

Tax Connect

The new procedure for reimbursing VAT to foreign businesses in 15 European Union Member States

CMS Tax Connect

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Editorial

Since 1 January 2010, a new legal framework has been available to businesses established within the European Union, for obtaining a refund of the VAT they pay in Member States where they are not established. In contrast, the procedure for reimbursing VAT to businesses which are not established within the European Union remains unchanged. It is still governed by the Thirteenth Council Directive (86/560/CEE of 17 November 1986).

When compared with the Eighth VAT Directive, which it replaces, Directive 2008/9 of 12 February 2008 actually introduces relatively few changes in the basic conditions of entitlement to a refund. On the other hand, it incorporates the clarifications given by the European Court of Justice (ECJ), particularly with regard to how the rights of deduction of partially exempt businesses are to be determined (Case C-136/99 *Monte dei Paschi di Siena*, ECJ 13 July 2000).

The procedure has a more definite framework and the deadlines imposed on claimant businesses and on States have been harmonised.

The major development is the move to an electronic procedure. This should make matters easier for businesses once the technical difficulties surrounding the launch of portals in the Member States have been surmounted.

It was those difficulties that led the Council of the European Union to postpone the deadline for submitting refund claims in respect of 2009 VAT to 31 March 2011. The period would otherwise have expired on 30 September 2010 (Directive 2010/66/UE 14.10.2010).

We thought it was important to bring together, in this issue of CMS Tax Connect, everything which may assist you in obtaining VAT refunds.

This issue has two parts:

- a presentation of the new procedure, which is applicable in all Member States,
- articles on the specific rules applicable in a number of European States, and practical information to make the procedure easier for businesses.

It is to be hoped that the new impetus given to the refund procedure will lead to greater respect from Member States for the right of businesses to recoup the VAT they pay abroad, thus avoiding the situation where, faced with complex and onerous procedures, many businesses ultimately bear the burden of VAT on their purchases in European Union countries. This is contrary to the principle of neutrality which applies to VAT.



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The new electronic refund procedure for foreign businesses

The refund procedure contemplated by Directive 2008/9 of 12 February 2008 assists businesses established within the European Union which, in carrying out their economic activity, incur tax-bearing expenditure in a State where they are not established, or in other words a State where they do not have their seat of economic activity, a permanent establishment, or a branch registered for VAT purposes.

It will be recalled that the tax element of expenditure which a business incurs in a State where it has a permanent establishment which is not legally distinct and autonomous may be recouped by the establishment under the ordinary procedure. The permanent establishment may recover the VAT whether or not the expenditure relates to its own operations, or in other words even where the expenditure in question relates to operations carried out from the principal establishment in another State (Case C-244/08 *Commission v. Italy* ECJ 16 July 2009).

1. Filing the claim with the Member State of establishment

The fundamental conditions

In order to take advantage of the refund procedure under Directive 2008/9 of 12 February 2008, the business, which of course must not be established in the State where the tax was borne (the Member State of refund), must not have carried out any taxable transactions in that State during the claim period.

There are nonetheless exceptions to this rule for certain transactions, such as the supply of transport and ancillary exempt services, transactions where the customer is liable to pay VAT, and transactions in respect of which VAT liability is suspended.

Outside those cases, the reclaimed tax must relate to expenditure referable to transactions which are taxable outside the State of refund, but which would give rise to a right of deduction if carried out in that State. In contrast, amounts of VAT which have been incorrectly invoiced (according to the legislation of the State of refund) may not be refunded. Some Member States have set out how a corrective invoice can be obtained in such a case.

For businesses which carry out both transactions giving rise to a right of deduction and transactions not giving rise to such a right in their State of establishment, the amount of tax to be reclaimed from the other European Union State is calculated according to the Member State of establishment's

rules for partially taxable persons (this rule having already been laid down by the ECJ, under the former regime of the Eighth VAT Directive, in *Monte Dei Paschi di Siena*).

The VAT which can be reclaimed is that which became due from the seller or service provider during the same period, or that paid on importation of goods during the period. If the applicant omits an item of expenditure in a claim which relates to a period of less than a year (a quarter, for example) covering the period when the tax fell due, it may seek a refund in a subsequent claim provided that this relates to the calendar year in which the tax fell due.

The general rule is that refund applications must relate to periods of one calendar year, in which case the minimum claim is 50 euros. Nevertheless, provided that the amount of VAT to be reclaimed exceeds 400 euros, applicants may lodge claims for shorter periods. These must be at least three calendar months, unless they relate to the balance of the calendar year.

The period for making the claim

Claims may be lodged up to 30 September of the year following that of the reimbursement period.

In light of the difficulties encountered by several Member States in implementing the electronic procedure (which is described below), the period for refund claims relating to 2009 has, exceptionally, been extended to 31 March 2011 (Directive 2010/66/UE 14.10.2010).

2. The electronic procedure

The change to a paperless electronic procedure is the most novel aspect of the reform.

Foreign businesses submit their refund claims to the tax authority of their Member State of establishment via the electronic portals made available in every Member State.

The Member State of establishment then forwards the claim to the Member State of refund, via an interface provided by the European Commission. The configuration of the electronic portal for receiving claims is left to the individual Member State of establishment.

Depending on the requirements of the Member State of refund (see the second part of this issue) the applicant may be obliged to attach the relevant invoices or import documents to its claim, if the amount shown on the

documents as subject to VAT is equal to or greater than 1,000 euros, or 250 euros for fuel invoices. In such cases the documents must be scanned and sent electronically.

In this regard, it should be noted that at present the file containing the invoices or scanned import documents may not exceed 5 MB, a limit imposed by the European Commission's electronic interface. According to our information, the relevant Commission departments are working on this technical limitation.

In addition, the requirement for businesses to submit confirmation of their VAT status has been dispensed with, as the transmission of the claim by the Member State of establishment to the Member State of refund operates to certify this status.

Finally, it should be noted that, in principle, it is for the Member State of establishment to verify that the claim is complete before forwarding it to the Member State of refund. It nevertheless appears that, with the exception of details such as the applicant's VAT registration number (which the State of establishment requires in order to confirm the applicant's VAT status), States of establishment are leaving it to States of refund to ask the applicant to supply information missing from the claim.

Upon receipt, the Member State of refund must send the applicant an acknowledgement as soon as practicable, in electronic form.

This acknowledgement of receipt is important: it marks the beginning of the claim and of the period given to the Member State of refund to make its decision. In default of a decision within the period, the Member State will be liable to pay interest.

3. Processing of the claim by the Member State of refund

The information required by the State of refund has been harmonised

This applies to information identifying the applicant, and to the applicant's bank details.

Identical expenditure codes have also been introduced for the whole of the European Union, although States may require special codes to be used for expenditure which is not eligible for reimbursement in their jurisdiction (see the second part of this issue).

A timetable has been laid down for dealing with the claim

The general rule is that the Member State of refund must make its decision to accept the claim (wholly or partly), or to reject it, within the period of four months running from receipt of the claim.

Nevertheless, this period is extended where the Member State of refund requests further information in order to make its decision. It may request this information electronically from the applicant, from the tax authority for the Member State of establishment, or from others.

Where further information is required (normally before expiry of the four-month period allowed for the decision), the person from whom it is requested has one month to respond, and to send any documents which may have been required.

The Member State of refund must notify the applicant of its decision (acceptance in whole or in part, or rejection) within a period of two months. This period runs either from the date when further information was received, or from the expiry of the one-month period allowed for it to be sent (as where nothing further is in fact sent). The Member State of refund will have additional time for its decision if it makes fresh requests for further information, but the total period for its response can never exceed eight months from receipt of the refund claim.

When the matter has been dealt with, the Member State of refund's decision (whether positive or negative) is notified to the applicant by electronic means or by post. In the case of a favourable decision, the refund must be paid to the claimant within ten working days of notification. If the State of refund allows this period to expire, or fails to make a decision within the general four-month period, or within the extended period applicable where further information is requested, it will be liable for late payment interest. This runs from the day after the last day for payment up to the day of actual payment.

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1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

In Austria, an electronic portal for applications and filings with the tax authority had already been implemented a few years previously. Therefore, the implementation of the new electronic refund system did not pose any problem in practice. It was possible to use the portal as of 1 January 2010.

b) Receipt of claims made by foreign businesses

The Austrian Ministry of Finance is aware that other Member States have had difficulties establishing the new electronic portal, but the state has not been accepting paper applications by European Union resident businesses after 1 January 2010. The deadline for filing applications for the year 2009 has however been prolonged from 30 September 2010 to 31 March 2011.

c) Are the difficulties now resolved?

Not applicable

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

In Austria, the following expenses in particular are excluded from the refund procedure:

- expenses relating to VAT-exempt sales,
- expenses relating to the acquisition, leasing and running of cars (with some exceptions),
- expenses which are not deductible for income tax purposes.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

Where VAT has been incorrectly invoiced there is no refund unless the invoice is corrected, as to which the following rules apply: the invoice must be corrected by the issuer of the invoice (and not the recipient), the corrected invoice must refer to the incorrect invoice, and the issuer of the

invoice must also provide evidence that the corrected invoice has been delivered to the recipient (Austrian VAT Guidelines Rz 1533).

c) Implementation choices

In Austria, the applicant need only send copy invoices where the tax authority so requests.

As a general principle, German is the only accepted language in correspondence / dealing with the Austrian authorities.

This general rule also applies to the refund procedure.

The decision in the refund procedure is delivered electronically via the electronic portal in the Member State of the applicant.

d) Rate of interest applicable in the event of a late decision

In the event of late decision (i.e. more than four months and ten business days after filing of the refund application), the tax authority must pay 2% interest to the applicant. In addition, the authority must pay 1% interest if the refund is made more than three months after the period just mentioned, and a further 1% if it is made more than three months after the end those three months.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

Where the competent tax authority does not make its decision within the statutory timescale, the legal consequence is that the applicant is entitled to interest (see answer "d" above). In addition, the applicant has the right to put the matter before the court of second instance if the competent tax authority (being the body of first instance) does not make its decision within six months of the application. If the court of second instance fails to make a decision, the applicant may file an application with the administrative court, which is the highest tribunal. The same route (court of second instance, administrative court as highest tribunal) also applies to any appeal from the refusal of an application.

3. Details of the practical arrangements for refunds by your Member State

From an Austrian perspective, it is acceptable for foreign refund applications to be made by an agent on behalf of the foreign business. Repayments however are made directly to the applicant.

