

Methodological Guideline issued by the Tax Directorate of the Slovak Republic
Refund of Value Added Tax to a Foreign Person from a Third Country Pursuant §56 to §58
of the Act No. 222/2004 Coll. on Value Added Tax as Amended

The Act No. 471/2009 Coll. amending and supplementing the Act No. 222/2004 Coll. on Value Added Tax as amended (hereinafter referred only as "the VAT Act"), with effect from 1st January 2010, inter alia, has modified the terms of refund of tax to foreign persons, that do not have a seat, place of business, fixed establishment, domicile or habitual residence within the territory of the European Union (hereinafter referred only as "foreign persons from a third country"). Following the Council Directive 2008/9/EC of 12th February 2008 which set out detailed rules for the refund of tax, stipulated in Directive 2006/112/EC, to taxable persons, that are not established in a Member State of refund, but are established in another Member State, the procedure for refund of tax to foreign persons from other Member States stipulated by the quoted directive harmonized as well the procedure for refund of tax to foreign persons from third countries. The conditions for refund of tax to foreign persons from third countries are stipulated in the Thirteenth Council Directive 86/560/EEC on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory, which is transposed into the VAT Act.

Refund of tax to a foreign person from a third country

A foreign person from a third country is entitled to the refund of the tax charged on the movable property and services supplied by a VAT payer within the territory of the country and to the refund of the tax charged on the importation of goods. Tax refund to a foreign person from a third country is stipulated in §56 to §58 of the VAT Act.

Qualification for refund of tax by a foreign person from a third country

A foreign person from a third country shall be entitled to refund of tax provided that:

- The foreign person is identified for the purposes of such tax or a similar general tax on consumption in the country where he has a seat, place of business, fixed establishment, domicile or habitual residence. Evidence, proving that the foreign person from a third country is a VAT payer or similar tax on consumption in the country, is a certificate of the status of the VAT payer issued by the administrative authority of the State, in which the foreign person from a third country has a seat, place of business, fixed establishment or domicile.
- During the period in respect of which an application for tax refund has been filed, the foreign person did not have a seat, place of business, fixed establishment, domicile or habitual residence within the territory of the European Union.
- During the period in respect of which application for tax refund has been filed, the foreign person did not supply goods or services within the territory of the country, except for supply of:

1. Transportation services and the related complementary services exempted from tax in accordance with §47 paragraph 6, 8, 10 and 12 and §48 paragraph 8 of the VAT Act.

Pursuant §47 paragraph 6 of the VAT Act exempt from tax shall be services, including transport services and ancillary services related thereto, other than the services exempt from the tax under §28 to §41 of the VAT Act, which are directly linked to the export of goods under the customs arrangements according to §18 paragraph 2 of the VAT Act. Pursuant §47 paragraph 8 of the VAT Act exempt from the tax shall be supply, repair, modification, maintenance, chartering and hiring of the sea-going vessels as per paragraph 7 subparagraphs a) and b), supply, repair, maintenance and hiring of equipment, including fishing equipment, and supply of other services to meet the needs of these vessels. Pursuant §47 paragraph 10 of the VAT Act exempt from the tax shall be supply, repair, modification, maintenance, chartering and hiring of aircraft used by airlines operating for reward chiefly on international routes, supply, repair, maintenance, chartering and hiring of equipment installed or used in such aircraft and supply of other services to meet the direct needs of aircraft or of their cargoes.

Pursuant §47 paragraph 12 of the VAT Act exempt from the tax shall be the procurement of supplies of goods and services referred to in paragraphs 1 to 11, provided that such procurement is done on behalf of and for the account of another person, and also exempt from the tax shall be the procurement of goods and services effected outside the territory of European Union, provided that such procurement is done on behalf of and for the account of another person; the exemption from the tax shall not apply to procurement of tourism services supplied in another Member State. §48 paragraph 8 of the VAT Act stipulates that exempt from the tax shall be services in connection with the importation of goods where the value of such services is included in the taxable amount in accordance with §24.

2. Services and goods supplied together with the installation or assembly if the person liable for payment of the tax to the tax administrator is the receiver pursuant §69 paragraphs 2 and 3 of the VAT Act.

