

THE RECOVERY OF THE VALUE ADDED TAX PAID IN ANOTHER COUNTRY BY TAXABLE PERSONS

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1. Introduction

The application of the common VAT regime instituted by the European legislation allows taxable persons settled in the Member State of the E.U. to get the reimbursement of the deductible tax. The application for the reimbursement of the tax is exerted by the VAT deduction submitted according to the legislation in the state in which it is fiscally registered. The European legislation gives the taxable persons the chance to request the direct reimbursement of the tax paid in another Member State for those operations giving the right to deduction but they cannot be emphasized in the VAT deductions. The taxable persons settled outside the Community can also benefit from the reimbursement of the tax paid in a Member State if there are reciprocity agreements/statements between the Member State where the tax was paid and the third state where the taxable person is settled.

2. Contents

The reimbursement of the value added tax to taxable persons settled in Romania

Taxable persons settled in Romania, who are normally registered for VAT purposes can get the VAT reimbursement paid for imports and purchases of goods/services carried out in another Member State. The right to get the reimbursement of the tax corresponding to the acquisitions carried out by these persons is determined

according to the legislation of the member state in which the tax has been paid.

In order to get the reimbursement of the tax in the reimbursement Member State, the taxable person settled in Romania will submit to the fiscal authority in Romania a reimbursement application, by electronic mail, until the 30th September of the calendar year following the reimbursement period. The fiscal authority in Romania will send by electronic mail to the competent authority in the reimbursement Member State the reimbursement application properly filled in.

If the taxable person carried out both operations giving the right to deduction and operations which do not give the right to deduction in that Member State, Romania will reimburse only that part of the VAT corresponding to the operations with the right to deduction. In order to be eligible for reimbursement in Romania, a taxable person not settled in Romania must carry out operations giving the right to deduction in the Member State in which it is settled.

In the reimbursement application there are also operations regarding the acquisitions of goods or services which were invoiced in the reimbursement period (provided the VAT had not become due before the invoicing), acquisitions invoiced before the VAT became due (case in which the VAT became due during the reimbursement period), and the import of goods carried out during the reimbursement period.

The reimbursement application can also relate to invoices or documents which have not been covered by the previous reimbursement applications but which aim at operations finalized during the calendar year in question.

The reimbursement period is no more than a calendar year and no less than 3 calendar months. The reimbursement applications can also relate to a period of less than 3 months if it represents the period remained until the end of the calendar year.

Depending on the reimbursement period, the amount of the tax requested upon the reimbursement is different. Thus, if the reimbursement period is less than a calendar year, but more than 3 months, the VAT amount cannot be smaller than the equivalent in lei of 400 Euro; if the reimbursement period is one calendar year or the period remaining of a calendar year, the VAT amount cannot be less than the equivalent in lei of 50 Euro or the equivalent of this amount in the national currency of the reimbursement state.

If, during the reimbursement period the requesting taxable person falls within any of the situations - it is not a taxable person within the VAT meaning, carries out only deliveries of goods or provides service which are exempted from VAT without the right to deduction, gets the exemption for small enterprises (the annual turnover is less than the limit of 35,000 Euro) - the fiscal authority in Romania will not submit the application to the reimbursement Member State.

Subsequently to the submission of the reimbursement application, the deduction pro-rata can be influenced upon the annual determination of the final pro-rata, whereupon the taxable person settled in Romania will go on to *rectify the amount requested or already reimbursed*. The rectification is done by submitting a *reimbursement application* during the calendar year following the reimbursement period in question. If the taxable person settled in Romania does

not submit a reimbursement application during the calendar year following the reimbursement period in question, the rectification of the amount is carried out by a *pro-rata adjustment statement*, sent electronically to the fiscal authority during the calendar year following the reimbursement period in question.

The reimbursement of the value added tax to the taxable persons not settled in Romania, but settled in another Member State

Taxable persons settled in the Community but not in Romania, not registered and not bound to usually register for VAT purposes in Romania, request the reimbursement of the value added tax by Romania – the Member State in which the tax for the goods / services purchases or in which the import of goods was carried out.