In Austria, a technical solution called the data stream system was found for files which exceed 5 MB.

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Belgium



1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

The electronic portal was open from 1 January 2010. As far as we are aware there were no particular problems in relation to the launch of the portal.

b) Receipt of claims made by foreign businesses

Some difficulties have arisen in relation to electronic processing of requests, which has given rise to delays on the part of the office responsible for considering such requests.

In spite of these delays, after 1 January 2010 refund applications may no longer be made in paper form.

c) Are the difficulties now resolved?

The difficulties have been resolved and since March 2010 requests are being processed within the periods required.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

Pursuant to article 3§2 paragraph 2 of Royal Decree 56, there is no right of refund in respect of:

- amounts of VAT representing a greater sum than is legally due,
- amounts of VAT invoiced in respect of deliveries of goods which are exempted from VAT, or which may be exempted, under article 39§1 paragraph 2 or article 39bis of the VAT Code.

In addition, by virtue of article 3§2 paragraph 1 of Royal Decree 56, the right of refund is granted only to the extent that a right of deduction exists under articles 45, 48 and 49 of the VAT Code. The taxable person concerned is thus subject to the same limitations on the right of deduction as a taxable person established and VAT registered in Belgium.

Thus, for example, in respect of delivery, importation and intracommunity acquisition of automobiles intended for the

transport of persons or goods by road, and in respect of goods and services relating to such vehicles, article 45§2 of the VAT Code provides that the deduction may not exceed 50% of the tax paid, save where exceptions apply.

It should also be noted that, under article 3§2 of Royal Decree 56, where the non-established taxable person carries out, in its Member State of establishment, both transactions which carry a right of deduction and transactions which do not, the right of refund exists only in respect of that proportion of VAT which is referable to transactions carrying the right of deduction. In such a case Belgian VAT is reimbursed to the non-established taxable person in accordance with the prorating rules applicable in the taxable person's Member State of establishment.

Thus, with specific reference to the expenditure mentioned in article 45§2 of the VAT Code, in respect of which the right of deduction is limited to 50% of the tax due in Belgium, the amount of VAT so calculated is then subject to the second limitation just mentioned. In other words, in order to calculate the amount of Belgian VAT it can reclaim, a taxable person which is subject to prorating in its Member State of establishment must prorate the amount remaining after the ceiling in article 45§2 of the VAT code has been applied.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

Amounts of VAT which have been charged to the non-established taxable person in this way may be recovered by the taxable person, by means of a corrective document to be issued by the supplier. More specifically, it is for the supplier to provide a credit note to the non-established taxable person in such a case. There is consequently no right of refund.

c) Implementation choices

By article 9 of Directive 2008/9/CE, the refund application must indicate, among other things, the nature of the goods or services acquired. This to be broken down by reference to specific codes.

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In this regard, Belgium has exercised the option granted by article 9(2) of Directive 2008/9/CE. For applications where Belgium is the country of refund, the codes are not sufficient. In practice, the applicant uses the sub-codes referred to in article 1 of Commission Regulation (EC) 1174/2009 of 30 November 2009, as Belgium has not introduced any other coding system.

As to the invoices in respect of which a VAT refund is claimed, it was previously necessary to send originals. Henceforth, under article 7 of Royal Decree 56, it is only necessary to attach an electronic copy of such invoices, and this only where the tax base indicated on the invoice or import document is equal to or greater than 1,000 euros (250 euros in the case of fuel). It should be noted that the Finance Minister or his appointee may nevertheless derogate from this obligation, in such manner as he may decide, if it proves not to be useful for the purposes of controlling refunds.

Refund claims may be written in any of the following four languages: French, Dutch, German and English.

Under article 15 of Royal Decree 56, the decision on the refund is to be notified to the applicant within the four month period beginning with receipt of the application. The notification will be electronic in the case of a favourable decision or by registered post in the case of a total or partial rejection of the refund application. The four-month period applies only where the authority considers that it has all the information required to form a proper basis for its decision to accept the applicant's refund application, or to reject it wholly or in part. There is no specific provision for Belgium to inform the applicant's Member State of establishment of its decision.

d) Rate of interest applicable in the event of a late decision

If the application is granted, the accepted sum is to be refunded within no more than ten working days of the end of the period for making the decision. If this period is not observed, the Member State must pay interest to the

applicant, unless the delay is due to further information requested from the applicant being provided late. For payments made by Belgium, the amount of interest is 0.8% for each month the payment is late (new article 91§3 2° of the VAT Code). A month which has begun is treated as a complete month.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

Under article 19§2 of Royal Decree 56, where a refund application is rejected in whole or in part, the non-established taxable person may challenge the decision pursuant to article 14 of Royal Decree 4 dated 29 December 1969, relating to reimbursement of VAT. Such proceedings must be commenced before the end of the third calendar year following that of notification of the decision to reject the refund application in whole or in part.

The proceedings must be issued by way of a contentious application, made on notice to the Belgian state in the person of the Head of the Central VAT Office for Foreign Taxpayers (Chef du Bureau Central de TVA pour Assujettis Etrangers - remboursement, Rue des Palais 48, 5^e étage, 1030 Bruxelles).

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

Under article 4 of Royal Decree 56, the refund application may be submitted to the Belgian state by the taxable person concerned (i.e. the applicant) or by a duly authorised third party. However, in the first instance the application must be sent electronically to the taxable person's Member State of establishment, via the electronic portal provided by that Member State. There are no specific conditions which the agent must fulfil for these purposes.

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**b) Specific procedure for sending copy invoices
where the electronic file exceeds the maximum
file size of 5 MB which is supported by the system
for transmission between Member States**

If the file is too large, the Belgian tax authority will accept copy invoices provided by ordinary email. In such a case, the application must first be sent to the authority with an explanation that the invoices will be attached to an email. The Belgian acknowledgement of receipt will be sent with a reference number which must then be stated in the email by which the copy invoices are sent. (It should be noted that the application must still be sent to Belgium and to the Member State of establishment).

**c) Address and contact details to be used by foreign
taxable persons in the event of difficulties**

In Belgium, the competent tax authority is:
Bureau Central de la TVA pour Assujettis Etrangers
Rue des Palais, 48 (5^e étage)
1030 Bruxelles
T +32 257 740 40
F +32 257 963 58
E vat.refund.ckbb@minfin.fed.be
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Bulgaria

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

The electronic portal is operating and so far we have not received any complaints from our clients with respect to access to the electronic portal. Day to day technical issues are being resolved reasonably well. The tax authorities have proven to be helpful in providing guidance and information on the use of the portal.

b) Receipt of claims made by foreign businesses

So far we have not received any complaints from our clients concerning the use of the electronic portal.

c) Are the difficulties now resolved?

Currently, the electronic portal is operating normally. Day to day technical issues are being dealt with reasonably well.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

Generally, under Bulgarian law VAT on the following types of expense is non-refundable:

- supplies of goods or services directly related to exempt supplies of the applicant or to supplies which do not carry a right of deduction,
- supplies of goods or services designated or used as gratuitous supplies or supplies outside the independent economic activities of the applicant,
- supplies of goods or services for representative or entertainment purposes,
- the acquisition, importation or rental of motorcycles or cars,
- services relating to maintenance, repair, improvement or operation of motor vehicles (motorcycles or cars),
- transport services received or taxi transport by motorcycle or car,
- supplies of goods which are expropriated by the state or (in the case of a building) demolished as illegally constructed.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

Incorrect invoices are to be cancelled and replaced by fresh invoices. If the incorrect invoice has been recorded in the

books of the supplier or the recipient, the two parties have to sign a protocol document indicating the grounds for cancellation and the details of the old and new invoices.

If the applicant has claimed an excessive VAT refund as a result of incorrect invoice information being given on the refund application, it is obliged to file a corrective refund application.

c) Implementation choices

The applicant is not required to submit copy invoices when the refund application is first lodged. However, the application must generally contain detailed information such as the date and number of the invoice, the name and VAT number of the supplier of the goods and/or services, etc.

The Bulgarian tax authorities may require the submission of additional information and documents including the original invoice (or a copy thereof) or the respective import documentation. The required information must be submitted by the applicant within one month from the receipt of the notification.

The refund application as well as any additional information may be submitted in the Bulgarian or English language.

After they have verified the application as necessary, the Bulgarian tax authorities either grant or refuse the refund. They communicate their decision to the competent tax revenue authorities in the applicant's Member State of establishment.

d) Rate of interest applicable in the event of a late decision

In the event of late refund the treasury must pay interest. The rate applicable to late payments is the official interest rate, as set by the Bulgarian National Bank, plus 10%. The average official interest rate for the period 1 January 2010 - 1 September 2010 was 0.2%. No interest is due where the delay in making the refund is caused by delay on the part of the applicant in submitting the documents and information required by the Bulgarian tax authorities.

The Bulgarian tax authorities must observe the statutory timeframes for making and notifying the applicant of their decision to grant the refund or, as the case may be, to refuse it in whole or in part. Failure to decide within the statutory timeframes is considered implicit refusal and is a ground for appeal. The period for filing the appeal is 14 days from the deadline for the tax authorities' formal decision.

3. Details of the practical arrangements for refunds by your Member State

With effect from 1 January 2010, persons established in another Member State may apply for refund of Bulgarian VAT by filing an application online through the web portal of the tax authority in their own Member State of establishment. The regulations in force from 1 January 2010 do not provide for the option to apply through a fiscal agent established in Bulgaria.

Refunds can be obtained through fiscal agents by persons established in non-member states. In that situation, refunds are allowed on the principle of reciprocity.

There is no specific procedure stipulated by law.

In Bulgaria, the competent tax authority is:
Territorial Directorate of the National Revenue Agency Sofia
21 Aksakov Str.
Sofia 1000

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Czech Republic

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

VAT payers have been able to use the electronic portal for refund of VAT since 1 January 2010. The Czech tax authority had published information about the new system for refunding VAT in December 2009. It was not necessary to implement any specific measures to enable the VAT payer to obtain a refund of VAT paid in other States.

b) Receipt of claims made by foreign businesses

We have no information about any difficulties with the electronic portal. According to information from the Ministry of Finance, the Czech Republic only accepts applications in electronic form.

c) Are the difficulties now resolved?

We have no information about any difficulties.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

Entitlement to refunds of VAT in respect of goods and services may be claimed under conditions similar to those under which Czech VAT payers may claim an entitlement to deduct VAT.

