

## VAT refunds

Specific information about VAT refunds f.ex. eligibles for a VAT refund, refund for goods and services, rules on proportional deduction, procedure for apply for a refund

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### When a business is eligible for a VAT refund

#### VAT refund

You may request a VAT refund if you are an authorised party from a Member State of the European Union.

**Authorised entities** are the following:

- natural persons,
- legal persons,
- organisational units without legal personality,

with registered offices of their economic activity in the EU territory, which in the period for which they apply for a VAT refund do not have in the territory of Poland:

- a place of business,
- a place of establishment from which business transactions were carried out,
- a permanent place of residence or ordinary place of stay.

**A VAT refund will be granted if you:**

- are a registered VAT taxpayer, as referred to in Article 2(11) of the Value Added Tax Act, in the Member State of establishment;
- do not carry out sales referred to in Article 2(22) of the aforementioned Act in the territory of Poland in the period for which you apply for a VAT refund (i.e. supply of goods and services for consideration in the territory of Poland, export of goods and intra-Community supply of goods), with the exception of:
  - transport services and auxiliary services relating directly to the import of goods, if the value of these services was included in the taxable amount,
  - air traffic control services provided for air carriers operating primarily international air services,
  - services relating to take-off, landing and parking, and the handling of passengers and cargo or other similar services provided for air carriers operating primarily international air services,
  - services provided in maritime ports relating to the handling of means of maritime transport or aimed at meeting the direct needs of their cargo,
  - services provided in maritime ports in connection with international transport, relating to the handling of means of land transport and inland waterway transport or aimed at meeting the direct needs of their cargo,
  - marine salvage services, monitoring of the safety of maritime shipping and inland waterway transport, and services relating to marine environment protection and the maintenance of port water areas and approach lanes,
  - services related to the operation of vessels mentioned in Article 83 (1) point 1 of the Act, belonging to sea-owners, with the exception of services provided for the personal purposes of the crew,
  - services consisting in the renovation, reconstruction or maintenance of the vessels mentioned in Article 83 (1) point 1 of the Act, and their component parts,
  - services relating to the repair, conversion or maintenance of means of air transport and equipment installed on board, used by air carriers operating primarily international air services,
  - other services provided to shipowners or other entities providing transport by means of maritime transport serving the immediate needs of the vessels referred to in Article 83 (1) point 1 of the Value Added Tax Act or their cargo,
  - supply of services and goods for which, pursuant to Article 17 of the above Act, the taxpayer is their buyer,
  - services provided to non-taxable persons referred to in Article 28a of the Act, by taxpayers or foreign entities identified for the purposes of the special VAT settlement procedure referred to in Chapter XII, Chapters 6a and 7 of the Act,

- intra-community distance sales of goods by taxpayers identified for the purposes of the special VAT settlement procedure referred to in section XII, chapter 6a of the Act,
- supplies of goods by taxable persons facilitating such supplies in accordance with Article 7a (2) of the Act, identified for the purposes of the special VAT settlement procedure referred to in Section XII, Chapter 6a of the Act,
- distance sales of imported goods by taxpayers identified for the purposes of the special VAT settlement procedure referred to in section XII, chapter 9 of the Act.

## What types of goods/services can and cannot be refunded

A VAT refund will be granted in relation to goods and services purchased in the territory of Poland or in relation to goods that were subject to import into the territory of Poland if such goods were used for the purposes of activities granting the right to reduce the amount of tax due by the amount of tax charged in the country in which the value added tax is settled, other than Poland.

A VAT refund will not be granted in relation to tax amounts:

- which have been invoiced in violation of the Value Added Tax Act and executive provisions issued thereunder,
- which related to activities referred to in Article 2(8)(b) of the aforementioned Act (export of goods where export outside EU was carried out by or for the benefit of a purchaser having registered office outside the country) and Article 13 of the aforementioned Act (intra-Community supply of goods),
- in relation to which, in accordance with the Value Added Tax Act and executive provisions issued thereunder, the right to reduce the amount or to the reimbursement of tax due is not granted to taxpayers referred to in Article 15 of the aforementioned Act (e.g. in relation to purchased **accommodation and catering services**, with the exception of purchase of ready meals for passengers by taxpayers performing passenger transport services).

