

Guide on the New Rules for VAT Refunds to Taxable Persons not established in the Member State of Refund but established in another Member State

The new rules for VAT Refunds to Taxable Persons not established in the Member State of refund but established in another Member State provided in the VAT Act (Chapter 406 of the Laws of Malta) are transposed from Council Directive 2008/9/EC of 12 February 2008 (commonly referred to as the Eight Directive) which is provided for in Council Directive 2006/112/EC (the VAT Directive).

What is this document about?

This document is aimed to serve as a guide to make you understand better the new rules for VAT Refunds to Taxable Persons not established in the Member State of Refund but established in another Member State.

As regards the legal text the relative provisions are mainly to be found in Legal Notice 357 of 2009 published on 15 December 2009.

The new rules are applicable as from 1 January 2010. However, the provisions of Legal Notice 219 of 2004 would apply for refund applications submitted before 1 January 2010.

In the notes, unless otherwise indicated, reference to the 'Act' means the VAT Act (Chapter 406 of the Laws of Malta) whilst reference to the 'VAT Directive' means Council Directive 2006/112/EC.

What are the new rules about?

The new rules set out the conditions that would enable a taxable person established in a Member State to apply for a refund of VAT incurred in connection with his business in a Member State other than that in which he is established. The application for such a refund shall be made electronically through the electronic portal of the Member State where the applicant taxable person is established. The Member State of establishment will in turn forward the application to the Member State of Refund where the application will be processed.

These notes are intended mainly for taxable persons not established in Malta but established in another Member State.

For taxable persons established in Malta and registered under article 10 of the Act the notes are only intended to guide them to submit the application to the Member State of refund via the VAT Department portal. The application will then be processed by the Member State where the refund is being claimed (Member State of Refund) in accordance with its rules.

What do I need to know?

If you are a taxable person established in a Member State other than in Malta and would like to apply for a refund of VAT incurred in Malta in connection with your business you need to know the conditions that apply, what information would be needed, the time when the refund will be paid, etc.

If you are a taxable person established in Malta and would like to apply for a refund of VAT incurred in another Member State in connection with your business you would need to know how to make the application to the Member State of Refund via the electronic portal of the VAT Department.

If I am a taxable person established in Malta what shall I do to apply for a refund?

You would need to be in possession of an electronic ID (e-ID) to access the relative portal on the VAT Department website (www.vat.gov.mt). When you submit an application you will be issued with an electronic confirmation of receipt and the application will be verified by the VAT Department to ensure that it conforms with the regulations. If the application is found to be correct the VAT Department will forward it to the Member State of Refund for processing. On the other hand the VAT Department will notify you if your application is found not to conform with the regulations.

If I am a taxable person established in a Member State other than in Malta what shall I do to apply for a refund in Malta?

If you consider yourself eligible to claim a refund in Malta you have to submit an electronic application via the electronic portal of the Tax Administration in the Member State where you are established. If this application is found to be conformant with the regulations by the Tax Administration in your Member State it will be forwarded to the Malta VAT Department for processing.

How can I consider myself eligible to apply for a refund according to the new rules in Malta?

You would be an **eligible applicant** when you are a taxable person not established in Malta who carries out transactions giving rise to a right of deduction in the Member State where you are established.

When you carry out in the Member State where you are established both transactions that give rise to a right of deduction and transactions that do not give rise to a right of deduction in that Member State, only such proportion of the VAT is refundable as is attributable to the former transactions in accordance with article 173 of the VAT Directive as applied by the Member State in which you are established.

Apart from eligibility are there any other conditions to apply for a refund according to the new rules in Malta?

Once eligibility is established you may only apply for a refund on condition that during the refund period you have not had in Malta the seat of your economic activity, or a fixed establishment from which you effected business transactions, or, if no such seat or fixed establishment existed, your domicile or normal place of residence.

Furthermore during the refund period you did not supply any goods or services deemed to have been supplied in Malta, with the exception of the following transactions:

(i) the supply of transport services and services ancillary thereto, exempted pursuant to items 4(2), 4(3), 4(4), 4(5), 4(6), 5, 6 and 7 of Part One of the Fifth Schedule to the Act and article 70 of the Act;

(ii) the supply of goods and services to a person who is liable for payment of VAT in accordance with article 20 (2) of the Act.

Is there a time limit for the submission of a refund application?

For an application to be valid you have to submit your application to the Member State where you are established at **the latest on the 30 day of September of the calendar year following the refund period**. The application shall be considered submitted only if you have filled in all the information required. You will receive an electronic confirmation of receipt from the Member State where you are established.

Is there a particular period to which a refund refers?

You may only make an application for a refund where the refund period is not more than one calendar year or less than three calendar months. Refund applications may, however, relate to a period of less than three months where the period represents the remainder of a calendar year.

Is there a threshold for amounts to be claimed as refund?