VAT payers are not entitled to deduct VAT on taxable supplies that are used for the purposes of representation (restaurant costs, entertainment etc.) and not recognised as expenses incurred in generating, assuring and maintaining income under the Czech Income Tax Act.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

No VAT refund can be claimed where VAT has been invoiced incorrectly (e.g. where the wrong VAT rate has been used, or where the supply is exempt or not subject to VAT). The supplier is entitled to issue a corrective tax document and can apply to the tax office for repayment of

the VAT. A corrective tax document may be issued up to but no more than three years after the end of the taxable period in which the original taxable supply was effected.

c) Implementation choices

In the Czech Republic there are no particular expenses which are subject to specific rules. The sub-codes for goods and services referred to in article 9(2) of Directive are not used.

VAT Refund applications are required to be supported by invoices or documents in electronic form if the tax base exceeds the limit of 250 euros for fuel and 1,000 euros for other supplies and services.

VAT Refund applications are required to be completed in Czech language.

Applicants are informed of receipt of their applications by the tax authority of the Czech Republic. All announcements and decisions are sent to the applicant in electronic form using the email address given in the application. The applicant's Member State is also informed of the decision.

d) Rate of interest applicable in the event of a late decision

In case that the tax authority does not meet the deadline for refunding overpaid tax, it must pay interest at a rate 14% above the Czech National Bank's repo rate for the first day of the relevant calendar half.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

Where a VAT refund is not granted in full, the decision of the tax office has to be substantiated. It is possible to lodge an appeal from this decision under the Administration of Taxes Act.

Where the tax authority does not make a decision within the timescale laid down by the Directive, the tax payer is entitled to compensation for loss caused by failure to follow the correct procedure.

3. Details of the practical arrangements for refunds by your Member State

Applicants can be represented for the purposes of the VAT refund process on the basis of a power of attorney.

Copy invoices can be sent by email or by post. The application reference number must be given as assigned by the tax authority.

The Czech body with responsibility for VAT refunds to taxable persons registered in other Member States is The Territorial Tax Office for Prague 1:

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France

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

France did not encounter any significant difficulties with the launch of the electronic procedure. The portal was opened to French businesses on 8 January 2010.

b) Receipt of claims made by foreign businesses

There has been no indication of any particular difficulty in receiving claims through the electronic portal.

To the best of our knowledge, as State of refund France has not been willing to accept paper claims from foreign businesses since the launch of the electronic portal.

c) Are the difficulties now resolved?

Not applicable

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

The expenses which are excluded from the refund procedure are:

- VAT charged on purchases of goods or services acquired for purposes other than those of the business or falling within an exception to the right of deduction. This applies to the following types of expenditure (expenditure for which particular provisions exclude or restrict the right of deduction, according to article 206 sub-paragraphs 2, 3 and 4 of paragraph IV of Annexe II to the General Tax Code):
 - VAT charged on goods and services used for purposes other than those of the business,
 - VAT charged on expenditure relating to vehicles or machines intended for the transport of persons or for mixed use,
 - VAT charged on petroleum fuel, jet fuel, gas, crude oil and other hydrocarbon products in gas form as well as kerosene, diesel and E85,

- VAT charged on lodging or accommodation expenses incurred for the benefit of the management and employees of the business.
- VAT which the seller or service provider has invoiced in error according to domestic law (as to which see below).

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

Where the European Union (EU) taxable person has not applied for a refund of the incorrectly invoiced VAT, the supplier or service provider may send it a corrective invoice provided that the following conditions are met:

- The EU taxable person must inform the VAT refunds department, by post (not via the electronic portal), that it gives up any claim to reimbursement of the tax stated on the relevant invoice. To this end, the taxable person must send the disputed invoice to the department so that it can formally identify it as one which can no longer be used in support of a refund application.
- In response, the VAT refunds department must send the EU taxable person a formal acknowledgment that the taxable person has given up the right to apply for a refund of the VAT wrongly stated on the invoice in question.
- On the basis of this document, the supplier or service provider may send a corrective invoice to the EU taxable person which has notified the refunds department that it has given up the right of refund.

c) Implementation choices

No expenditure types have been given specific codes other than those provided for in article 9(2) of Directive 2008/9.

For VAT which France is to bear, the applicant must attach electronic copies of the original invoices or import documents where the tax base stated on such documents is 1,000 euros or more (250 euros for invoices relating to fuel).

In such circumstances the VAT refunds department will only request those invoices or import documents which were required to be sent when the refund application was filed. It follows that this is not a request for further information.

If foreign taxable persons encounter difficulties, they may obtain information from the following address:

E sr-tva-dresg@dgfip.finances.gouv.fr

E elisabeth.ashworth@cms-bfl.com

Germany

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

There are no difficulties known of concerning the go-live of the electronic portal on 1 January 2010.

b) Receipt of claims made by foreign businesses

There are no difficulties known of for the receipt of requests via the electronic portal. As a general rule, only electronic applications have been accepted since 1 January 2010. No provisions have been made for paper applications after that date.

c) Are the difficulties now resolved?

Not applicable

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

German VAT law is to be considered. For example, VAT paid by a foreign physician or for advance performance by a travel business cannot be refunded in Germany. In case of transactions where a refund is partly excluded, it will be granted only to the extent that the applicant would be entitled to on a pro-rata basis in the Member State of establishment.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

According to sec. 31 par. 5 German VAT ordinance, a corrective invoice must meet all requirements regarding form and content of a regular invoice stated in sec. 14 German VAT code. Additionally, it must refer clearly to the invoice to be corrected.

c) Implementation choices

There are no expenses subject to specific rules (other than as provided by article 9(2)).

Scans of the invoices are required for any transaction volume exceeding 1,000 euros (250 euros in the case of fuel). Original invoices may be requested in individual cases.

The languages acceptable for the purposes of the refund procedure are German and English.

Decisions are notified to applicants established in other States via email. The Member State of establishment will be informed within 15 days of the application with confirmation that (i) the VAT ID number is correct and (ii) the applicant is entitled to a VAT refund.

d) Rate of interest applicable in the event of a late decision

The interest rate is 0.5% per month (6% a year) as set by sec. 238 German Fiscal Code.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

An appeal may be filed against a decision within one month of its receipt. If no decision is made within the timescale, appeal may be filed after the deadline has lapsed.

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

A power of attorney (PoA) in electronic form is to be provided. If the electronic portal in the Member State of establishment does not provide for the transmission of a PoA, the Federal Central Tax office will request the PoA at a later point in time. The PoA may not be transmitted separately.

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

Invoices must be transmitted in full. To keep the size of the electronic file small, the scan should be made in black and white using a resolution of 200 dpi.

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

Felix Trapp
CMS Hasche Sigle
E felix.trapp@cms-hs.com



Hungary

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

The Hungarian Tax Authority (HTA) did not experience any difficulties in this regard. The HTA has already been operating an electronic portal for several years, through which the tax returns of Hungarian companies are to be filed in any event. VAT refund claims can be submitted via this electronic portal as well. The relevant form was available in time.

b) Receipt of claims made by foreign businesses

According to information given by the HTA, there were some problems with the content of the application form at the beginning, but the form has already been corrected. Based on this information there were no difficulties with the operation of the electronic portal.

We have no information as to whether Hungary has accepted paper applications as Member State of refund. As Member State of establishment it has only accepted electronic request forms.

c) Are the difficulties now resolved?

Not applicable

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

According to the Hungarian VAT rules, no VAT refund can be claimed in respect of:

- expenses which were incorrectly invoiced or otherwise charged unlawfully,
- supply of products which are exempted under articles 138 or 146(1)(b) of Council Directive 2006/112/EC,
- purchase of real estate,
- purchase of leaded or unleaded motor fuels,
- purchase of passenger cars, motorcycles above 125 cc, yachts, sporting and leisure boats,
- purchases of foodstuffs and beverages,
- services of restaurants, confectionery shops, and other

- public catering services,
- entertainment services,
- purchases and services received in connection with the operation and maintenance of passenger cars,
- long distance or local taxi services,
- parking services and highway tolls, with the exception of parking services used and highway tolls paid for a motor vehicle whose gross weight is 3.5 tons or greater,
- purchases relating to the construction or renovation of residential properties.

In addition, 30% of the tax charged on local and long-distance telephone services, mobile telephone services, and voice over IP (VoIP) services cannot be deducted. This deduction restriction does not apply to taxable persons who reinvoice at least thirty per cent of the services in question for the purpose of resale.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

If the transaction is subject to Hungarian VAT, the relevant invoice is to be corrected according to the Hungarian provisions. The correcting invoice must indicate the date of issue, the number of the correcting invoice, the invoice being corrected, the details being corrected, and the nature of the amendment together with its financial effect.

c) Implementation choices

Apart from the expenses mentioned in article 9 of the Directive, there are no expenses subject to specific rules.

If the net amount invoiced exceeds the HUF equivalent of 1,000 euros (or 250 euros in the case of fuel), the applicant must file a copy of the invoice electronically as an attachment to the refund request.

If Hungary is the Member State of refund, the applicant can fill out the form in English or Hungarian.

If the applicant is registered with the Hungarian government gateway, communication between the applicant and the

HTA is by means of that portal. Otherwise, the HTA notifies the applicant via email and the applicant may choose whether it wishes to register with the government gateway or wishes to communicate via email. According to guidelines published by the HTA, it informs both the applicant and the Member State of establishment of its final decision.

d) Rate of interest applicable in the event of a late decision

If the decision on the refund claim is not made in time, or the refund is not made within 10 working days of the date the decision is made, the HTA must pay interest of double the National Bank Base rate for the time being (currently 2x 5.25%).

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

In the case of a late decision the applicant can request the supervisory body (which for these purposes is the Directorate of Special Affairs and Large Taxpayers) to order the relevant department to render the decision within a new deadline. If this deadline is not met the supervisory body appoints a new decision-making body.

Appeals can be made against decisions of the HTA under the general rules of tax procedure. Such appeals can be submitted electronically or by post, paying the relevant procedural fee.

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

According to the relevant Hungarian legislation, the following can act as an agent on behalf of a business entity: a lawyer, a law firm, a European Community jurist, a tax expert, a certified tax expert or tax consultant, or an organisation providing accounting, bookkeeping or tax consulting services. The agent will become eligible to

represent the business entity on filing a specific form (No. T180) with the HTA.

Please note, where Hungary is the Member State of refund, the reclaimed VAT can only be transferred into the applicant's bank account; no transfer can be made to a bank account belonging to any other party (such as the agent).

