

## EU VAT refunds for non-EU businesses require action by 30 June 2018

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### Executive summary

Non-EU businesses that have incurred value added tax (VAT) in Europe during 2017 may be able to recover the VAT by applying to the relevant European Union (EU) countries for a refund – provided they comply with the rules. In general, claims by non-EU businesses must be submitted within six months after the end of the calendar year. The deadline for applications for 2017 for most EU countries is 30 June 2018, so taxpayers should be collecting the required information now to support a successful claim.

Many multinational enterprises (MNEs) incur VAT in countries where they are not established or VAT registered. A business may, for example, incur foreign VAT on trade fairs and conferences; meals and accommodations; travel; transportation and fuel costs; business entertainment; marketing and advertising costs; professional services; telecommunications; printing materials and stationery; and training. Even for large business expenses, recovering foreign VAT may be an issue.

Although there are mechanisms for VAT recovery, it may be difficult for foreign businesses to fulfill the requirements in practice. Not every country allows nonresidents to recover VAT or to recover VAT on all items of expenditure. In addition, tax authorities apply strict criteria before they will authorize a repayment. Barriers to recovering foreign VAT include a lack of understanding of the VAT rules in different jurisdictions, difficult administrative procedures,

language barriers, insufficient or incorrect documentation to support the application and missing important deadlines. So, planning ahead, understanding the detailed rules and applying them thoroughly can improve an organization's chances of success in reclaiming EU VAT on business expenses.

## Detailed discussion

### EU 13th VAT Directive – who can use it?

The EU 13th VAT Directive grants the right for a business established outside the EU to recover VAT incurred in one of the 28 Member States.<sup>1</sup> Similar refund rules apply for expenditures incurred in Norway and Switzerland. Organizations can use the 13th Directive to reclaim VAT paid in the EU if they are registered for business purposes in a non-EU country, provided that they meet all of the following requirements:

- ▶ The organization is not registered, liable or eligible to be registered for VAT in the EU.
- ▶ It has no place of business in the EU.
- ▶ It does not make any supplies in the EU (other than transport services related to the international carriage of goods, or services where VAT is payable by the person in the EU to whom the supply is made).

In addition, the expenses must be incurred by a business person or entity that would be considered to be engaged in an activity subject to VAT if its activity were carried out in the EU. For example, financial services are generally VAT exempt in the EU; therefore, e.g., a bank established in India may not be entitled to a full VAT refund, as it may not be considered eligible for VAT refund under EU VAT legislation. However, this is not always a simple issue to decide, as it depends very much on the actual activities that the claimant undertakes.

### Eligible expenses

Only VAT paid on business-related expenses can be reclaimed. Therefore, any private expenditure is not allowable under this refund procedure. In addition, some business expenditures may not be eligible for a VAT refund.

Each EU Member State has specific rules concerning which expenses can be subject to a claim in that country, and the rules can vary considerably from country to country. Some Member States, for example, do not allow recovery on hotel accommodation or fuel costs. In general, to be eligible for

reclaim, the goods or services included must be expenses that would be deductible if the business was carried on locally. For example, if local businesses are not entitled to take a VAT deduction for business entertainment, a non-EU business cannot file a VAT refund application for business entertainment expenses incurred in that country.

### Non-EU reciprocity

Some EU Member States also require that the organization's country of residence allow EU traders similar refunds of any turnover taxes levied in the respective country. This is called the "reciprocity" principle. So, if such country does not levy a VAT or if it does not refund a local VAT to nonresidents, an organization may not be able to claim VAT incurred in some EU countries. But it is worth noting that not all EU Member States apply this rule in the same way.

### EU 13th VAT Directive claim forms

The period covered by the claim varies from one Member State to the other, but annual claims are generally accepted. The EU VAT refund process for non-EU businesses is still largely a paper-based system. A separate claim must be filed with each country where an organization wants to reclaim VAT. Although the claim form can generally be printed from the relevant tax authority's website, it must then be filled in and filed together with the original paper invoices. Difficulties can arise if the form needs to be completed in the local language.

Assistance from the country of claim may sometimes be necessary to comply with this requirement.

### Deadlines

The deadline for annual claims is generally 30 June of the year following the calendar year when the expenses were incurred. This means that for 2017 (invoices dated 1 January 2017 to 31 December 2017), the deadline for submission is 30 June 2018. There are, however, certain exceptions to the period covered by claims and the deadline. In the United Kingdom (UK), VAT refund claims for non-EU businesses are based on a "prescribed year" running from 1 July to 30 June. The deadline for submission of annual claims in the UK is six months after the end of the prescribed year (i.e., 31 December). The deadline set by the EU Member States is a firm date, and late claims are not accepted. This is an area where foreign businesses often struggle to meet the requirements.

## Endnote

1. Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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