account. The legal representative receives an e-mail acknowledging receipt of the registration.

8. Content of the application:

The application should contain the following information:

- the name of the applicant
- the applicant's VAT identification number or tax reference number
- the applicant's full address, including country code (the address on record in the Member State of establishment)
- an e-mail address
- a description of the applicant's business activity for which the goods and services are acquired, using NACE v.2 codes.
- the refund period covered by the application
- a declaration stating that the applicant did not supply any goods or services deemed to have been supplied in the Member State of refund during the refund period, with the exception of specific transport services and services ancillary thereto or supplies to which the reverse charge mechanism is applicable in the Member State of refund
- the applicant's bank account details, including IBAN and BIC codes

In addition, the application should contain the following details of each invoice or import document:

- the supplier's full name and address
- the supplier's VAT identification number or tax reference number, except in the case of importation
- the prefix of the Member State of refund, except in the case of importation
- the date and number of the invoice or import document
- the taxable amount and amount of VAT expressed in the currency of the Member State of

refund

- the amount of deductible VAT calculated expressed in the currency of the Member State of refund
- where applicable, the deductible proportion expressed as a percentage
- the nature of the goods and services acquired according to codes 1 to 10
- where requested, further information on the nature of the goods and services acquired, according to sub-codes 1 to 10 provided in the Annex to Commission Regulation No 1174/2009 of 30 November 2009

9. The circumstances under which a Member State of establishment will not send an application to the Member State of refund.

- The details in point 8 above are not completed
- The applicant is not a taxable person during the entire refund period.
- The applicant only makes exempt supplies in the Member State of establishment during the refund period.
- The applicant is covered by the exemption for small businesses.
- The applicant is covered by the flat-rate scheme for farmers.

10. Minimum refund amounts

- EUR 400 or the equivalent in the national currency if the refund period is between three months and one calendar year
- EUR 50 or the equivalent in the national currency if the refund period is one calendar year, or the remainder of a calendar year.

11. Deadline

- The application must be submitted to the Member State of establishment by 30 September of the calendar year following the refund period. The application is only considered to be submitted if the applicant has completed all of the required information.

12. Can an applicant correct errors in an application that has been forwarded to a Member State of refund?

The electronic portal provided by the DGFIP allows submitted applications to be corrected until the decision is communicated by the Member State of refund.

The applicant can make corrections to a previously-submitted refund application by consulting the details of the application. The taxable person is then prompted to enter the information to be modified in the original application and has the option of adding attachments.

What procedure is followed when the Member State of refund wants the Member State of establishment to forward notifications to the taxable person?

Where the Member State of refund has asked France to notify the applicant of its

instruments and decisions relating to VAT refunds via the electronic system described in Article 3 of Commission Regulation 1774/2009 of 30 November 2009, this information is made available to the French taxable person via the electronic portal referred to in Council Directive 2008/9/EC of 12 February 2008.

The French taxable person can consult the information sent by the Member State of refund using the 'Suivre une démarche' (Track an application) online service accessible via the user account page of the tax portal impots.gouv.fr.

Procedures in the Member State of refund

Contact details of the tax office responsible for processing applications from businesses not established in France:

Service de Remboursement de la TVA

10, rue du Centre

TSA 60015

93465 NOISY LE GRAND CEDEX

Tel: +33.1.57.33.84.00

Fax: +33.1.57.33.84.85

e-mail: sr-tva.dresg@dgfip.finances.gouv.fr

Procedures in the Member State of refund

13. Are copies of invoices required?

Applicants must attach by electronic means a digital copy of the original invoices or import documents to their refund applications where the taxable amount indicated on these documents is equal to or greater than EUR 1000, or EUR 250 for invoices relating to fuel expenses.

14. The maximum size limit for an attachment has been agreed at 5mb. What should applicants do if they exceed this limit?

If the size of the file(s) containing the documents to be sent in line with the limits set out in Article 10 of the Directive exceeds the maximum permitted size, applicants are advised to send the most important documents as a priority.

With respect to documents that could not be attached to the application, the tax office may issue a request for additional information, in the form of copies of invoices.