Pursuant §69 paragraph 2 of the VAT Act a taxable person with a seat, place of business, fixed establishment or domicile within the territory of the country, shall be liable to pay tax in respect of services listed in §16 paragraphs 1 to 4, 10 and 11 of the VAT Act and goods supplied together with an installation or assembly, which are supplied by a foreign person from another Member State or a foreign person from a third country, if the place of supply of the service or goods is within the territory of the country. Pursuant §69 paragraph 3 of the VAT Act a taxable person and a legal person which is not a taxable person and is registered for tax purposes pursuant §7 of the VAT Act shall be liable to pay tax in respect of a service supplied by a foreign person from another Member State or by a foreign person from a third country if the place of service supply pursuant §15 paragraph 1 is within the territory of the country.

3. Goods pursuant §13 paragraph 1 subparagraph e) and f) of the VAT Act if the person liable for payment of the tax to the tax administrator is, pursuant §69 paragraph 9 of the VAT Act, the person to whom such goods are supplied.

A payer or person registered for tax according to §7 or §7a of the VAT Act to whom a product is delivered according to §13 paragraph 1 subparagraph e) and f) is, pursuant §69

paragraph 9 of the VAT Act, obliged to pay tax on the product if it is supplied by a foreign person.

4. Goods from the territory of the country to another Member State, which has been imported from a third country by a foreign person, who has been represented by a tax representative pursuant §69a of the VAT Act.

5. Goods within a trilateral transaction, pursuant §45 of the VAT Act, attended by a foreign person from a third country as the first customer and the person liable for payment of the tax is the second customer.

From 1st January 2010 one exception has been removed from the list of exceptions, which were applicable until 31st December 2009 – delivery of transport services exempted from tax pursuant §46 of the VAT Act. If a foreign person from a third country provides from 2010 onwards transport services exempted from tax pursuant §46 of the VAT Act then pursuant §5 of the VAT Act this person must file an application for tax registration at the Bratislava I Tax Office before commencing an activity that is subject to tax, i.e. before the delivery of transport of passengers within the territory of the country exempted from tax pursuant §46 of the VAT Act. From 1st January 2010 there has been a change in the list of exceptions, which were applicable until 31st December 2009 - the exemption was extended to transport services and related ancillary services which are exempt from tax pursuant §47 paragraph 8, 10 and 12 of the VAT Act.

Example

Japanese entrepreneur imported into Slovakia a production line. In Slovakia, the goods were released under the free circulation arrangements and tax on importation of goods was assessed, which the Japanese entrepreneur paid. The production line was installed at the VAT payer in the country, including testing of the functionality of the production line, which was a part of the supply - supply together with installation. The person liable for payment of the tax on importation of goods together with installation is pursuant §69 paragraph 2 of the VAT Act the VAT payer. The Japanese entrepreneur filed for refund of the tax paid on importation of goods in the country. Since the conditions for the refund were met the Bratislava I Tax Office refunded the Japanese entrepreneur the demanded amount of the tax.

- The tax would be deductible pursuant §49 of the VAT Act.

Conditions for entitlement and exercise the right of deduction are stipulated in §49 to §51 of the VAT Act. In respect of deduction the principle of so called “*substantive assignment*” of received goods or services to taxable sale is exercised. If a foreign person from a third country pursues in the country where it has a seat, place of business, fixed establishment, domicile activities, which would be according to §28 to §41 of the VAT Act exempted from tax without any right to deduction, no right for refund of tax from purchased goods and services shall accrue. Would a foreign person from a third country use the received goods and services for taxable transactions, by which a tax liability arises, and simultaneously for taxable transactions exempt from tax without a right of deduction then foreign person from a third country would be entitled to proportional refund of tax from purchased goods and services. The §49 paragraph 7 of the

VAT Act stipulates the limit of tax deduction under which it is not possible to deduct the tax in respect of the purchase of goods and services for the purposes of treat and entertainment and in respect of suspense items as per §22 paragraph 3 of the VAT Act.

A foreign person from a third country is not entitled to a refund of tax, which was not exercised by the supplier in accordance with the VAT Act, and to a refund of tax exercised in respect of goods that are or may be exempted from tax pursuant §43 or §47 paragraph 2 of the VAT Act. If a VAT payer claims tax on an invoice in respect of which no tax liability arises pursuant §19 of the VAT Act, for example because the place of supply is in third country, the tax on invoice has not been applied in accordance with the VAT Act and a foreign person from a third country is not entitled to the refund of the tax. If the VAT payer applies the tax in respect of supply of goods, which is dispatched or transported from the territory of the country to another Member State by the seller or acquirer of goods or for their account, provided that the acquirer is a person identified for tax purposes in another Member State, and the mentioned supply of goods is exempted from tax pursuant §43 of the VAT Act, then the foreign person from the third country shall not be entitled to refund of tax. Pursuant §47 paragraph 2 of the VAT Act exempt from the tax shall be supply of goods dispatched or transported by the purchaser or for his account to the place of destination within the territory of a third country, if the purchaser does not have a seat, place of business, fixed establishment or domicile within the territory of the country, except for supply of goods transported by the purchaser for the purposes of equipment, supply of pleasure boats, private aircraft or any means of transport by fuels and foodstuffs for private use. If the VAT payer applies the tax in respect of export of goods effected in accordance with §47 paragraph 2 of the VAT Act a foreign person from a third country shall not be entitled to a refund of tax.