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

The invoices are to be attached as pdf, jpeg, tiff or zip files. Where Hungary is the Member State of establishment, the attachments cannot exceed 4 MB in size. According to HTA instructions, if the attachments are larger than 4 MB the invoices should be scanned in black and white instead of colour in order to minimise their size. In such a case applicants are advised to attach only the highest value invoices, sending the others according to the instructions of the Member State of refund. Where this is Hungary, the missing invoices can be sent via software downloadable from <https://elekafa.apeh.hu>

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

Hungarian Tax Authority
T +36-1-250-9500 (available only in Hungarian)

The Hungarian Tax Authority has been restructured as of 1 October 2010. Its Directorate of Special Affairs has become the organ responsible for refunding VAT to foreign businesses, although no specific contact details are available at present.

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Eszter Kálmán
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1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

The Italian Revenue Agency's electronic portal was not brought into operation until July 2010.

Although some alternative systems were put forward (such as the Italian administration's Entratel service) nothing concrete was put in place during the transitional period.

b) Receipt of claims made by foreign businesses

The position is as for taxpayers established in Italy (see the paragraph above).

c) Are the difficulties now resolved?

Yes

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

Firstly, all expenditure which the administration does not consider to be an integral part of the business or professional activity in question is excluded from the reimbursement procedure.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

For the time being the site does not seem to allow for any specific procedure in this regard.

c) Implementation choices

All invoices must be forwarded, as well as evidence of payment for VAT amounts in excess of 1,000 euros.

The accepted languages are Italian, English and French.

d) Rate of interest applicable in the event of a late decision

The rate of interest is 2% a year.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

An appeal can be brought before the Commissione Tributaria Provinciale di Pescara (Centro Operativo di Pescara, Via Rio Sparto).

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

Taxpayers established in Italy must provide the Revenue Agency with specific written authority.

Foreign businesses generally provide the principal's contact details electronically, on their State of establishment's portal.

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

There is no specific technical procedure, and the applicant must therefore take care not to exceed this file size.

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

Agenzia della Entrate (Revenue Agency)
Direzione Centrale Servizi ai Contribuenti
Settore Gestione Tributi
Ufficio Rimborsi
Via Cristoforo Colombo 426 C/D
I – 600147 Roma
T +39 06 505 427 37
E dc.sac.rimborsi@agenziaentrate.it
<http://www.finanze.it>

Federico Baridon
CMS Adonnino Ascoli & Cavasola Scamoni
E federico.baridon@cms-aacs.com

The Netherlands



1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

In the Netherlands, the electronic portal for reclaiming foreign VAT was slightly delayed and went “live” on 18 January 2010. The portal has been introduced on a phased basis. A group of 2,000 businesses and intermediaries had been authorised to use the portal from 1 January 2010 and were actually able to use it as of 18 January 2010. Another group of 400 businesses and intermediaries had received authorisation by the middle of January and were able to log in by 1 February 2010. An electronic channel for bulk applications from larger businesses and intermediaries was opened by early March 2010.

By the end of June 2010, around 8,000 businesses and intermediaries were making use of the portal.

On 29 September 2010, the Dutch tax authorities confirmed that the deadline for businesses to reclaim the VAT paid in/to another Member State in the year 2009 had been extended to 31 March 2011.

b) Receipt of claims made by foreign businesses

The VAT Directive has been altered and the “old” procedure (paper applications) is no longer acceptable, as the Secretary of State for Finance has emphasized.

c) Are the difficulties now resolved?

With the new release of the supporting system (VAT refund core asset; VCRA) at the end of May 2010, the last major difficulties were resolved. However, the Dutch tax authorities will continue improving the portal site and correcting errors.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

No expenses are specifically excluded from the refund procedure. However some expenses, like food and drinks in restaurants and private use of cars, are generally

excluded from VAT deduction. On that basis, they are also excluded from the refund procedure. In addition, requests for VAT refunds are subject to a minimum amount. If a request relates to a period of at least 3 months, the total amount must generally be 400 euros or more. If it relates to a full calendar year, the total amount of VAT must generally be 50 euros or more.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

There are no specific procedures for issuing corrective invoices.

c) Implementation choices

Articles 9(2) and 10 of Directive 2008/9/EC, regarding submission of additional information and copy invoices, have been implemented by the Dutch VAT Act 1968 (article 32f(3) and 32g). Under the VAT Act, power to make regulations applying these provisions has been delegated. A ministerial decree may be made stipulating that the provisions apply, and in which situations they apply. For the time being no such decree has been made, and foreign businesses are not generally required to provide additional information and/or copy invoices.

Additionally, article 11 of Directive 2008/9/EC has been implemented (by article 32h of the Dutch VAT Act).

According to these provisions, applicants must provide a description of their business activities using the standard codes determined in accordance with Council Directive EC No 1798/2003, concerning administrative cooperation in the field of VAT.

The refund application, as well as any additional information, may be provided in Dutch, English or German.

The Dutch tax authorities will notify the applicant, within 4 months of receiving the request, whether the refund is granted or not. They will do so in the form of a decision open to objection/appeal.

If the refund of the approved amount is paid after the last day for payment, the state is obliged to pay interest to the applicant. The applicable rate of interest is that for overpaid/overdue tax. It is determined quarterly and currently stands at 2.5%. The interest is calculated over the period from the day following the last day for payment until to the day the refund is actually paid.

Where the Dutch tax authorities refuse or partly refuse the application, the applicant may enter an objection to the tax authorities with regard to this decision. If the tax authorities reject the objection, the applicant may appeal to a district court. Where no decision is made within the timescale, the application is deemed to be rejected.

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

According to the Dutch Secretary of State for Finance (in his letter of 24 August 2010, 32 123 IXB, No 18) a representative admitted in one Member State should also be able to function as an intermediary in other Member States. No distinction will be made.

According to the Dutch State Secretary of Finance (in his letter of 22 September 2009, No DV2009/568M) the Member States have agreed that if the copy invoices exceed the maximum file size, the invoices with the highest amounts will be attached to the application first. If Member States wish to receive all invoices, they can

request these invoices by way of article 20 of Directive 2008/9/EC (request for additional information).
The Netherlands does not request copy invoices in general, only selectively as a request for additional information.

Tax and Customs Administration/Limburg/Department
of International Issues:
Kloosterweg 22
PO Box 2865
6401 DJ Heerlen
T +31 555 385 385

Paul Hulshof
CMS Derks Star Busmann
E paul.hulshof@cms-dsb.com



Poland

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

According to information obtained from the Polish Ministry of Finance and Polish tax authorities, there were no technical difficulties with the electronic portal on 1 January 2010.

Certain difficulties arose due to the fact that the electronic platform would only accept VAT refund applications which had a digital signature verifying the relevant personal or tax identification number. Therefore, those without such a number, i.e. foreign persons representing Polish entities, could not effectively file applications.

From 1 September 2010, foreign persons without personal or tax identification numbers who represent Polish entities have been able to file VAT refund applications. Such applications, however, must be signed with a valid digital signature issued by a Polish certification authority.

b) Receipt of claims made by foreign businesses

No difficulties have been experienced since 1 January 2010 concerning requests received via the electronic portal.

Since that date, paper applications from foreign businesses have not been accepted.

c) Are the difficulties now resolved?

Please see point 1. a).

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

The refund of VAT is not applicable to expenses such as:

- motor fuel, fuel oil and gas used for passenger cars and other automotive vehicles of a maximum total weight not exceeding 3.5 tons,
- accommodation and catering services, except ready meals purchased for passengers by taxable persons providing passenger transport services,

- goods and services acquired as a result of donation or free-of-charge provision of services.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

A corrective invoice should be issued within five years from the end of calendar year in which VAT should be paid.

c) Implementation choices

There are no expenses subject to specific rules (other than as provided by article 9(2)).

Applicants should send copy invoices whose taxable base equals or exceeds the PLN equivalent of 1,000 euros (250 euros in the case of an invoice for fuel).

It should be noted that Polish is the only acceptable language for the purposes of the refund procedure.

The Polish tax authority sends its decisions on VAT refunds to applicants from different Member States by post, however, it does not inform the tax authorities of the Member States where the applicants are established.

d) Rate of interest applicable in the event of a late decision

Interest is due if the tax office does not refund VAT within ten days from issuing a decision as to the amount of VAT to be refunded. Currently the rate of interest is 10%, calculated annually on the outstanding VAT refund. The rate of interest depends on the Polish National Bank's Lombard rate.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

Apart from due interest as described above, Polish law provides for complaints to be lodged concerning inaction on the part of a tax authority, or overly lengthy proceedings, if a decision is not made in the timescale prescribed by law.

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

There is an obligation to provide the tax office with an original power of attorney for agents acting on behalf of foreign entities. A power of attorney should be made in Polish or translated into Polish by a sworn translator. Additionally, a power of attorney is subject to stamp duty of PLN 17 in Poland. In order to avoid delays in the refund procedure, it is advisable to attach a further copy of the power of attorney to the VAT refund application.

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

If the file containing copies of all invoices exceeds 5 MB, the applicant should only send copies of the highest value invoices. In the course of the VAT refund procedure, the Polish tax office may ask for the remaining copy invoices. Attachments that are over 5 MB are rejected by the system.

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

There is no special “helpdesk” to assist foreign entities in case of any difficulties encountered. As all VAT refund applications should be directed to the Second Tax Office Warszawa-Śródmieście, difficulties should be notified to this tax office at the following address:

Jagiellońska Str. 15

03-719 Varsovie

T +48 22 511 35 00

E us1436@mz.mofnet.gov.pl

Arkadiusz Michaliszyn

CMS Cameron McKenna Dariusz Greszta Sp. ko.

E arkadiusz.michaliszyn@cms-cmck.com

Portugal

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

The Portuguese electronic portal went live on 1 January 2010 and has been operational since then. Some minor technical difficulties were experienced at first but by May 2010 they had been overcome. For European Union VAT refunds purpose, Portuguese companies may address the Portuguese Tax Authorities through the official website at <http://www.portaldasfinancas.gov.pt/pt/menu.action?pai=743>

b) Receipt of claims made by foreign businesses

Other than occasional technical problems, no major difficulties were experienced by the Portuguese Tax Administration when receiving requests via its electronic portal from 1 January 2010. Since that date, no paper applications have been accepted, as the VAT refund procedure is now fully electronic.

c) Are the difficulties now resolved?