## What the rules are on proportional deduction

If the goods or services for which you apply for a VAT refund were used only partially in order to perform activities granting the right to reduce the amount of due tax by the amount of tax charged in the territory of a country in which you settle the value added tax, other than the territory of Poland, a VAT refund will be granted in proportion in which goods or services are related to the performance of activities granting the right to reduce the amount of due tax by the amount of tax charged. In such case, when specifying the amount of a VAT refund applied for in the submitted application, you need to account for the proportion calculated as specified above.

If the proportion has been changed after the VAT refund application was submitted:

- you account for the change in such proportion and make a relevant correction of the amount of tax for refund resulting from changing such proportion in the tax refund application submitted in the fiscal year following that for which or for whose part the application was submitted. The amount of correction will increase or reduce the amount of refund applied for for such period.

- you make a correction of the tax refund application if in the fiscal year following that for which or for whose part the application was submitted you do not apply for tax refund. In such case, the amount of tax reducing the amount of tax refund received, as specified in the decision, must be paid to the tax office within 10 days of receiving such decision. However, if such correction resulted in a tax amount increasing the amount of tax refund received, such amount will be refunded from the tax office. Time limits specified for the issuance of a decision concerning the recognised amount of tax refund will be applicable.

## **What the procedure is for applying for a refund**

A VAT refund application must be submitted in Polish, via means of electronic communication and through tax administration of the Member State of establishment, to the Head of the Second Tax Office for Warszawa-Śródmieście. The Tax Office will without undue delay confirm in electronic form that the application has been received.

The application should be accompanied by a copy of an invoice or a customs document if the tax base specified:

- in the invoice or the customs document is equal to or exceeds the equivalent in PLN of **EUR 1 000**;
- in the invoice stating that fuel has been bought is equal to or exceeds the equivalent in PLN of **EUR 250**.

The amount expressed in euro will be converted according to the average exchange rate of euro, as published by the National Bank of Poland, in force as of the last business day preceding that of invoice or customs document issuance.

## **Whether the applicant can use a third party to submit a claim for a VAT refund**

### **If so, whether they need to provide any additional documentation**

The manner of representation when submitting the VAT refund application before an authority where you are established (a Member State of establishment) is regulated by provisions applicable in such country.

In proceedings before Polish tax authorities (an authority of a Member State of refund), you may act in person or by proxy.

If you have appointed an attorney to represent you in a specific matter, you have to remember to provide the power of attorney to the Second Tax Office for Warszawa-Śródmieście. This document has to be affixed with your signature and be executed in Polish.

The PPS-1 form contains a template of such power of attorney.

## **Whether payments can be made to third parties**

Tax refund will be paid in PLN to your bank account in Poland or in the Member State of establishment or in another Member State.

## What information should be included in the refund application

A VAT refund application must be submitted in electronic form and should contain the following data:

- the Member State being the addressee of the application;
- purpose of the application (new application/correction);
- data concerning the application to which the correction relates:
  - application number,
  - application date;
- data of the authorised party from Member State of the European Union (applicant):
  - identifying information of the authorised party – name and surname or full name,
  - exact address of authorised party's economic activity registered office,
  - email address,
  - VAT registration number;
- information concerning the person representing the authorised party from Member State of the European Union (to be provided if the taxpayer granted a power of attorney):
  - name and surname,
  - exact address of the representative,
  - email address,
  - identification number;
- description of economic activities according to the fourth level of NACE Rev. 2, in accordance with Article 2(1)(d) of the Regulation (EC) No 1893/2006<sup>1)</sup>, pursuant to Article 2 of the Regulation 79/2012<sup>2)</sup>;
- the period covered by the application:
  - from (day, month, year),
  - to (day, month, year);
- detailed information about the bank account of the authorised party from Member State of the European Union to which tax is to be refunded:
  - IBAN number referred to in banking law provisions,
  - BIC number referred to in banking law provisions,
  - bank account currency;
- information about imported goods:
  - name and surname/business name of the goods seller,
  - address and country of the goods seller,
  - data and number of the customs document,
  - type of goods according to codes and subcodes referred to in an annex III to Regulation 79/2012,
  - tax base in PLN,
  - tax amount in PLN,

