



**THOMPSON
HINE**

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INTERNATIONAL TAX UPDATE

VAT Refund for Non-EU Companies Operating in Belgium

Companies operating in Belgium but based outside of the EU may be entitled to a refund of the Belgian value-added tax (VAT). Companies that may qualify are those not performing any operation subject to the VAT in Belgium (and thus not obliged to register for VAT purposes) but find themselves incurring the Belgian VAT anyway. The most common examples are companies having an office in Belgium without carrying out any taxable supply or companies incurring Belgian VAT for services or products acquired in Belgium.

This bulletin provides an overview of the Belgian VAT refund procedure for non EU-based companies.

RECIPROCITY

The 13th VAT Directive¹ (“13th Directive”) provides that the member states may require reciprocity in order to allow a VAT refund. At the time of this writing, Belgium has not completed any reciprocity agreement and requests for refunds coming from any country are accepted without requiring reciprocity.

TAX REPRESENTATIVE

Under the 13th Directive, no tax representative is required for the refund procedure of the VAT paid by foreign companies. The designation of a tax representative is only required where the foreign company performs operations subject to Belgian VAT in Belgium.²

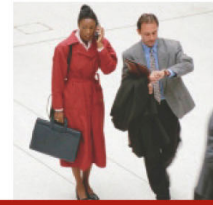
TIME LIMIT

The foreign company is entitled to a refund within five years from the date on which the right to deduct takes effect. The invoices may not have been the subject of previous applications. Only one refund application may be submitted per calendar quarter.

Notification of the refund decision by the Belgian VAT authorities is issued within six months of the date on which the application, accompanied by all the required documents, is presented to the Central Office for Foreign Taxpayers. Any decision not to grant a refund is accompanied by the reasoning for that decision.

MINIMUM AMOUNT

The minimum refundable amount is €200.00, except where the application is presented during the first calendar quarter, in which the minimum refundable amount is €25.



WHERE AND HOW

Refund applications must be presented to the Central Office for Foreign Taxpayers (*BCAE Remboursement, Rue des Palais 48, 5^{ième} étage, B-1030 Bruxelles - CKBB Teruggaven, Paleizenstraat 48, 5^{de} verdieping, B-1030 Brussel*). The application form (known as form 803) is available on request only from the Central Office for Foreign Taxpayers (note that the form is only available in Dutch, French or German).

The application form may only be completed in Dutch, French or German. Attestations to the applicant's status as a taxpayer (see below) submitted in a language other than Dutch, French or German must be accompanied by a certified translation.

INFORMATION TO BE PROVIDED

The applicant is obliged to include proof that he or she is a taxpayer in accordance with the terms of the VAT Code. Such proof will most likely take the form of an attestation from the competent authorities of the country of residence.

The application must also be accompanied by the original invoices (and credit notes) received from suppliers as well as the import documents, if applicable.

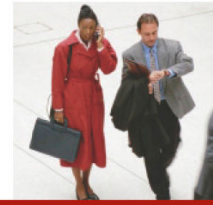
Although not formally required, applicants may want to include a cover letter with a brief description of the activities of the company in its home country, the activities carried out in Belgium and the reason why there is no need to be VAT registered in Belgium, and the reason why the VAT refund should be granted. Adding this brief explanation may increase the chances for the refund to be approved quickly without any further question.

EXCLUSIONS AND LIMITATIONS

As a rule, a refund is granted insofar as the right to deduct is available under the VAT Code. According to the VAT Code, no deduction may be made for VAT paid on:³

- Intra-community supplies and acquisitions of manufactured tobacco;
- Intra-community supplies and acquisitions of spirit drinks other than those intended for resale or to be supplied in performance services;
- Costs of accommodation and, with the exception of that placed on display, of food and drink to be consumed on the spot by staff responsible for carrying out a supply of good or performing a service outside the firm, or by taxpayers who, in turn, provide the same services against consideration; or
- Entertainment costs.

Travel agencies that do not directly provide the traveler, via their own means, with transport, accommodation, food and drink to be consumed on the spot or entertainment may not make a



deduction for the VAT charged on those services, for invoices that are made out to them in their own name, nor for the VAT charged on the payment made to another travel agency involved in the supply of such services.⁴

With regard to the supply, importation and intra-community acquisition of motor vehicles to be used for the carriage by road of persons and/or goods, and the goods and services pertaining to those vehicles, Article 45(2) of the VAT Code stipulates deduction may in no circumstances exceed 50 percent of the taxes paid. However, this provision does not apply to motorcycles and a number of “professional” motor vehicles exclusively used for carrying out the economic activity of the taxpayer (e.g., trucks, delivery vans, cars used as taxi or intended to be leased, etc.). VAT incurred for these types of motor vehicles can be fully recovered. Note, however, that a company car is not regarded as a “professional” motor vehicle, and by consequence the 50 percent deduction limit applies to the purchase of the car, as well as to all costs related to the company car (e.g., fuel, maintenance).

FOR MORE INFORMATION

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¹ Directive 86/560/EEC.

² Note however that there are cases where, although the foreign company performs operations subject to Belgian VAT in Belgium, it is not obliged or dispensed from the obligation to designate a tax representative (Administrative Circular No. 4/2003 of March 4, 2003 on VAT rules governing taxpayers not established in Belgium).

³ Article 45(3) of the Belgian VAT Code.

⁴ Article 45(4) of the Belgian VAT Code.