Not applicable

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

The following expenses are excluded from the VAT refund procedure:

- Expenses related to the purchase, acquisition, manufacture, importation, rental, leasing, use, and repair of passenger motor vehicles or multipurpose vehicles, recreational boats, helicopters, aeroplanes, motorbikes and motorcycles. Please note that passenger motor vehicles / multipurpose vehicles means any vehicle (including a trailer):
 - which, due to its construction or equipment, cannot be used solely for the purposes of transport of goods, or agricultural, commercial or industrial use, and
 - does not have more than 10 seats, including the driver's seat.

- Fuel - however, diesel, GPL and Biofuel is 100% deductible when used by vehicles used in the transport of goods, with a gross weight of more than 3,500 kg. Otherwise, the deduction is limited to 50%.
- Parking expenses (on and off streets).
- Transport expenses and business travel including tolls, unless they relate to participation in or organisation of a congress, fair or exhibition and are duly contracted with a legalised travel agency – the deduction is limited to 50% or 25%, provided that certain conditions detailed below are met.
- Accommodation, meals, drinks and tobacco:
 - however, reception, accommodation and meals expenses are deductible as to **50%** (not including tobacco) if (i) they relate to the **organisation** of a congress, fair or exhibition; (ii) they are duly contracted with the supplier or entities duly legalised to act accordingly; and (iii) they are definitively incurred for the purposes of the taxable person's taxable transactions.
 - if these expenses are incurred in connection with **participation** in a congress, fair or exhibition, deduction is allowed as to **25%**, provided that the same conditions are met.
- Representation expenses (with the exceptions mentioned above).
- Entertainment and luxury goods and services.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

The first step in this situation is to return the incorrect invoice to the supplier who then issues a credit note identifying and cancelling the initial invoice. Subsequently, a new invoice correctly assessing VAT is issued. This procedure is only available during the two-year period starting from the original invoice date.

c) Implementation choices

No specific rules have been implemented for particular expenses.



Slovakia

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

With effect from 1 January 2010, applications for VAT refunds in Slovakia are filed electronically in the state of the applicant's domicile and not in the Member State making the tax refund. This applies to all applications filed after 31 December 2009, even if refunds are claimed for 2009 invoices.

A Slovak VAT payer may claim a refund of tax paid abroad by completing and filing an electronic tax refund application with the Slovak Tax Directorate, using a certified electronic signature. The application must be filed no later than 30 September of the calendar year following the period for which the tax refund is claimed. The Slovak Tax Directorate will then send an electronic acknowledgment of receipt. Thereafter, the application is considered and sent, through the Tax Authority in Bratislava, to the relevant member country. The Tax Authority will not forward the application if, in the period for which the tax refund is claimed, the applicant was not registered as a taxpayer or a VAT payer, or if the applicant only carried out activities which are not subject to deduction of VAT.

In respect of the introduction of the new procedure, the tax administrator reported no issues or bottlenecks regarding incoming tax refund applications made by Slovak VAT payers. Unfortunately, if the Slovak Tax Directorate portal is down, there is no alternative method of filing an application.

b) Receipt of claims made by foreign businesses

A foreign person claiming a refund of Slovak tax should file the application electronically, through the relevant authorities in the country of domicile. Thereafter, the application will be electronically forwarded to the Tax Authority Bratislava I. The Slovak tax administrator has complained about incomplete and insufficiently detailed applications being received from tax authorities in foreign claimants' countries of domicile.

Since 1 January 2010, Slovak tax administrators have not been accepting paper applications from foreign persons. With effect from that date, it has only been possible to claim tax refunds electronically in the country of domicile.

c) Are the difficulties now resolved?

Difficulties have not been resolved as yet; introduction of the new procedures is a lengthy process not only for the business entities concerned but also for the local tax authority.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

The right of refund does not apply to expenses relating to refreshment and entertainment.

An applicant entity may claim tax refunds if it transacts taxable business which would entitle it to deduct tax in its country of domicile. Where the applicant transacts some business that carries a right of deduction and some that does not, it is entitled to a prorated tax refund.

On the other hand, an applicant is not entitled to a refund of any tax which the supplier applied otherwise than in line with Slovak VAT Act on goods, or which is or could be VAT exempt. If the applicant is subject to the special tax regime for travel agencies, it will not be entitled to tax refunds in respect of tourist industry services.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

No specific procedure is to be applied.

c) Implementation choices

In addition to details of the applicant's identity and bank account, the application must contain information on all invoices issued for the supply of goods or services and all import documents in respect of which a tax refund is claimed. It is not necessary to submit originals of the relevant invoices. Copy invoices must be attached to

the application if the tax base in the invoice or import document exceeds 1,000 euros, or 250 euros in the case of invoices for the purchase of fuel.

As Slovak is the official language of Slovakia, tax refund applications must be submitted in that language. We have no information as to how tax authorities in other Member States exchange information, but the exchange of information between Member States should be ensured.

d) Rate of interest applicable in the event of a late decision

As a rule, the tax administrator should decide on tax refund applications within four months of the application being delivered. Should the tax administrator decide to make a refund of tax, it will do so no later than ten business days after expiry of the period for notifying the decision. Should the authority fail to refund the tax within the applicable period, the applicant will be entitled to default interest of three times the European Central Bank base rate as it stood on the last day of the period in which the tax should have been refunded. The default interest is calculated on the amount of tax due and the period of the default. Should three times the European Central Bank interest rate be less than 10%, the calculation will be based on a rate of 10% a year.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

Where the tax administrator does not make a decision on the application, the next decision maker in line is the authority immediately superior to the administrator.

A decision dismissing an application for a refund in whole or in part must give reasons supporting the decision. The applicant can appeal the decision within 15 days of notification. When appealing a decision dismissing a refund application, or granting it in part only, it is necessary to apply directly to the tax administrator making the decision. The Slovak tax administrator does not deal with appeals against the decisions of other Member States.

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

Applicants can appoint an agent to handle the filing of their tax refund applications. The agent will act pursuant to a power of attorney made either in writing (in which case the signatures on the power of attorney must be seen by a notary public) or verbally (in which case it will be minuted by the tax administrator).

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

Where the total file size, after compression, exceeds 5 MB, it is only necessary to send a subset of the documents which is within the size limit. Pursuant to an agreement between the Member States, only the highest value invoices need be attached to the refund application. Other documents are to be sent, where applicable, in response to a request for further information made by the Member State of refund. Scanned documents may be attached in the following formats: jpeg, tiff and pdf.

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

Daňový úrad Bratislava I. (Tax Authority Bratislava I.)
Odbor zahraničnej správy DPH (Foreign VAT Administration)
Radlinského 37
817 89 Bratislava
T +421 2 57378111
www.drsr.sk

Róbert Janeček
CCS Tax
E janecek@ccstax.sk

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

As far as CMS Reich-Rohrwig Hainz is aware, there were no difficulties with the go-live of the electronic portal on 1 January 2010.

b) Receipt of claims made by foreign businesses

As far as CMS Reich-Rohrwig Hainz is aware, there were no difficulties receiving requests via the Slovenian electronic portal from 1 January 2010.

Since 1 January 2010, Slovenia has not been accepting paper applications.

c) Are the difficulties now resolved?

Not applicable

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

In general, only input VAT paid on transactions relating to a person's taxable business may be deducted.

Input VAT cannot be deducted if it relates to the following:

- Exempt activities, i.e. input VAT incurred on the purchase, acquisition or import of goods and services which relate to VAT exempt activities cannot be deducted.
- Purchases of yachts and boats intended for sport and recreation, aircraft, passenger cars, fuels, spare parts etc. and services closely related to those goods that are not used for transport of passengers or leasing renting or resale, or are not vehicles used in driving schools, combined vehicles for carrying out an activity of a public or special line of transport, or special personal vehicles adapted for the transport of the disabled.
- Entertainment expenses (limited to the costs of entertainment and amusement during business or social contacts).

- Expenses for meals and drinks and accommodation, except expenses of this type which are incurred by the taxable person in the ordinary course of his business.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

If the taxpayer issues an incorrect invoice, i.e. one which states an amount of VAT where none is due, the taxpayer may correct the invoice and claim back the VAT incorrectly accounted for in the VAT return (or avoid a payment of VAT if the return has not been filed), provided it ensures that every risk of loss of tax revenue has been obviated.

The taxpayer will either have to recover the original invoice from the recipient or, if this is not possible, issue a credit invoice which contains a clear reference to the old invoice. The taxpayer will only be able to claim back the VAT incorrectly accounted for (or correct his VAT liability) if the customer provides a written statement confirming that it has corrected its input VAT (either on the basis that it has not deducted VAT and will not do so in the future, or on the basis that it had deducted VAT but has repaid it to the tax authorities).

Errors in refund applications may be corrected even after the claim has been forwarded to the Member State of Refund. The correction is made by selecting the relevant claim and using the correction button on the eDavki portal (<http://edavki.durs.si>). A claim which is corrected and resubmitted will automatically contain the unchanged data from the previous claim.

c) Implementation choices

Claims for refund of Slovenian VAT in another European Union Member States are submitted electronically via the web portal operated by the tax authorities of the Member State where the taxpayer is established.

Taxpayers established in Slovenia submit claims for VAT refunds in other Member States via the eDavki portal

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(<http://edavki.durs.si>), which is run by the Tax Administration of the Republic of Slovenia. The portal is available in Slovenian and English.

A qualified digital certificate is required to sign in to the eDavki portal. It is necessary to have a Slovenian tax number in order to obtain such a certificate.

Instructions for obtaining a Slovenian tax number and a qualified digital certificate are available at: http://www.durs.gov.si/eNot_applicablektualno/a_new_system_of_vat_refunds_for_taxable_persons/

The taxpayer may authorise another person to represent him in a VAT refund procedure in another Member State. For that purpose, a special mandate should be completed in the form intended for use within the eDavki system. This is available at: <http://edavki.durs.si/openportal/Pages/Mandates/Mandating.aspx>

The web portal will ensure that the application is sent to the Member State which would make any VAT refund. The Member State where the taxable person is established will carry out an initial verification of the taxpayer's status against its database. When that Member State forwards the application to the Member State of refund, this operates as a confirmation that the application has been submitted by a taxpayer with a valid VAT identification number.

The taxpayer is not required to submit original invoices or import documentation, the requirement is only that they provide the necessary information with respect to these documents electronically.

The Tax Administration of the Republic of Slovenia will communicate with the applicant by email. Where the applicant is represented by an authorised person, email correspondence will be directed to the authorized person.