- calculation of tax if proportion is applied – amount of proportion (in %),
  - amount of tax for refund in PLN (if proportion is applied, amount of return should be calculated taking this proportion into account);
- information concerning purchased goods and services:
  - name and surname/business name of the supplier of goods or services,
  - tax identification number of the supplier of goods or services,
  - address and country of the supplier of goods or services,
  - invoice data and number
  - type of goods and services according to codes and subcodes referred to in an annex III to Regulation 79/2012,
  - tax base in PLN,
  - tax amount in PLN,
  - calculation of tax if proportion is applied – amount of proportion (in %),
  - amount of tax for refund in PLN ;
- change of proportion:
  - period to which the change relates:
    - from (day, month, year),
    - to (day, month, year),
  - amount of proportion after the change (in %);
- information about appendixes – type and name of the file and description of content.

## What the minimum refund limits are

The amount of VAT refund applied for may not be lower than the amount constituting the equivalent in PLN of:

- **EUR 400** – if the application concerns a period shorter than one fiscal year but not shorter than 3 months;
- **EUR 50** – if the application concerns the entire fiscal year or a period shorter than the last 3 months of such year.

Refund of the tax included in prices of purchased goods and services or paid on account of import of goods must comprise the amount of tax specified in the invoice, and in the case of import of goods- in the customs document.

## What the time limit is to request a refund

The application should be lodged no later than by 30 September of the year following the fiscal year to which the application relates.

## What the time limit is for an authority to process a refund

The Head of the Second Tax Office for Warszawa-Śródmieście will issue a decision about the amount of recognised VAT refund within **4 months** of receiving the application accompanied by all required documentation.

If the authority does not have access to all information based on which it may make a decision, it may request additional information from you. This may be done within 4 months of receiving the application if the request is directed to authorised parties from EU Member States.

If based on additional information received the decision about the amount of recognised tax refund still cannot be rendered, the authority may request the provision of further additional information.

Requested information is to be provided in Polish, within 1 month of receiving the request.

If the provisions of additional information and further additional information has been requested, the head of tax office will make a decision about the amount of recognised tax refund within:

- **2 months** of receiving additional information and further additional information, not later than within **8 months** of receiving the application;
- **2 months** of the expiry of the time limit for providing requested information, if such additional information and further additional information has not been provided, but no later than within:
  - **6 months** of receiving the application if additional information has been requested,
  - **8 months** of receiving the application if further additional information has been requested.

### **Whether there are any repayment supplements available if the authority is late paying the VAT back**

The tax office will refund the recognised tax amount no later than within **10 working days** of rendering the decision about the amount of recognised tax refund.

If you do not receive the recognised tax refund within this time limit, the authority will also pay you interest to which you are entitled.

### **Whether there is a limit on how many applications are allowed annually**

You may apply for tax refund for a period **not shorter than 3 months and not longer than a fiscal year or for a period shorter than 3 last months of such year** – in respect of tax on purchased goods or services or goods imported in the period for which you apply for tax refund.

You can apply for a tax refund for a period not shorter than 3 months and not longer than a tax year or for a period shorter than the last 3 months of this year - with regard to tax on purchased goods or services or imported goods in the period for which you are applying for a tax refund .

## How the authority will communicate with the applicant

In the first place, the authority will contact you via the email address you provided. In this manner, you may receive, for example, a request to provide additional information.

## Whether application errors can be corrected and if so how

If information given in the application lodged contains errors, such errors may be remedied by sending a corrected application. The correction will be submitted for the same period.

The correction may not relate to:

- your tax identification number,
- indication of another Member State of refund,
- period of refund.

The correction may not also contain additional items in respect of information concerning imported or purchased goods or services (parts E and F).

The correction which contains no items in parts E and F will be deemed as a request to cancel the application.