15. As a Member State of refund, do you require additional documentation for claims submitted by an agent?

Where the application is submitted by an agent ('authorised representative'), the sections of the electronic form provided for this purpose must be completed: name, full address, e-mail address and VAT identification number, tax reference number or any other identification number if the legal representative is a natural person.

In addition, applicants who opt to use a legal representative must send, by post, an authorisation document in French to the VAT refund department, under the terms described in BOI-TVA-DED-50-20-30-20 available in the online tax documentation at

16. Can payments be made to agents?

Applicants can opt to appoint an authorised representative to submit a refund application and designate that person as the payment recipient.

In this case, the sections of the electronic form provided for this purpose must be completed, together with the person's bank account details in IBAN and BIC format, specifying their title ('Representative') and the name of the account holder.

In addition, the applicant must send, by post, an authorisation document in French to the VAT refund department, under the terms described in BOI-TVA-DED-50-20-30-20 available in the online tax documentation at impots.gouv.fr.

17. How will the Member State of refund communicate with the applicant?

Acknowledgement of receipt

The acknowledgement of receipt referred to in Article 19-1 of the Directive is sent to the applicant electronically via the Member State of establishment in accordance with the procedure laid down at EU level.

Notification of the decision

The VAT refund department informs the applicant by electronic means of its decision and the date on which it was taken. This notification is sent to the applicant electronically via the Member State of establishment in accordance with the procedure laid down at EU level.

If the refund application is refused either in part or in full, the VAT refund department notifies the applicant by post of the reasons for the refusal when it issues its decision.

Request for additional information

If it decides that it does not have the information needed to approve or refuse the application, the VAT refund department may request additional information from the applicant. The department may send further requests for additional information to the applicant as it sees fit.

For the purposes of these requests for additional information, the VAT refund department may ask the applicant to provide originals or copies of invoices indicating the VAT for which a refund is requested, with no threshold conditions.

Requests for additional information may be sent by post or electronically, in which case the message is sent outside the portal, by e-mail.

18. Time limits for the processing of an application

The Member State of refund has four months from the date on which an application is received to notify the applicant of its decision to approve or refuse the application, or to ask for additional information. Where additional information is required, it has a further two months from when it receives that information. Where it has asked for further information, it shall, in any case, notify the applicant of its decision within eight months of the application being received.

Where the refund application is approved, payment should be made within

10 working days.

19. Procedure for sending additional information to the Member State of refund

Member States can ask for additional information from persons other than the applicant. In all cases, the information should be provided to the Member State of refund within one month of the date on which the request is received by the addressee.

Replies to requests for additional information must be addressed to the VAT refund department in the specified format (by post, particularly if original invoices are requested, or electronically). If the message is sent electronically, this is carried out outside the portal, by e-mail.

Whichever form is requested, the reply must be written in French (preferably) or English.

20. The refund period

Generally speaking, the refund period may not be less than three calendar months and not more than one calendar year.

Examples: an application may cover a period between 1 February and 30 April.

An application may cover a period between 1 June and 31 December.

However, the refund period may be less than three months when it consists of the remainder of a calendar year.

Example: an application may cover a period between 1 November and 31 December.

21. Number of applications accepted per entry.

In practice, applicants can submit a maximum of five refund applications per year:

- a maximum of four applications covering a period that may not be less than three calendar months, except at the end of a calendar year;
- and one additional application covering the entire calendar year.

22. What is the procedure for appealing a decision? Are there any deadlines for appeals?

If the application is refused either in part or in full, the applicant can initiate proceedings with the appropriate court, in accordance with the provisions of Article R*199-1 of the Livre des procédures fiscales (Manual of Tax Procedures, LPF).

The standard time limit of two months for taxable persons to bring a case before the administrative courts is extended by two months for foreign residents (the special distance-related time limit).

The time limit given to taxable persons not established in France to bring a case before the administrative court if a VAT refund application is refused is therefore four months, counting from the receipt of the decision notification.

23. Incorrect applications

If a refund has been received fraudulently or incorrectly, Member States can recover the sum in question.

Where a check following a VAT refund reveals that the taxable person not established in France did not meet the conditions required to benefit from the refund, the person is asked to pay back the sums unduly received to the Treasury.

To recover the wrongly-refunded VAT, the VAT refund department applies the adversarial rectification procedure set out in Articles L.55 et seq. of the LPF.