The cumulative conditions that must be met by these taxable persons in order to get the reimbursement are the following:

- during the reimbursement period, it did not have in Romania the registered office of its business or a stable office wherefrom it did business or, lacking such stable offices, its regular domicile or residence;

- during the reimbursement period it is not registered not bound to register for VAT purposes in Romania;

- during the reimbursement period it did not deliver goods not provided services deemed as delivered/provided on the Romanian territory, except for the provision of transport services and ancillary services which are exempted and the delivery of goods and provision of services for which the beneficiary must pay the tax.

The reimbursement of the value added tax cannot be requested if it was incorrectly invoiced, nor the tax invoiced for deliveries of goods which are or can be exempted, the tax corresponding to the acquisitions of goods/services for the delivery/provisions of which no deduction is granted in Romania, nor the tax which

was invoiced subsequently to the registration in Romania for VAT purposes of that taxable person.

In order to be eligible for reimbursement in Romania, the taxable person settled in Romania must carry out operations which give the right to deduction. If the taxable person carries out both operations giving the right to deduction and operations which do not give the right to deduction, Romania will reimburse only that reimbursable part of the VAT corresponding to the operations with the right to deduction.

The taxable person not settled in Romania, but settled in another Member State is entitled to the reimbursement of the tax paid in Romania, right exerted by submitting an electronic application in the Member State in which the taxable person is settled. The jurisdiction for the settlement of the reimbursement applications belongs to the General Directorate of the Public Finances of Bucharest Municipality, by the compartment with attributions of managing the non-resident taxpayers. The applicant must supply both the information in the reimbursement application and the possible additional information of documents requested by the fiscal authority in Romania. The application will be submitted until September 30th of the calendar year following the reimbursement period.

In order to get the reimbursement of the value added tax corresponding to the import invoices or documents for which the taxation base is at least the equivalent in lei of 1000 Euro or in case of fuel invoices of at least 250 Euro, the applicant must send by electronic mail along with the reimbursement application copies of those invoices or, as the case may be, import documents. For the import documents or invoices the values of which do not exceed the above-mentioned amount, it is not compulsory to send their copies, except for the situation in which there are serious doubts regarding the validity or accuracy

of a certain application, at the request of the fiscal authority in Romania.

The reimbursement applications are drawn up for the acquisitions of goods or services which were invoiced in the reimbursement period, paid until the date of the reimbursement application or for imports of goods carried out in the reimbursement period, but they can also relate to import invoices or documents which have not been covered by the previous reimbursement applications but which aim at operations finalized during the calendar year in question. The period for which the value added tax is reimbursed is no more than a calendar year and no less than 3 calendar months, but the reimbursement applications can also relate to a period of less than 3 months if it represents the period remained until the end of the calendar year.

The amount of the tax requested at reimbursement is different depending on the reimbursement period. Thus, if the reimbursement period is less than a calendar year, but more than 3 months, the VAT amount cannot be smaller than the equivalent in lei of 400 Euro; if the reimbursement period is one calendar year or the period remaining of a calendar year, the VAT amount cannot be less than the equivalent in lei of 50 Euro.

After the fiscal authority in Romania receives the application, it notifies the applicant at once, electronically the date on which it received the application. The decision to approve or reject the reimbursement application is notified to the applicant within 4 months as of the date the application is received. If the fiscal authority demands additional information, the period to solve the reimbursement application is extended by no more than 2 months.

The reimbursement of the approved amount is done in lei in a bank account in Romania within no more than 10 business days as of the expiration of

the notification of the reimbursement decision. Upon the applicant's request, the reimbursement can be done in a bank account opened in any other Member State. In this case, the possible banking fees of transfer are detained from the amount that is going to be paid to the applicant.

The reimbursement of the value added tax to taxable persons settled outside the Community

Taxable persons not settled in the Community, not registered and not bound to normally register for VAT purposes in Romania, request the reimbursement of the tax paid for imports and acquisitions of corporate movables and services carried out in Romania, if they meet the following conditions:

- during the reimbursement period, it did not have in Romania the registered office of its business or a stable office wherefrom it did business or, lacking such stable offices, its regular domicile or residence;

- during the reimbursement period it did not deliver goods not provided services deemed as delivered/provided on the Romanian territory, except for the provision of transport services and ancillary services which are exempted and the delivery of goods and provision of services for which the beneficiary must pay the tax.

