

Annex 1

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

General

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

Information about existing tax legislation and administrative instructions is available in Portuguese language on www.portaldasfinancas.gov.pt.

2. Eligibility for a refund

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

3. What can be refunded

VAT relating to business activities carried out outside the Member State of Refund if those activities would be subject to tax or exempt with a right to deduct in the Member State of Refund if they had been made there, and VAT relating to supplies on which the reverse charge is applicable in the Member State of Refund.

4. What cannot be refunded

VAT incurred which relates directly to activities, which are exempt without the right to deduct.

VAT incurred on expenses on which there are restrictions on the right to deduct in the Member State of Refund.

According to the national legislation, in particular article 21 of the Portuguese VAT Code, following expenses **are excluded from the right to deduction**:

- a) Acquisition/hiring/use/transformation/repair/manufacturing or import of passenger cars, pleasure crafts, helicopters, planes, motorcycles, **except** for goods which sale or exploitation is the object of activity;
- b) Fuel:
 - Petrol
 - Partially deductible (50%) - diesel, LPG, natural gas and biofuels, except
 - Fully deductible (100%) - diesel, petrol, LPG, natural gas and biofuels, in the case of:
 - i) Heavy passenger vehicles;
 - ii) Vehicles licensed for public transport, rent-a-car vehicles excluded;
 - iii) Diesel; LPG, natural gas or biofuel consuming machines, which are not registered vehicles;
 - iv) Tractors exclusively or predominantly used for fieldwork related to agricultural activity;
 - v) Vehicles transporting goods, weighting more than 3 500Kg
- c) Business travels made by taxable person and staff, including toll fees;
- d) Food, accommodation, beverages and tobacco, **except** in cases the expense is related to

conferences, fairs, expositions or congresses, where a deduction of 50% or 25% can be applied, according to the Portuguese VAT Code (Art. 21, paragraph 2, Portuguese VAT Code);

- e) Fun and luxury, not considered normal operating expenses.

5. Proportional deduction

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

Procedures in the Member State of Establishment

6. What is the application procedure?

National taxable persons or their legal representatives, accountants or agents when duly authorized by the applicant, submit their request on site www.portaldasfinancas.gov.pt, using a password.

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

The representatives, in particular agents acting for or on behalf of the applicant, should have a valid, properly identifying password to access site www.portaldasfinancas.gov.pt.

8. Content of the application:

The application should contain the following information:

- the applicant's name;
- the applicant's VAT identification number or tax reference number;
- the applicant's full address including country code (the address which is on record in Member State of Establishment);
- e-mail address;
- a description of the applicant's business activity for which the goods and services are acquired via NACE cods;
- the refund period covered by the application;
- declaration by the applicant that he has supplied no goods and services deemed to have been supplied in Member State of Refund during the refund period, with the exception of the supply of specific transport services and services ancillary thereto or supplies to which the reverse charge mechanism is applicable in Member State of Refund;
- bank account details including IBAN and BIC codes.

In addition, the following details of each invoice or importation document.

- name and full address of the supplier;
- the VAT identification number or tax reference number of the supplier except in the case of importation;
- the prefix of the Member State of Refund (except in the case of importation);

- date and number of the invoice or importation document;
- taxable amount and amount of VAT expressed in the currency of Member State of Refund;
- the amount of deductible VAT calculated expressed in the currency of Member State of Refund;
- where applicable, the deductible proportion expressed as a percentage;
- nature of the goods and services acquired according to the codes 1 to 10;
- Where requested, further information on the nature of the goods and services acquired according to the sub-codes of 1 to 10.

[Reference here to the SCAC information document in annex]

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

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

10. Minimum refund limits

- 400 EUR or the equivalent in national currency if the refund period is between 3 months and less than a calendar year;
- 50 EUR or the equivalent in national currency if the refund period is of a calendar year, or the remainder of a calendar year.

[non-Euro zone Member States to give the equivalent in their national currency]

11. Time limit

The 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. The application shall be considered submitted only if the applicant has filled in all the information required.

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

In case an error on application, a request can be replaced by a different, at the latest on 30 September of the calendar year following in which the tax became due, or until the end of that calendar year, if the error to be corrected the elements of the invoice(s) supporting the request.

Procedures in the Member State of Refund

13. Are copies of invoices required?

No, only if requested under an additional information request.

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

No specific procedure is provided for, but the Portuguese Tax Administration advises to use zipped files, in Tiff, Jpeg and Pdf format.

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

The submission of a power of attorney may be required.

16. Can payments be made to agents?

Yes, as long as they are authorized by the applicant through a power of attorney.

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

The contacts should preferably be made by email (dsr-vatrefund@at.gov.pt).

However, the decision (partial approval or rejection of the application) is notified to the applicant for reimbursement or to his representative by post.

18. Time limits for the processing of an application

The Member State of refund has four months from the date of receipt of an application to notify the applicant of its decision to approve or refuse the application, or to ask for further additional information. Where additional information is required, it has a further two months from receiving that information. Where it has asked for further information, it shall notify the applicant of its decision within 8 months of the receipt of the application.

Where the refund application is approved, payment should be made within 10 working days.

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

The Member State of refund shall be provided with the information requested within one month of the date on which the request reaches the person to whom it is addressed.

[Member States to provide details – language requirements can be taken from Member States preferences]

20. The refund period

The refund period shall not be 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.

21. Number of applications accepted per year.

There is no limit to the number of requests, given the possibility of substitution and correction of the submitted requests at the latest on 30 September of the calendar year following, in which the tax became due.

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

According to national legislation the applicant can administratively appeal against the decision to the Director of the Department of Tax Refunds Services, Avenida João XXI, 76 - 5º, 1094-065 LISBOA- Portugal, in 120 days, or can file a judicial review, in 3 months directed to the judge, the last may be presented in the 3rd Local Services of Lisbon who is located in : Rua dos Correeiros, nr 70, 1100-167 LISBOA.

23. Incorrect applications

If an amount has been recovered in a fraudulent or incorrect way, Member States may recover those amounts.

In case of incorrect refunds, the Autoridade Tributária e Aduaneira (Tax and Customs Authority) assesses additionally the amount unduly refunded, plus compensatory interests, and starts a proceeding of misdemeanor (penalties) without prejudice of the provisions concerning mutual assistance in the recovering of VAT.