A VAT refund which is made pursuant to a claim will be paid into the bank account referred to in the refund claim submitted through the portal. This must have an IBAN and BIC code.

d) Rate of interest applicable in the event of a late decision

Under domestic regulations, Slovenia, as the Member State of refund, should notify the applicant of its decision to approve or refuse the VAT refund, or to ask for additional information, within four months of the date it received the claim. Where the VAT refund is approved, payment should be made within 10 working days.

If VAT is refunded after the deadline, the applicant is entitled to interest at 0.0274% per day, calculated from the date following the last date for refunding the VAT up to the date of actual payment.

However, no interest will be payable if the applicant fails to provide additional information to the Tax Authorities within the deadline.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

The applicant may file an appeal within 15 days after receiving the decision. The appeal shall be filled in writing or orally on the record at:

Ljubljana Tax Office
PO Box 107, SI-1001 Ljubljana

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

The taxpayer may authorise another person to represent him in a VAT refund procedure in another Member State. For that purpose, a special mandate should be completed in the form intended for use within the eDavki system. This is available at: <http://edavki.durs.si/openportal/Pages/Mandates/Mandating.aspx>

The Tax Administration of the Republic of Slovenia will check representation mandates in VAT refund procedures

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in Slovenia. Authorised persons may send their letters of representation as an attachment to their VAT refund requests. It is recommended that letters of representation be attached to the first request for a VAT refund in Slovenia.

VAT refund may be paid into the bank account of the authorised person (intermediary/agent). The authorised person's account should be held with a bank established in the European Union.

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

If the attachment exceeds 5 MB, the applicant should decrease the size of the attachment by setting the scanner as follows:

- Resolution: 200 dpi
- Black/white copies
- Type of file: pdf or tiff (compressed)
- Paper size: A4

If the size of the copies cannot be reduced below 5 MB, the applicant should only include copies of the highest value invoices or import documents. In such a case, the Member State of Refund may require the tax payer to submit additional information if necessary.

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

Ministrstvo za finance
Davčna uprava Republike Slovenije
Davčni ured Ljubljana
Davčna ulica 1, Ljubljana

Wolfgang Auf
CMS Reich-Rohrwig Hainz
E wolfgang.auf@cms-rrh.com

Spain



1. Implementation of the electronic portal

As to whether the Spanish administration has experienced any problems or difficulties with the launch of the electronic portal for businesses established in Spain and abroad, this is confidential. Consequently, it is not known whether there have been any problems with the portal, or if so whether they have been resolved.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

Under section 119 of the Spanish VAT Act, there are no types of expenditure which are expressly excluded from the refund procedure. However, that section provides that the refund procedure for non-established entities will not apply (i) if the reverse charge mechanism procedure applies, or (ii) in the case of certain transport expenditure which is taxable but zero-rated.

In all other cases, non-established entities can apply for a refund of any VAT charged in respect of any purchase or importation of goods or services carried out in Spanish VAT Territory.

Finally, there are certain requirements (such as correct invoicing) that must be met in order for a VAT refund to be claimed. Where these are not met, the tax authorities are entitled to seek reimbursement of refunded VAT.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

Spanish VAT rules and regulations do not set out any particular procedure in relation to corrective invoices. Where the Spanish tax authorities have serious doubts about the validity or accuracy of the invoices or documents in question, the competent authority can ask for the originals in order to check their validity and accuracy.

As a consequence, it is only where the competent tax authority refuses a VAT refund on the ground of incorrect invoices that the company will need to send it corrective invoices. This is done through the company's representative, upon the request of the authority and in the form the authority deems fit.

c) Implementation choices

In principle, there are no specific rules for VAT refund applications relating to any particular types of expenditure.

The VAT Act does not contain any particular rule on this point. Consequently, the representative will only be required to send copy invoices if the tax authorities have any doubt as to the VAT actually borne.

As set out in the guidelines for completion of the application form, this should be completed in Spanish.

Pursuant to regulations passed by the Ministry of the Economy, where a non-established entity's claim for a VAT refund is accepted, the tax authority must send the acceptance to the entity's representative, who should deal with the matter.

d) Rate of interest applicable in the event of a late decision

Section 119 provides that in the case of a late decision from the Spanish tax authorities, the rate of interest for delayed payment will apply. For 2010, this was 5% a year.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

Although there are no specific rules on this point, sections 103 and 104 of the Spanish General Tax Act provide that the Spanish tax authority must make an express decision in every case. Further, if the tax payer does not receive such a decision within 6 months of the date when the VAT refund was filed with the authorities, the claim is taken to have been rejected.

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In this scenario, the tax payer has two options in terms of administrative procedure: (i) to lodge an appeal seeking reconsideration of the application, or (ii) to issue proceedings before the Economic-Administrative Court.

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

Under the applicable VAT law, an entity located outside the European Union must have a representative in order to apply for a non-established VAT refund.

The entity should apply for such a refund on tax form 361. The legal representative must file this form with the tax authorities via the internet.

The applicant might previously have sent the tax authorities a Power of Attorney (PoA) granted in a Public Deed made before a Spanish Notary, by which it granted certain powers to the person becoming the representative. Such a PoA should state that the representative is authorised to file form 361 with the competent authority, in the name of the company and on its behalf.

Where a PoA has been granted, the following conditions must be met in order for the form to be filed: (i) the representative must have a Spanish Tax Identification Number (NIF) and be included within the "Censo de Obligados Tributario" (an administrative census in which the representative must appear in order to have dealings with the tax authorities); (ii) it must have either an electronic certificate issued by the "Fábrica Nacional de la Moneda y Timbre-Real Casa de la Moneda", or an electronic identity number (DNI).

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

The representative should not attach any document or invoice to form 361.

c) Address and contact details to be used by foreign taxable persons in the event of difficulties

The competent tax authority is located in:
Oficina Nacional de Gestión Tributaria
Departamento de Gestión Tributaria
Agencia Estatal de Administración Tributaria
Ministerio de Economía y Hacienda
Calle Infanta Mercedes 49
E - 28020 Madrid
T +34 91 582 67 39
F +34 91 582 67 57
E consultas@aeat.es
<http://www.aeat.es>

Javier Povo Martín
CMS Albiñana & Suárez de Lezo
E javier.povo@cms-asl.com

United Kingdom

1. Implementation of the electronic portal

a) Receipt of claims made by businesses established in your Member State

CMS Cameron McKenna is aware of two difficulties with the electronic portal:

- Sending European Union (EU) VAT refund applications to the Netherlands and Luxembourg

The Dutch tax authority continues to experience technical problems with acknowledging or processing claims from UK claimants. This issue has affected claims submitted to the Netherlands since 9 July 2010 and the UK tax authorities recommend that UK claimants do not submit claims to the Netherlands until their issues are fully resolved.

Meanwhile, the Luxembourg tax authority has fixed their technical problems and is starting to process UK claims as normal.

- Isle of Man traders wishing to enrol for the VAT EU Refunds Service

To enrol for the VAT EU Refunds Service, claimants need information contained on their last VAT return and VAT4 (Certificate of Registration). The information the claimant enters will be verified against data held on the UK tax authority VAT database.

For Isle of Man traders however, not all this information is held by the UK tax authorities, including details of VAT Returns. If claimants are registered in the Isle of Man they will first have to contact the Isle of Man Customs and Excise advising them that the claimant wishes to enrol for the VAT EU Refunds Service. They will provide written confirmation of the details that the claimant will be required to input when enrolling.

b) Receipt of claims made by foreign businesses

CMS Cameron McKenna is not aware of any difficulties with receiving requests.

c) Are the difficulties now resolved?

Please see above.

2. Specific conditions applicable to refunds by your Member State

a) Expenses excluded from the refund procedure

Expenditure incurred that relates to non-business activities is not claimable under the refund scheme. Otherwise, the goods and services codes that the UK requires on refund applications are in line with those in article 9 of the Directive. The expenditure codes are listed below:

- 1 - Fuel
- 2 - Hiring of means of transport
- 3 - Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)
- 4 - Road tolls and road user charges
- 5 - Travel expenses, such as taxi fares, public transport fares
- 6 - Accommodation
- 7 - Food, drink and restaurant services
- 8 - Admission to fairs and exhibitions
- 9 - Expenditure on luxuries, amusements and entertainment
- 10 - Other goods and services

Code 10 will be used for expenditure that cannot be categorised under any of codes 1 to 9. This code allows free text to be added to describe the expenditure.

b) Specific procedure for issuing corrective invoices where VAT has been incorrectly invoiced and cannot give rise to a refund (article 4(a) of the Directive)

Where VAT has been invoiced incorrectly (e.g. on an exempt or zero-rated supply) the application will be rejected. The business will normally need to contact the supplier for a reimbursement of any VAT incorrectly invoiced.

c) Implementation choices

Certain expenses are subject to specific rules (other than as provided by article 9(2)). For claims to the UK, sub-codes will apply to primary codes 2 and 3 (to identify the purchase or

leasing of cars), and 6, 7 and 8 (to identify business entertainment other than that covered by primary code 9). The claimant must attach scanned copies of all invoices and import documents where the taxable amount exceeds:

- £200 in the case of fuel, and
- £750 in the case of all other goods and services.

The language acceptable for the purposes of the refund procedure is English.

When an applicant is established in another State, the UK tax authorities must notify whether they are satisfied that the claimant is entitled to repayment of VAT claimed within ten working days of the decision deadlines (namely within four months of receiving an application or eight months if further information is requested). Payment will be made in pounds sterling, to the bank account detailed in the claimant's application. If the UK tax authorities are not satisfied that the claimant is entitled to repayment of any VAT claimed, they must state their reasons in a letter of notification to the claimant. If the UK tax authorities do not notify a claimant, they shall be deemed to have refused to make payment of the VAT in question. The UK tax authorities do not inform the Member State of establishment of their decision.

d) Rate of interest applicable in the event of a late decision

Where the UK tax authority fails to make payment to the claimant by the deadlines (and provided the claimant has supplied any additional information requested within the required timescales) the claimant will be paid interest. Interest will be calculated at the same rate applied to taxable persons within the UK (currently the statutory interest rate is 0.5%), and the interest calculation period will run from the date payment was due (four months and ten days of receiving an application or eight months and ten days of receiving an application, where further information has been requested and the claimant has provided this within one month) until the date it is made.

e) Rights of recourse where no decision is made within the timescale laid down by the Directive, or where a decision to refuse the application is challenged in full or in part

If the claimant does not agree with the decision to refuse its application, the claimant can:

- ask for the decision to be reviewed by a UK tax authority officer not previously involved in the matter, or
- appeal to an independent tribunal.