Example

In 2011, entrepreneur with its seat in Switzerland participated in a contractual trade fair in Slovakia as an exhibitor. The organizer of the trade fair is a VAT payer, who rented the Swiss entrepreneur exhibition space and secured connection to water, electricity and gas. The VAT payer applied Slovak VAT to the invoiced price for the rental of exhibition space. The Swiss entrepreneur was not provided with services consisting in providing right of entry to the trade fair in exchange for a ticket or for a fee. The place of supply of service provided to a taxable person is pursuant §15 paragraph 1 of the VAT Act the place where acquirer of the service has a seat, i.e. Switzerland. The VAT payer did not apply the tax in accordance with the VAT Act as the place of supply of services is Switzerland and the Swiss entrepreneur is not entitled to a refund of tax.

Claiming tax refunds

A foreign person from a third country shall claim a refund of tax by filing an application for tax refund with the Bratislava I Tax Office. The model form of the refund application is presented in Annex 2 of the VAT Act. The amendment of the VAT Act effective as of 1st January 2010 specified the text of “The Application form for the VAT refund to a foreign person pursuant to §56 to §58 of Act No. 222/2004 Coll.” The refund application shall be submitted for a period

of one calendar year, no later than by 30th June of the calendar year following the calendar year in respect of which the refund is claimed. A foreign person from a third country may file a refund application provided that the refund amount is not less than 50EUR. A foreign person from a third country may file a refund application only once per year and at the end of a calendar year.

According to temporary provisions §85 paragraph 4 on amendments effective as of 1st January 2010 the refund applications of foreign persons from third countries for the period until 31st December 2009 shall be governed by the provisions §56 to §58 in the wording effective until 31st December 2009. Conditions stipulated by the VAT Act effective until 31st December 2009 were applied to the refund applications for the calendar year 2009. The conditions introduced by the amendment to the VAT Act effective since 1st January 2010 have been applied for the first time to the refund applications for the calendar year 2010.

To his refund application, a foreign person from a third country shall attach:

- a) **the original of an invoice** issued by the VAT payer within the territory of the country, which shows the amount of tax in Euro currency, and in the case of importation of goods, the relevant importation document and a document confirming payment of the tax. The invoice of supplies of goods and services in the territory of the country is set in §71 of the VAT Act. An invoice is also considered to be:
 - **a ticket issued by an operator of public passenger transport** that is a payer, if such a ticket contains his trade name, date of issue, and price including tax,
 - **the stub section of a sticker** confirming payment of the toll for using highways, motorways, and 1st-class roads in the territory of the country, which the service receiver keeps after separating the sticker, provided that the stub section of the sticker contains the trade name of the service provider and his tax identification number, sale date of the sticker, price including tax, and tax amount,
 - **a document made out by an electronic cash register** if the price of goods or services, including the tax, is not more than 1,659.70 EUR, which must contain the details listed in §71 paragraph 2 of the VAT Act except for: the name and address of the seat, place of business, fixed establishment or domicile of the recipient of goods or services and his tax identification number, if any, and except for the per unit price less the tax.

- b) **a certificate issued by the tax authority of the state** in which the foreign person from a third country has a seat, place of business, fixed establishment, domicile or habitual residence, evidencing that the foreign person is identified for the purposes of this tax or a similar general tax on consumption; the certificate may not be of an earlier date than a year ago. This certificate serves as evidence proving that the applicant is a VAT payer or a payer of a similar general tax on consumption in the country in which the foreign person has a seat, place of business, fixed establishment, domicile or habitual residence. The model form of the certificate is presented in Annex 3 of the VAT Act. The amendment of the VAT Act effective as of 1st January 2010 specified the text of “The certificate of status of taxable person form”. The certificate of status of taxable person form shall be used when filing refund application

form for the calendar year 2010 stipulated by the amendment of the VAT Act effective as of 1st January 2010.