The value added tax is not reimbursed if it was incorrectly invoiced, nor the tax invoiced for deliveries of goods which are or can be exempted, the tax corresponding to the acquisitions of goods/services for the delivery/provisions of which no deduction is granted in Romania, nor the tax which was invoiced subsequently to the registration in Romania for VAT purposes of that taxable person.

In order to get the reimbursement, any taxable person not settled in the Community, not registered and which is not bound to normally register for VAT purposes in Romania must appoint a representative in Romania for

reimbursement purposes. The representative acts on behalf and on account of the taxable person that he/she represents and will be held liable severally and jointly with the taxable person for its obligations and rights regarding the reimbursement application. The fiscal authority accomplishes, on behalf and on account of the requesting taxable person, the following obligations:

- submits an application to the fiscal authorities, appending all the import invoices and/or documents in the original, which would emphasize the tax whose reimbursement is requested;

- presents documents wherefrom it results that the applicant is engaged in a business which would grant him/her the capacity of taxable person if he/she were settled in Romania. By way of exception, if the fiscal authorities already hold such evidence, it is not compulsory that the taxable person should bring new evidence for a period of one year as of the date this evidence is presented;

- presents a written statement of the applicant that in the period to which the reimbursement application is related that person has done no deliveries of goods or provision of services which occurred or were deemed as occurring in Romania.

The reimbursement applications relate to a period for which the value added tax is reimbursed of *no* more than a calendar year and no less than 3 calendar months, but they can also relate to a period of less than 3 months if it represents the period remained until the end of the calendar year.

The taxable person submits the reimbursement application at the fiscal authority within no more than 9 months as of the end of the calendar year in which the tax becomes demandable and will correspond to the invoices for the acquisition of goods or services or import documents carried out in the reimbursement period, but it can also correspond to invoices or import documents which are not included

already in the previous applications, to the extent in which these invoices or import documents correspond to the operations concluded in the calendar year to which the application relates.

Depending on the reimbursement period, the amount of the tax requested at reimbursement is different. Thus, if the reimbursement period is less than a calendar year, but more than 3 months, the amount for which the reimbursement is requested cannot be smaller than the equivalent in lei of 400 Euro; if the reimbursement period is one calendar year or the period remaining of a calendar year, the amount for which the reimbursement is requested cannot be less than the equivalent in lei of 50 Euro.

Within 6 months as of the date on which the application is received, the fiscal authority will issued the reimbursement application, and in case of partial or total rejection of the reimbursement, reasons will be presented for the rejection of the application.

The equivalent in lei of the

amounts expressed in Euro is determined on the grounds of the exchange rate communicated by the National Bank of Romania valid on January 1st, 2010.

3. Conclusions

Taxable persons settled outside the Community, not registered and not bound to register for VAT purposes in any other Member State can benefit from the reimbursement of the tax paid for acquisitions or imports carried out in that Member State provided they do business that would grant them the capacity of taxable persons in the State where they are settled, according to the community legislation in the field of the VAT. Taxable persons, VAT payers, settled in a Member State of the European Union can benefit from the reimbursement of the tax paid for acquisitions or imports carried out in another Member State provided they were not registered not bound to register for VAT purposes in that state.

REFERENCES

*****	The methodological norms issued in the application of Title VI of Law no. 571/2003 regarding the Fiscal Code, approved by Government Resolution no. 44/22.01.2004, published in the Official Gazette of Romania no. 112/06.02.2004, with the subsequent amendments and supplementations;
*****	The Presidential Order of the National Agency for Fiscal Administration no. 3/04.01.2010, for the approval of the Procedure for the reception of VAT reimbursement applications paid by the taxable persons settled in Romania for imports and acquisitions of goods/services carried out in another Member State of the European Union, published in the Official Gazette of Romania no. 32/15.01.2010;
*****	The Presidential Order of the National Agency for Fiscal Administration no. 4/04.01.2010, for the approval of the Procedure for the resolution of value added tax reimbursement applications submitted by the taxable persons not settled in Romania, settled in another Member State of the European Union, published in the Official Gazette of Romania no. 32/15.01.2010;
*****	Title VI of Law no. 571/2003 regarding the Fiscal Code, published in the Official Gazette of Romania no. 927/23.12.2003, with the subsequent amendments and supplementations.