If the claimant opts for a review he/she can still appeal to the tribunal after the review has finished.

If the claimant wants a review he/she should write to the address given in the decision letter within 30 days of the date of the letter, giving reasons why they do not agree with the decision. If the claimant wants to appeal to the tribunal he/she should send them his/her appeal within 30 days of the date of the decision letter.

3. Details of the practical arrangements for refunds by your Member State

a) Conditions to be met in order for the refund application to be made by an agent on behalf of the foreign business

If the claimant uses an agent to submit an application and/or receive payment of refunds on the claimant's behalf, the claimant must submit a letter of authority, in hard copy, to the *UK Overseas Repayment Unit* (see contact details below). CMS Cameron McKenna can advise claimants on an acceptable form of words for the letter of authority.

b) Specific procedure for sending copy invoices where the electronic file exceeds the maximum file size of 5 MB which is supported by the system for transmission between Member States

The documents must be scanned and saved as files of pdf, tiff or jpeg format, and the total attachment size per application must not exceed 5 MB. In order to keep the

attachment size within this limit, the claimant should scan the documents at the lowest resolution that still provides a legible copy, and may include the document files in a 'zip' file. The claimant may not, however, include 'zip' files within 'zip' files.

Where the UK tax authorities receive an attachment larger than 5 MB, containing 'zip' files within 'zip' files, or infected by a virus, they will remove and destroy the attachment. They will notify the claimant if this happens. To prevent this happening, if the attachment size would exceed 5 MB, the claimant should remove lower value invoices to reduce the attachment size to an acceptable limit for submitting. If the UK tax authorities require copies of further invoices, they will ask for them separately.

Foreign taxable persons should write to HM Revenue & Customs at the following address:

HM Revenue and Customs
VAT Overseas Repayment Unit
PO Box 34
Foyle House
Duncreggan Road
Londonderry
BT48 7AE
T +44 2871 305100
F +44 2871 305101
E enq.oru.ni@hmrc.gsi.gov.uk

Panayiota Petrou
CMS Cameron McKenna
E panayiota.petrou@cms-cmck.com

Appendix

List of the sub-codes required in each country (article 9(2) of the Directive 2008/9)

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1. Fuel

- (Fuel for means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers)

2. Hiring of means of transport

- (Hiring of means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers)

3. Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)

- 3.1.2 Maintenance of a means of transport with a mass greater than 3,500 kg other than means of transport for paying passengers

- 3.3.3 Purchase and installation of accessories for a means of transport for paying passengers
- 3.3.4 Garaging or parking of a means of transport for paying passengers
- 3.3.5 Other expenditure relating to a means of transport for paying passengers

- 3.4.1 Purchase of a means of goods transport
- 3.4.2 Maintenance of a means of goods transport

4. Road tolls and road user charge

- 4.1 Road tolls for means of transport with a mass greater than 3,500kg other than means of transport for paying passengers
- 4.2 Road tolls for vehicles with a mass less than or equal to 3,500kg other than means of transport for paying passengers
- 4.3 Road tolls for means of transport for paying passengers

5. Travel expenses, such as taxi fares, public transport fares

- 5.1 For the taxable person or an employee of the taxable person
- 5.2 For someone other than the taxable person, or an employee of the taxable person

6. Accommodation

- 6.1 Expenditure on lodging and accommodation for the taxable person, or an employee of the taxable person
- 6.2 Expenditure on lodging and accommodation for someone other than the taxable person or an employee of the taxable person

7. Food, drink and restaurant services

- 7.1.1 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast for the taxable person or an employee of the taxable person
- 7.1.2 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast for someone other than the taxable person or an employee of the taxable person

8. Admissions to fairs and exhibitions

- 8.1 For the taxable person or an employee of the taxable person
- 8.2 For someone other than the taxable person or an employee of the taxable person

9. Expenditure on luxuries, amusements and entertainment

- 9.3 Expenditure on receptions and entertainment
- 9.5 Expenditure on works of art, collectors items and antiques

10. Other

- 10.9.1 Participation in fairs
- 10.9.2 Participation in seminars

Belgium

1. Fuel

- 1.6 Fuel purchased for resale
- 1.13 Fuel for means of transport for which there exists no restriction on the right to deduct
- 1.14 Fuel for means of transport for which there exists a restriction on the right to deduct

- 2.10 Hiring of means of transport for which there exists no restriction on the right to deduct
- 2.11 Hiring of a means of transport for which there exists a restriction on the right to deduct

3.13 Expenditure relating to means of transport for which there exists no restriction on the right to deduct

3.14 Expenditure relating to means of transport for which there exists a restriction on the right to deduct

6.5 Expenditure on lodging and accommodation for an employee of the taxable person effecting supplies of goods or services

6.6 Expenditure on lodging and accommodation for onward supply

6.7 Expenditure on lodging other than 6.5 or 6.6

- 7.2 Food and drink provided in the context of a conference, fair, exhibition or congress
- 7.3 Food and drink for an employee of the taxable person effecting supplies of goods or services
- 7.4 Restaurant services purchased for onward supply
- 7.5 Purchase of food, drink or restaurant services other than 7.2, 7.3 and 7.4

9.3.1 Expenditure on receptions and entertainment for publicity purposes

9.3.2 Expenditure on receptions and entertainment not for publicity purposes

10.15 services purchased for resale other than 6.6 and 7.4

3. Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)

- ### 9. Expenditure on luxuries, amusements and entertainment

- Czech Republic

France

(Fuel for means of transport with a mass greater than 3,500kg, other than means of transport for paying passengers)

- 1.1.3 LPG
- 1.1.4 Natural Gas
- 1.1.5 Bio fuel

(Fuel for means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers)

- 1.2.1 Petrol
- 1.2.2 Diesel
- 1.2.3 LPG
- 1.2.4 Natural Gas
- 1.2.5 Bio fuel

(Fuel for means of transport for paying passengers)

- 1.3.1 Petrol
- 1.3.2 Diesel
- 1.3.3 LPG
- 1.3.4 Natural Gas
- 1.3.5 Bio fuel

- #### 1.4 Fuel used specifically for test vehicles

- ### 1.5 Petroleum products used for lubrication of means of transport or engines

- ### 1.7 Fuel for means of goods transport

- ### 1.10 Fuel for machines and agriculture tractors

2. Hiring of means of transport

- 2.1 Hiring of means of transport with a mass greater than 3,500kg other than means of transport for paying passengers

- 2.2 Hiring of means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

- ### 2.3 Hiring of means of transport for paying passengers

- ## 2.4 Hiring of means of goods transport

- ## 2.5 Hiring of passenger and multipurpose cars

- 3.1.2 Maintenance of a means of transport with a mass greater than 3,500kg other than means of transport for paying passengers
- 3.1.3 Purchase and installation of accessories for a means of transport with a mass greater than 3,500kg other than means of transport for paying passengers
- 3.1.4 Garaging or parking of a means of transport with a mass greater than 3,500kg other than means of transport for paying passengers
- 3.1.5 Other expenditure relating to a means of transport with a mass greater than 3,500kg other than means of transport for paying passengers
- 3.2.1 Purchase of means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers
- 3.2.2 Maintenance of a means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers
- 3.2.3 Purchase and installation of accessories for a means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers
- 3.2.4 Garaging or parking of a means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers
- 3.2.5 Other expenditure relating to a means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers
- 3.3.1 Purchase of a means of transport for paying passengers
- 3.3.2 Maintenance of a means of transport for paying passengers

5. Travel expenses, such as taxi fares, public transport fares

- 5.1 For the taxable person or an employee of the taxable person
- 5.2 For someone other than the taxable person, or an employee of the taxable person

7. Food, drink and restaurant services

- ### 7.1 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast

9. Expenditure on luxuries, amusements and entertainment

- ### 9.3 Expenditure on receptions and entertainment

10. Other

- 10.5.1 Purchase or hiring of immovable property
- 10.5.2 Purchase or hiring of immovable property used as a dwelling, or for recreational or leisure use
- 10.12 Expenditure on fax and phone in connection with accommodation

Italy

1. Fuel

(Fuel for means of transport with a mass greater than 3,500kg, other than means of transport for paying passengers)

- 1.1.1 Petrol
- 1.1.2 Diesel
- 1.1.3 LPG
- 1.1.4 Natural Gas
- 1.1.5 Bio fuel

(Fuel for means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers)

- 1.2.1 Petrol
- 1.2.2 Diesel
- 1.2.3 LPG
- 1.2.4 Natural Gas
- 1.2.5 Bio fuel

(Fuel for means of transport for paying passengers)

- 1.3.1 Petrol
- 1.3.2 Diesel

133 | PG

1 3 5 Bio fuel

2.1 Hiring of means of transport with a mass greater than 3,500kg other than means of transport for paying passengers

2.2 Hiring of means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers

2.3 Hiring of means of transport for paying passengers

3. Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)

3.1.1 Purchase of means of transport with a mass greater than 3,500kg other than means of transport for paying passengers

3.2.1 Purchase of means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

3.3.1 Purchase of a means of transport for paying passengers

6. Accommodation

6.1 Expenditure on lodging and accommodation for the taxable person, or an employee of the taxable person

6.2 Expenditure on lodging and accommodation for someone other than the taxable person or an employee of the taxable person

7. Food, drink and restaurant services

7.1.1 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast for the taxable person or an employee of the taxable person

7.1.2 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast for someone other than the taxable person or an employee of the taxable person

The Netherlands

No sub-codes required

Poland

No sub-codes required

Portugal

1. Fuel

(Fuel for means of transport with a mass greater than 3,500kg, other than means of transport for paying passengers)

1.1.1 Petrol

1.1.2 Diesel

1.1.3 LPG

1.1.4 Natural Gas

1.1.5 Bio fuel

(Fuel for means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers)

1.2.1 Petrol

1.2.2 Diesel

1.2.3 LPG

1.2.4 Natural Gas

1.2.5 Bio fuel

(Fuel for means of transport for paying passengers)