The refund application form pursuant to §56 to §58 of the VAT Act, and The refund application form guidance as well as The certificate of status of taxable person are present (in Slovak and English languages) on the web portal of Tax Administration of the Slovak Republic in *English* part of the side – www.drsr.sk

In his application for refund of tax, the foreign person from a third country must declare that:

- he meets the conditions specified in §56 paragraph 2 of the VAT Act,
- the data stated in the refund application are true,
- he undertakes to transfer back any wrongly refunded tax.

In respect of refund of tax to a foreign person from a third country the so called “reciprocity principle” is applied, i.e. a foreign person from a third country is not entitled to a refund of tax if the country in which the foreign person has a seat, place of business, fixed establishment or domicile does not refund tax to taxable persons, who are VAT payers pursuant the VAT Act. A Member State may refund tax to a foreign person from a third country under a condition that the third country provides similar (comparable) advantages regarding value added tax.

Decision on the refund application or decision to refuse a refund application in whole or in part

By the decision on the refund application the Bratislava I Tax Office awards a foreign person from a third country the whole requested amount of tax refund (i.e. application is accepted) or awards only a part of the requested amount of tax refund (i.e. application is partially accepted) or does not award any amount of tax refund (i.e. application is denied). If the Bratislava I Tax Office decides to refund the tax, it shall do so within the time limit for taking a decision on the application, i.e. no later than within six months of the receipt of application. The refund of tax shall be transferred in Euro currency and to an account kept with a local bank or, based on the applicant’s request, to an account with a foreign bank in another Member State. If the refund is transferred to a bank account in another Member State, any bank charges for the transfer of funds shall be deducted from the refund of tax.

If Bratislava I Tax Office decides to refuse a refund application, in whole or in part, it must contain the grounds for refusal. A foreign person from a third country may appeal against a decision to refuse refund application, in whole or in part, in a manner and within the time limit pursuant §46 of the Act No. 511/1992 Coll. on Administration of Taxes and Fees and Changes to the System of Local Financial Authorities (hereinafter referred only as "Administration of Taxes Act"). The appeal shall be filed in writing or verbally (in form of minutes) with the tax administration and within 15 days from the receipt of the appealed decision.

Where a tax has been refunded on the basis of untrue information or the refund has been obtained in a fraudulent way then the Bratislava I Tax Office shall impose a penalty pursuant §35 paragraph 1 subparagraph g) of the Administration of Taxes Act. Unless the foreign person from a third country transfers back the wrongly refunded tax or pays the penalty, the Bratislava I Tax Office shall have the right to refuse other applications for refunds of tax during two calendar years following the filing of the tax refund application based on untrue information.

Representation of a foreign person from a third country

The Bratislava I Tax Office may also refund the tax through the agent (representative) of a foreign person from a third country provided that the agent presents to the tax office a power of attorney authorising him to represent the foreign person from a third country for the purposes of refund of tax. Representation is stipulated by §9 and §10 of the Administration of Taxes Act. The taxable party, i.e. a foreign person from a third state may appoint an agent of its own choice, who shall act to the extent of the underlying power of attorney made in writing and containing a notarized signature. The agent might be appointed also verbally, in form of a protocol drawn by the tax administration. The power of attorney made in writing must have a notarized signature; while the signature of the represented person is verified, i.e. of the foreign person from a third country. The power of attorney containing a notarized signature shall be filed in writing to the Bratislava I Tax Office. If the power of attorney is made in other than in Slovak language or Czech language the foreign person from a third country shall be obliged to arrange for its translation into the Slovak language. If a foreign person from a third country grants a power of attorney verbally, the tax office shall draw a protocol, which has to contain requisites listed in §11 of the Administration of Taxes Act. In this case the notarized signature is not required. The Act No. 490/2010 Coll. amending and supplementing the Act No. 222/2004 Coll. on Value Added Tax as later amended introduced with the effect as of 1st January 2011 a clause into the §58 paragraph 2 of the VAT Act according to which, if a foreign person from a third country is represented by an agent, the provision of §10 paragraph 2 of the Administration of Taxes Act, does not apply to the agent. With the effect as of 1st January 2011 one agent may represent more than one taxpayer - foreign persons from third countries in respect of VAT refund and therefore the application of §10 paragraph 2 of the Administration of Taxes Act is excluded in the VAT Act.

This Methodological Guideline repeals the Methodological Guideline issued in January 2006 on refund of value added tax included in prices of goods and services according to provisions §56 to §64 of the Act No. 222/2004 Coll. on the Value Added Tax as later amended, which had been effective until 31st December 2010.

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