

Notice on the VAT refund procedures to be applied by taxable persons not established in Hungary as of 1 January, 2010

Act CX of 2009 on the amendment of certain tax laws with the purpose of complying with European Community legal harmonisation obligations amends, among others, Chapter XVIII of Act CXXVII of 2007 on Value Added Tax (hereinafter: the VAT Act) as of 1 January, 2010.

As per the amendment based on Council Directive 2008/9/EC (12 February, 2008), VAT refund procedures change as follows:

Definition of basic concepts:

Member State of refund means the Member State of the European Community in which the purchase after which VAT was charged took place, and which decides on the refund application and – in case of a positive decision – refunds VAT. Hungary (in case of being a Member State of refund) carries out tasks related to VAT refund through the Hungarian national tax administration (hereinafter in this Notice: national tax administration).

Member State of establishment means the Member State of the European Community where the taxable person applying for VAT refund is established for business purposes and where the refund application is submitted.

1. Procedure applicable to taxable persons established in another Member State of the Community that is not the Member State of refund:

A.) The general conditions for refund from the taxable person's perspective do not change significantly from the current provisions:

A taxable person is eligible for VAT refund if he is not established in Hungary for business purposes (or if no such established seat exists, his domicile or normal place of residence is not in Hungary) and does not carry out supply of goods or services in Hungary (with the exception of certain transactions).

B.) The conditions for the application of the VAT refund legislation change in their merit from the currently in force provisions as follows:

The application of the taxable person not established in Hungary must be submitted **electronically** to the tax administration of the Member State where he is established, in the way and form required in that country (including applications submitted after 1 January 2010, even though they might refer to 2009). The Member State of establishment shall, after the necessary checks are carried out, forward the application electronically within 15 days to the Member State of refund, that is, to the national tax administration.

The VAT refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. This is a term of preclusion, in case the deadline is not observed, no application for justification is admitted. Accordingly, applications submitted after the 30 September to the Member State of establishment shall be forwarded, but the national tax administration shall reject them without consideration. The forms available for providing information in the Member State of establishment can be filled out in Hungarian or in English.

The exact form of the application, and extent and the maximum size of the attachments shall be determined by the tax administration of the Member State of establishment.

It is mandatory to attach to the application the invoice or the advance invoice that is a proof of the transaction, and the decision on the free trade of the product where the taxable amount on an invoice or importation document is EUR 1 000 or more or the equivalent in HUFs, or in case the invoice concerns fuel, the threshold is EUR 250 or the equivalent in HUFs.

C.) Procedure by the national tax administration

The national tax administration sends electronic notice to the applicant or to the representative identified in the application on the arrival of the application forwarded electronically by the Member State of establishment. The administration procedure starts on the day the application is received by the national tax administration. After the application is received, the national tax administration studies it on its merits as provided by Hungarian law, and makes a decision within 4 months. The period for administrative action can be extended as per the law, but it may not be more than 8 months.

In case the national tax administration decides to accept or to partially accept the VAT refund application, provisions are made for payment of the VAT refund simultaneously with the decision, or the latest within 10 working days of such decision. The national tax administration informs the applicant and the tax administration of the Member State of establishment of the decision and of the rulings electronically. The e-mail address given in the application form submitted to the Member State of establishment for electronic contact shall be used by the national tax administration for electronic correspondence.

D.) Representation

The application shall be submitted in the Member State of establishment by the applicant, or by the representative duly authorised as per the rules of the Member State of establishment. The national tax administration shall communicate with the so called contact person identified in the application, at the given e-mail address. In case the applicant wishes to give a proxy in the given procedure to a person other than the applicant as identified in the application, the applicant must comply with the rules of representation as provided in Section 7 of Act XCII of 2003 on the Rules of Taxation.

Summary: As of 1 January, 2010, taxable persons not established in Hungary shall submit their VAT refund applications electronically only in the Member State of establishment. The application form is drawn up by the Member State of establishment, and is made public on its web site. Paper based applications that are submitted shall be deemed rejected without consideration.

2. Procedure applicable to persons not established in a Member State of the European Community, but established in a so called recognized third country (currently the Swiss Confederation and the Principality of Lichtenstein)

The subjective conditions of eligibility for VAT refund and the circumstances for applying them shall not change in their merits in the future, meaning that applications shall continue to be submitted on paper to the national tax administration. Applications shall be submitted before 30 September, 2009 in such a way that they are received by the national tax administration by this date. This is a term of preclusion, in case the deadline is not observed, no application for justification is admitted. Electronic submission is not mandatory, but it is possible as provided by Section 251/M of the VAT Act.