1.3.1 Petrol

1.3.2 Diesel

1.3.3 LPG

1.3.5 Bio fuel

- 1.10.2 Diesel
- 1.10.3 LPG
- 1.10.4 Natural Gas
- 1.10.5 Bio fuel

- 1.11.2 Diesel
- 1.11.3 LPG
- 1.11.4 Natural Gas
- 1.11.5 Bio fuel

2.4 Hiring of means of goods transport

- 2.6 Hiring of motorcycles, caravans and vessels for recreational or sports purposes, and aircraft with a mass less than 1,550 kg
- 2.8 Hiring of means of passenger transport with more than 9 spaces
- 2.9.1 Hiring of means of passenger transport with less than 9 spaces used for commercial operations

3.6 Maintenance, of motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1,550 kg

3.8 Expenditure, other than maintenance, garaging and parking relating to motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1,550 kg

3.11 Expenditure relating to means of passenger transport with more than 9 places, or to means of goods transport

3.12 Expenditure relating to means of passenger transport with less than 9 places used for commercial operations

4.1 Road tolls for means of transport with a mass greater than 3,500kg other than means of transport for paying passengers

4.2 Road tolls for vehicles with a mass less than or equal to 3,500kg other than means of transport for paying passengers

4.6 Road tolls for means of transport for paying passengers with more than 9 places

4.7 Road tolls for means of transport for paying passengers with less than 9 places

4.8.1 Road tolls for vehicles used in the context of a conference, fair, exhibition or congress for the organiser of the event

4.8.2 Road tolls for vehicles used in the context of a conference, fair, exhibition or congress for a participant in the event, where the expenditure is directly charged by the organiser

(For the taxable person or an employee of the taxable person in the context of a conference, fair, exhibition or congress)

5.3.1 For the organiser of the event

5.3.2 For a participant in the event, where the expenditure is directly charged by the organiser

(Expenditure on lodging and accommodation for the taxable person or an employee of the taxable person in the context of a conference, fair, exhibition or congress)

6.4.2 For a participant in the event, where the expenditure is directly charged by the organiser

7.2.1 Food and drink provided in the context of a conference, fair, exhibition or congress for the organiser of the event

7.2.2 Food and drink provided in the context of a conference, fair, exhibition or congress for a participant in the event, where the expenditure is directly charged by the organizer

2. Location de moyens de transport

2.7 Hiring of passenger cars of the M1 category

3.9 Purchase of passenger car of M1 category

3.10 Purchase of accessories for passenger cars of M1 category, including their assembly and installation

7.1 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast

9.3 Expenditure on receptions and entertainment

10.5.1 Purchase or hiring of immovable property

10.5.2 Purchase or hiring of immoveable property used as a dwelling, or for recreational or leisure use

1. Fuel

1.1 Fuel for means of transport with a mass greater than 3,500kg, other than means of transport for paying passengers

1.2 Fuel for means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

1.3 Fuel for means of transport for paying passengers

2.1 Hiring of means of transport with a mass greater than 3,500kg other than means of transport for paying passengers

2.2 Hiring of means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

3.1 Expenditure relating to means of transport with a mass greater than 3,500 kg other than means of transport for paying passengers

3.2 Expenditure relating to means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers

3.2.5 Other expenditure relating to a means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers

4. Road tolls and road user charge

4.1 Road tolls for means of transport with a mass greater than 3,500kg other than means of transport for paying passengers

4.2 Road tolls for vehicles with a mass less than or equal to 3,500kg other than means of transport for paying passengers

4.3 Road tolls for means of transport for paying passengers

9. Expenditure on luxuries, amusements and entertainment

9.2 Purchase of manufactured tobacco

10. Other

10.1 Tools

10.2 Repairs within a warranty period

10.3 Services connected with education

10.4 Work on property

10.4.1 Work on immoveable property

10.4.3 Work on moveable property other than code 3

10.5 Purchase or hiring of property

10.5.1 Purchase or hiring of immoveable property

10.5.4 Purchase or hiring of moveable property other than
code 2

10.9 Participation in fairs and seminars, education or training

10.9.1 Fairs

10.9.2 Seminars

10.10 Flat rate additions on livestock and agricultural produce

Spain

1. Fuel

1.3 Fuel for means of transport for paying passengers

1.14 Fuel for means of transport for which there exists a restriction on the right to deduct

2. Hiring of means of transport

2.3 Hiring of means of transport for paying passengers

2.11 Hiring of a means of transport for which there exists a restriction on the right to deduct

3. Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)

3.3 Expenditure relating to means of transport for paying passengers

3.14 Expenditure relating to means of transport for which there exists a restriction on the right to deduct

10. Other

10.2 Repairs within a warranty period

10.3 Services connected with education

10.4 Work on property

10.4.1 Work on immovable property

10.4.2 Work on immovable property used as a dwelling

10.4.3 Work on moveable property other than code 3

10.5 Purchase or hiring of property

10.5.1 Purchase or hiring of immovable property used as a dwelling, or for recreational or leisure use

10.5.4 Purchase or hiring of moveable property other than code 2

10.7 Gifts of a small value

10.13 Goods and services acquired by a travel organiser for the direct benefit of the traveler

1. Fuel

1.6 Fuel purchased for resale

2. Hiring of means of transport

2.2 Hiring of means of transport with a mass less than or equal to 3,500 kg other than means of transport for paying passengers

2.4 Hiring of means of goods transport

2.5.1 Hiring of passenger and multipurpose cars used exclusively for business purposes

2.5.2 Hiring of passenger and multipurpose cars used partly for commercial passenger transport or driving instruction

2.6.1 Hiring of motorcycles, caravans and vessels for recreational or sports purposes, and aircraft with a mass less than 1,550 kg used for commercial passenger transport or driving instruction

2.6.2 Hiring of motorcycles, caravans and vessels for recreational or sports purposes, and aircraft with a mass less than 1,550kg used for other business purposes

2.7 Hiring of passenger cars of the M1 category

2.9.1 Hiring of means of passenger transport with less than 9 spaces used for commercial operations 2.9.2 Used for other than commercial operation

3. Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)

3.2.1 Purchase of means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

3.2.2 Maintenance of a means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

3.2.3 Purchase and installation of accessories for a means of transport with a mass less than or equal to 3,500kg other than means of transport for paying passengers

3.4.1 Purchase of a means of goods transport

3.4.2 Maintenance of a means of goods transport

3.5.1 Maintenance of passenger and multipurpose cars used exclusively for business purposes

3.5.2 Maintenance of passenger and multipurpose cars used partly for commercial passenger transport, driving instruction, or rental purposes

3.6.1 Maintenance, of motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1,550 kg used for commercial passenger transport, driving instruction, rental purposes

3.6.2 Maintenance, of motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1,550kg used for other business purposes

3.7.1 Expenditure, other than maintenance, garaging and parking relating to passenger and multipurpose cars used exclusively for business purposes

3.7.2 Expenditure, other than maintenance, garaging and parking relating to passenger and multipurpose cars used partly for commercial passenger transport, driving instruction or rental purposes

3.8.1 Expenditure, other than maintenance, garaging and parking relating to motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1,550kg used for commercial passenger transport, driving instruction, rental purposes or resale

3.8.2 Expenditure, other than maintenance, garaging and parking relating to motorcycles, caravans and vessels

6.6 Expenditure on lodging and accommodation for onward supply

3.9 Purchase of passenger car of M1 category

7.1.1 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast for the taxable person or an employee of the taxable person

7.1.2 Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast for someone other than the taxable person or an employee of the taxable person

7.2.1 Food and drink provided in the context of a conference, fair, exhibition or congress for the organiser of the event

7.2.2 Food and drink provided in the context of a conference, fair, exhibition or congress for a participant in the event, where the expenditure is directly charged by the organizer

7.4 Restaurant services purchased for onward supply

8. Admissions to fairs and exhibitions

8.1 For the taxable person or an employee of the taxable person

8.2 For someone other than the taxable person or an employee of the taxable person

9. Expenditure on luxuries, amusements and entertainment

9.1 Purchase of alcohol

9.2 Purchase of manufactured tobacco

9.3.1 Expenditure on receptions and entertainment for publicity purposes

9.3.2 Expenditure on receptions and entertainment not for publicity purposes

publicity purposes

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9.4 Expenditure on maintenance of pleasure craft

9.5 Expenditure on works of art, collectors items and antiques

9.6 Expenditure on luxuries, amusements and entertainment for advertising

9.7 Expenditure on luxuries, amusements and entertainment other than 9.1, 9.2 and 9.3

10. Other

10.1 Tools

10.2 Repairs within a warranty period

10.3 Services connected with education

10.4.1 Work on immoveable property

10.4.2 Work on immoveable property used as a dwelling

10.4.3 Work on moveable property other than code 3

10.5.1 Purchase or hiring of immoveable property

10.5.2 Purchase or hiring of immoveable property used as a dwelling, or for recreational or leisure use

10.5.3 Purchase or hiring of moveable property connected with or used in immoveable property used as a dwelling, or for recreational or leisure use

10.5.4 Purchase or hiring of moveable property other than code 2

10.6 Provision of water, gas or electricity through a distribution network

10.7 Gifts of a small value

10.8 Office expenses

10.9.1 Participation in Fairs

10.9.2 Participation in Seminars

10.9.3 Participation in Education

10.9.4 Participation in Training

10.10 Flat rate additions on livestock and agricultural produce

10.11 Expenditure on postage of mail to countries outside the European Union

10.12 Expenditure on fax and phone in connection with accommodation

10.13 Goods and services acquired by a travel organiser for the direct benefit of the traveller

10.14 Goods purchased for resale other than 1.6

10.15 Services purchased for resale other than 6.6 and 7.4

10.16.1 Work on immoveable property used as a residence, recreational or leisure facility

10.16.2 Work on immoveable property other than 10.16.1

10.16.3 Work on moveable property connected with or use of an immoveable property in 10.16.1

10.16.4 Work on moveable property other than 10.16.3

10.17.1 Expenditure on immoveable property used as a dwelling, or for recreational or leisure use

10.17.2 Expenditure on immoveable property other than 10.17.1



Aberdeen

Edinburgh

London

Bristol

Paris

Madrid

Seville

Marbella

Casablanca

Algiers

Amsterdam

Arnhem

Utrecht

Antwerp

Brussels

Duesseldorf

Cologne

Frankfurt

Luxembourg

Strasbourg

Zurich

Lyon

Milan

Ljubljana

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◁ Buenos Aires
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* Thought not member of CMS,
Rui Pena, Arnaut & Associados has
kindly contributed to this VAT edition
of CMS Tax Connect.

** As Luxembourg office has been
created on 1st January 2011, it could
not participated in this issue.

