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VAT IN THE EUROPEAN COMMUNITY

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

NOTE

**THIS DOCUMENT COLLATES A RANGE OF
BASIC INFORMATION ON THE
APPLICATION OF DIRECTIVE 2008/9/EC
(REFUNDS TO NON-ESTABLISHED
TAXABLE PERSONS) IN THE MEMBER
STATES. THIS INFORMATION HAS BEEN
OBTAINED FROM THE TAX AUTHORITIES
CONCERNED.**

**THIS DOES NOT REFLECT THE VIEWS OF
THE EUROPEAN COMMISSION, NOR DOES
IT SIGNIFY APPROVAL OF THE
LEGISLATION.**

**THE EUROPEAN COMMISSION CANNOT BE
HELD RESPONSIBLE FOR THE ACCURACY
OF THIS INFORMATION.**

LUXEMBOURG

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

General

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

National legislation on this matter is based on

- Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State;
- Council Regulation (EC) No 143/2008 of 12 February 2008 amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation and the exchange of information concerning the rules relating to the place of supply of services, the special schemes and the refund procedure for value added tax;
- and Commission Regulation (EC) No 1174/2009 of 30 November 2009 laying down rules for the implementation of Articles 34a and 37 of Council Regulation (EC) No 1798/2003 as regards refunds of value added tax under Council Directive 2008/9/EC.

The above Directive was transposed into national law by the Law of 10 November 2009 [...] amending the amended Law of 12 February 1979 on value added tax¹, which introduced the relevant provisions into Articles 55bis and 55ter of the amended VAT Law of 12 February 1979², and by the Grand Ducal Regulation of 1 December 2009 setting the application conditions relating to VAT refund applications submitted by taxable persons established in another Member State³.

Circular No 745quater of 17 December 2009 clarifies a certain number of points on the scope of the new legal rules⁴.

Information on the practical rules governing refund applications can be accessed on the portal www.vatrefund.lu.

2. Eligibility for a refund

To be eligible for a refund the applicant must be a taxable person established in the EU making taxable supplies in his own Member State (the Member State of establishment). He must have incurred VAT on expenses in a Member State in which he has no establishment (the Member State of refund), and he must have made no supplies within that Member State other than reverse charge supplies, or certain exempt transport

¹ <http://www.legilux.public.lu/leg/a/archives/2009/0216/a216.pdf#page=2>

² http://www.aed.public.lu/tva/loi/Loi_TVA_2010.pdf

³ <http://www.legilux.public.lu/leg/a/archives/2009/0233/0233.pdf#page=3>

⁴ http://www.aed.public.lu/actualites/2009/12/circulaires_no_745/circulaire_745quater.pdf

services, during the refund period.

3. What can be refunded

The following is subject to a refund:

- VAT in Luxembourg on supplies of goods or services
 - o invoiced during the refund period and due by the invoice date at the latest, or
 - o due during the refund period and invoiced before it is due;
- VAT in Luxembourg incurred on the import of goods carried out during the refund period;
- VAT in Luxembourg paid on invoices or import documents relating to transactions carried out during the calendar year in question and for which a refund application has not yet been made;

insofar as the tax to be refunded relates to expenses incurred in connection with an economic activity carried out abroad with a right to deduct according to the relevant national rules if it had been carried out in Luxembourg.

4. What cannot be refunded

VAT which has been wrongly invoiced;

VAT incurred on transactions legally eligible for exemption;

VAT incurred which directly relates to exempt activities without the right to deduct;

VAT incurred on expenses resulting from the needs of an activity which falls outside the scope of the tax;

VAT incurred on expenses subject to restrictions regarding the right to deduct in the Member State of refund, namely Luxembourg;

VAT relating to expenses which are not strictly professional, such as expenditure on luxuries, entertainment or hospitality.

5. Proportional deduction

Where the taxable person is only able to deduct a proportion of his input tax because he makes taxable and exempt supplies, that person can only have the amount refunded according to the rules on proportional deduction in his Member State.