Where the refund application relates to a refund period of less than one calendar year but not less than three months, the amount of VAT for which a refund is applied for may not be less than €400.

However, if the refund application relates to a refund period of a calendar year or the remainder of a calendar year, the amount of VAT may not be less than €50.

What information am I required to give in the refund application?

In your refund application you are required to give the following information:

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- your name and full address
- an address for contact by electronic means
- a description of your business activity for which the goods and services are acquired
- the refund period covered by the application
- a declaration that you have supplied no goods and services deemed to have been supplied in Malta during the refund period, apart from the exceptions allowed
- the VAT identification number or tax reference number by which you are identified in the Member State where you are established
- your bank account details including IBAN and BIC codes.

Furthermore, the refund application shall set out, **for each invoice or importation document**, the following details:

- name and full address of the supplier
- except in the case of importation, the VAT identification number of the supplier, as allocated by the Commissioner in accordance with the provisions of article 10 of the Act
- date and number of the invoice or importation document
- taxable amount and amount of VAT expressed in the currency euro
- the amount of deductible VAT expressed in euro

The **nature of the goods and services** acquired shall be indicated by the following **description codes**:

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| code 1 | for fuel |
| code 2 | for hiring of means of transport |
| code 3 | for expenditure relating to means of transport (other than the goods and services referred to under codes 1 and 2) |
| code 4 | for road tolls and road user charge |
| code 5 | for travel expenses, such as taxi fares, public transport fares |
| code 6 | for accommodation |
| code 7 | for food, drink and restaurant services |
| code 8 | for admissions to fairs and exhibitions |
| code 9 | for expenditure on luxuries, amusements and entertainment |
| code 10 | for other. |

If code 10 is used, you will have to indicate the nature of the goods and services supplied to you.

In addition to the above is there other information that has to be included?

You may be required to submit by electronic means a copy of the invoice or importation document with the refund application **where the taxable amount**

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on an invoice or importation document is €1,000 or more. Where the invoice concerns **fuel, the threshold is €250.**

In addition you may be required to provide a description of your business activity by using the harmonised codes determined in accordance with the second subparagraph of Article 34a(3) of Council Regulation (EC) No 1798/2003.

The VAT Department may also specify which language or languages are to be used for the provision of information in the refund application or of possible additional information.

Would it be possible to correct a refund claim?

If subsequent to the submission of a refund application the deductible proportion is adjusted pursuant to article 175 of the VAT Directive you are required to make a correction to the amount applied for or already refunded.

Such correction shall be made in a refund application during the calendar year following the refund period in question. On the other hand if you have not made refund applications during that calendar year you have to submit a separate declaration.

What happens when my application is received by the VAT Department?

You shall be notified by the VAT Department by electronic means of the date on which the application is received. Furthermore the VAT Department shall notify you with the decision to approve or refuse the refund application within four months from the date of its receipt.

What if the information furnished with the application is found not to be sufficient?

Where the VAT Department considers that it does not have all the relevant information on which to make a decision in respect of the whole or part of the refund application, it may request, by electronic means, additional information, in particular from yourself, or from the competent authorities of the Member State where you are established, within the four-month period referred to in the previous answer.

If necessary, the VAT Department may request further additional information. The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the VAT Department has reasonable doubts regarding the validity or accuracy of a particular claim.

The additional information requested above shall be provided to the VAT Department within one month of the date on which the request reaches the person to whom it is addressed.

What if my application is refused?

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You shall be notified by the VAT Department with the decision including the grounds for refusal where the refund application is refused in whole or in part.

You may appeal against a decision by the VAT Department to refuse a refund application. The appeal shall be made to the Value Added Tax Appeals Board in terms of article 44 and the Ninth Schedule to the Act.

Where the VAT Department fails to take a decision on a refund application within the prescribed time limits it shall mean that the application is deemed to have been rejected.

What if my application is accepted?

If after processing your refund application the VAT Department is satisfied that the refund claim is in conformity with the regulations you will be issued with a refund of the VAT claimed in your refund application.

How will I receive the refund?

Approved refunds shall be paid by the VAT Department at the latest within 10 working days of the four month period from the date of receipt of the application, provided that no additional or further additional information would have been requested.

The refund shall be paid in Malta or, at the applicant's request, in any other Member State. In the latter case, any bank charges for the transfer shall be deducted by the VAT Department from the amount to be paid to the applicant.

What if a refund already paid is found to have been fraudulently claimed?

Where a refund has been obtained in a fraudulent way or otherwise incorrectly, the VAT Department shall proceed directly to recover from the person to whom the refund was paid the amounts wrongly paid including any penalties and interest imposed.

DISCLAIMER

Please be aware that the above notes are published for information purposes and as guidance for further exploration. Utmost care has been taken to ensure that the information given is correct. This notwithstanding it is to be pointed out that they are not legally binding and should not serve as a legal document providing legally binding rulings. If you require further information you are advised to either refer to the legal text or contact the VAT Department.