If after the application has been submitted the proportion of refund to which you are entitled is changed, you should:

- account for the change in such proportion and make a relevant correction of the amount of tax for refund resulting from changing such proportion in the tax refund application submitted in the fiscal year following that for which or for whose part the application was submitted,
- make a correction of the tax refund application if in the fiscal year following that for which or for whose part the application was submitted you do not apply for tax refund.

## What the procedure is for appealing against a decision

If you do not agree with the decision you received, you may lodge an appeal.

The appeal must be lodged via the Head of the Second Tax Office for Warszawa-Śródmieście to the Director of the Warsaw Tax Administration Chamber (Izba Administracji Skarbowej),

**Important: the appeal should specify the grounds on which the decision is challenged, what are your expectations and indicate evidence substantiating the request.**



If the Head of the Second Tax Office for Warszawa-Śródmieście admits your request in full, a new decision will be rendered, whereby the challenged decision will be repealed or amended.

If the request is not admitted in full, your appeal together with all files of the case will be provided to the Director of the Warsaw Tax Administration Chamber (Izba Administracji Skarbowej) who will render a decision in your case.

The Director of the Warsaw Tax Administration Chamber may:

- uphold the decision you received, or
- repeal it in part – and in this scope render a new decision in your case, or
- repeal it in full – and in this scope discontinue proceedings in your case or refer the case for re-examination, if resolving the case would require a prior hearing on evidence to be conducted in full or in substantial part.

## Whether there are any time limits for appeals

An appeal against the decision may be lodged within 14 days of the decision being delivered.

This time limit will run from the day following that on which the decision is delivered to you. The expiry of the last of the indicated number of days will be deemed the end of the time limit.

**Remember: The time limit for lodging an appeal will be deemed met if prior to the lapse thereof your pleading has been:**

- sent in the form of an electronic document to the tax authority and you obtained an official receipt;
- dispatched in a Polish post office of a designated operator in the meaning of the Postal Law Act of 23 November 2012 (Journal of Laws of 2018, item 2188) or in a post office of an operator performing universal postal services in another Member State of the European Union or has been collected by the Polish post office of a designated operator after having been dispatched in a non-EU country or filed with a Polish consular post.

## What the circumstances are where a requester's EU country won't send the refund request

The circumstances whereby a Member State of establishment for the applicant fails to send a tax refund application to Poland are not specified in Polish legal provisions.

In accordance with Article 18 of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, the Member State of establishment will not forward the application to the Member State of refund where, during the refund period, any of the following circumstances apply to the applicant in the Member State of establishment:

1. the applicant is not a taxable person for VAT purposes;

2. the applicant carries out only supplies of goods or of services which are exempt without deductibility of the VAT paid at the preceding stage pursuant to Articles 132, 135, 136, 371, Articles 374 to 377, Article 378(2)(a), Article 379(2) or Articles 380 to 390 of Directive 2006/112/EC or provisions providing for identical exemptions contained in the 2005 Act of Accession;
3. the applicant is covered by the exemption for small enterprises provided for in Articles 284, 285, 286 and 287 of Directive 2006/112/EC;
4. the applicant is covered by the common flat-rate scheme for farmers provided for in Articles 296 to 305 of Directive 2006/112/EC.

## Whether refunds can be granted without reciprocal agreements to non-EU based businesses

A VAT refund to authorised parties from third countries (non-EU) will be granted on the basis of reciprocity. This rule will not be applicable to entities:

- identified for the purposes of the special VAT settlement procedure referred to in Chapter XII, chapters 6a and 7 of the Act, providing services provided to non-taxable persons referred to in Article 28a of the Act,
- identified for the purposes of the special VAT settlement procedure referred to in section XII, chapter 6a of the Act, making:
  - intra-Community distance sales of goods,
  - supplies of goods by taxable persons facilitating such supplies in accordance with Article 7a (2) of the Act,
- identified for the purposes of the special VAT settlement procedure referred to in section XII, chapter 9 of the Act, performing distance sales of imported goods,

if the tax refund to these entities is associated only with the performance of these activities.

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1. Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Rev. 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EU Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1, as amended).
2. Commission Implementing Regulation (EU) No 79/2012 of 31 January 2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax (OJ L 29, 1.2.2012, p. 13, as amended).



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