Procedures in the Member State of establishment

6. What is the application procedure?

Refund applications for VAT paid in other Member States by taxable persons established in Luxembourg must be submitted via the portal www.vatrefund.lu.

This portal forms part of the eVAT platform for the electronic submission of VAT reporting obligations.

Subscribers to this platform can access the application 'vatrefund.lu' with no further formalities. Taxable persons not yet registered with eVAT can find information about it on the website <http://www.aed.public.lu/etva> under the heading 'Non-registered users'.

Information regarding the applicant is taken from the register of VAT taxable persons. It is available on the 'vatrefund.lu' application via the link 'Edit your profile', under the tab 'My company profile'. When first accessing the 'vatrefund.lu' application, the applicant is invited to complete his profile by entering his e-mail address and details of the bank account into which the refund of the claimed tax is to be paid. The applicant is advised to use a generic email address so that emails can be followed up in the event of absence or a change of person responsible.

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

The 'vatrefund.lu' application allows taxable persons with an eVAT account to submit a refund application to other Member States on behalf of another taxable person.

The taxable person being represented must authorise his representative to do so in advance by entering, among other things, the representative's identification number in the 'vatrefund.lu' application, under the heading 'Authorised representatives' in the section 'Edit your profile'.

Foreign representatives will be granted access to eVAT by applying for it via a downloadable form on https://saturn.etat.lu/etva/forms/FormulaireEDI_certif_F.pdf. This access is subject to the possession of an electronic certificate issued by an approved certifying authority. Furthermore, all foreign representatives will be assigned a VAT identification number to use by their principals, which authorises them to submit a refund application on their behalf (see previous paragraph). It should be noted that this number is assigned exclusively for technical reasons and does not correspond in any way to VAT registration in Luxembourg.

The scope of the rules relating to the submission of an application through a representative is limited merely to access to the national portal. It does not imply recognition, even implicitly, of the existence of a valid mandate between the parties. The parties are entirely responsible for submitting the documents granting the mandate if so requested by the Member States receiving the refund applications.

8. Content of the application:

The application should contain the following information:

- the applicant's name
- the applicant's VAT identification number or tax reference number
- the applicant's full address including country code (the address which is 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 via NACE v.2 codes

- the refund period covered by the application
- a declaration by the applicant that he has supplied no goods or services deemed to have been supplied in the Member State of refund, with the exception of the supply of specific transport services and services ancillary thereto or supplies to which the reverse charge mechanism is applicable in the Member State of refund
- bank account details including IBAN and BIC codes.

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

- the name and full address of the supplier
- the VAT identification number or tax reference number of the supplier 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 the codes 1 to 10
- where requested, further information on the nature of the goods and services acquired according to the sub-codes of 1 to 10.

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

- If the details in point 8 above are not filled in.
- The applicant is not a taxable person during the entire refund period.
- The applicant only carries out 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 and foresters.

10. Minimum refund limits

- EUR 400 or the equivalent in the national currency if the refund period is between 3 months and less than 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. Time limit

- 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 as submitted if the applicant has filled in all the required information.

12. Is an applicant able to correct an error on an application which has been forwarded to a Member State of refund?

There are plans to put in place a function which would allow corrected applications to be submitted.

As there is no Community legal basis in this area, the issue of the admissibility of corrected applications lies with the Member States to which they are submitted.

12a. Notification, through the 'vatrefund.lu' portal, of the acts and decisions made by the refund authorities of other Member States

The 'vatrefund.lu' application provides for the consultation of acts and decisions relating to the refund procedure which are issued by the Member States of refund which have opted for this form of notification.

12b. Contact details of the bodies involved in the refund procedure

*Management of the refund procedure
Land Registration and Estates Department
VAT Services
Tax Office 11
P.O. Box 31
L-2010 Luxembourg.
Telephone: +352 44 905 222
E-mail: vatrefund@en.etat.lu*

*Management of the 'vatrefund.lu' portal
Land Registration and Estates Department
eVAT helpdesk
P.O. Box 31
L-2010 Luxembourg.
Telephone: +352 44 905 777
E-mail: etva@en.etat.lu*

Procedures in the Member State of refund

13. Are copies of invoices required?

The refund authority in Luxembourg may request supplementary information in the form of image files or original invoices.

No copies of documents are requested at the time of submitting the refund application.

14. The maximum size limit for an attachment has been agreed at 5mb. What is the applicant to do if they exceed this limit?

The limit for sending image files by email as supplementary information is set at 10 megaoctets. Where necessary, the requested documents should be divided among several emails, which should contain the reference number of the refund application in the 'Subject' line.

Each document should ideally be digitised in colour with an optic resolution of 200 x 200 dpi (dots per inch). The related file should be saved in a PDF format using the nomenclature CCNNNNNN-AAAAMMJJ.pdf (CC = 2-letter Member State code, NNNNNN = VAT identification number, AAAAMMJJ = the year, month, day of the document in 4, 2, 2 digit format).

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

Once the application has been submitted, the representative or his principal may be requested to provide proof of the existence of the mandate through the submission of the relevant agreement, according to the rules set by the refund authority.

There is no preliminary information procedure on this matter

16. Can payments be made to agents?

As a general rule, payments are made into the account indicated in the refund application, regardless of the recipient's status.

The refund authority may, at any time and according to its rules, request from the applicant the document proving the express agreement of the taxable person in whose name the application was submitted that payment be made to the recipient.

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

As a general rule, communication between the refund authority and the applicant, and when necessary his representative, is carried out via email. The refund authority may use any other common form of communication in its dealings with companies.

Even if the applicant has designated a representative, all electronic communication addressed to the latter is also sent (in copy) to the applicant, who is required to intervene in the procedure if he has observations or clarifications to make on issues relating to the refund application. Applications submitted with the physical or electronic address of the representative alone are inadmissible.

18. Time limits for the processing of an application

The Member State of refund has four months from the date of receipt of an application to notify the applicant of its decision to approve or refuse the application, or to ask for further additional information. Where additional information is required, it has a further two months from receiving 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 receipt of the application.

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.

Communication between the applicant and the refund authority is carried out in French or German as chosen by the applicant. Nevertheless, applications and messages addressed to this authority may also be written in plain English.

20. The refund period

The refund period may not be less than three calendar months and not more than one calendar year, unless it covers a period constituting the remainder of a calendar year.

21. Number of applications accepted per year.

All applicants can submit up to four recurrent refund applications as long as they cover separate periods which do not overlap.

Furthermore, applicants are authorised to submit an extra yearly application for VAT charged on invoices or import documents which have not been the subject of a previous application and which relate to the same calendar year.

22. What is the procedure for appealing against a decision? Are there any time limits for appeals?

Appeals against decisions of the refund authority entailing a total or partial refusal to grant a refund go through several stages, each of which must be successfully completed before the applicant proceeds with the next:

- A corrective application submitted via the electronic portal of the applicant's Member State of establishment or an administrative appeal by means of a complaint filed with the tax office against the refusal within three months from the date of notification of the decision. If the refund authority considers that it cannot deal with the matter, the complaint is forwarded to the director of the Land Registration and Estates Department who will make a decision;
- A legal appeal brought before the District Court in Luxembourg:
 - o within three months from the date of notification of the director's decision on the complaint, or
 - o after a period of six months from the submission of the complaint to the department, if no decision on the complaint has been made.

23. Incorrect applications

If, following the VAT refund, the refund authority finds that it was not justified, in part or in its entirety, it will recover the sums unduly paid.

Where it establishes that a tax repayment has been obtained on the basis of incorrect information, the taxable persons concerned are required to submit a tax adjustment application or contact the refund authority in order to rectify the situation.