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| VAT refund for entrepreneurs not registered for Polish VAT

Description

Regardless of the legal form of carrying out business activity in Poland foreign investors are obliged to pay VAT on purchases made in Poland. The basic VAT rate in Poland is 23%, but there are products taxed at lower rates of 5%, 8% or even 0%. There are also some explicitly listed goods and services which are VAT exempt under the Polish VAT Law, such as provision of some financial services, rental of apartments for non-business purposes, sale of a building and constructions (under some conditions) as well as sale of an enterprise or its organized part.

VAT refund for entrepreneurs not registered for Polish VAT

If a foreign investor is registered for VAT in Poland he has a right to receive a direct return of the excess of VAT on purchases (input VAT) over the VAT on sales (output VAT). In order to apply for a VAT refund, he or she must declare so in the monthly VAT return (quarterly returns are not very common in Poland yet). Submitting VAT returns on a regular basis is a basic duty for all entities registered for VAT. Hence, this procedure is common and well-known for foreign investors, particularly those using assistance from Polish outsourcing entities with a huge experience with such matters (for details how to get back VAT according to the mentioned procedure please see the article "How to recover VAT paid during the investment phase?")

VAT recovery for non-registered foreign entities

The procedure mentioned above cannot be, however, applied for foreign entities not registered for the Polish VAT. Registering for VAT in Poland is not obligatory for those who do not start any VAT-able activity in Poland (except for very limited cases). The registration process is a bit time-consuming (a couple of weeks) and requires some additional preparation as an application to the tax office must be submitted along with a bunch of documents including the Articles of Association, bank agreement, excerpt from the foreign company register and agreement with an accounting office.

VAT refund conditions

There are also some costs involved – not only registration fee but also translation expenses (some documents must be translated into Polish language by the Polish sworn translator).

Moreover, once a company is VAT-registered it must be kept compliant with the current VAT Law (non compliance may be penalized under the Polish Fiscal Penal Code). Even with no or little operations a company must have VAT registers, maintain and submit VAT returns (monthly or quarterly) even if they are actually nil-VAT returns.

Taking the above into consideration some foreign companies opt not to register for the Polish VAT (of course there may be also some other business reasons here). But lack of registration does not mean that VAT paid in Poland must be an additional unrecoverable cost.

According to the Decree of the Polish Minister of Finance dated of 23 April 2004 (which to some extent introduces in the Polish Law the regulations of the EU VAT Directives), foreign entrepreneurs from EU countries may apply for a VAT refund in Poland if they are not registered for VAT in Poland. Entities from outside the EU may also apply for such refund, however a reciprocal mechanism must be available for Polish companies.

To obtain the VAT refund a foreign entrepreneur:

- should be a registered VAT payer (or similar tax payer) in the country of its registered seat, place of residence or place of conducting business activities;
- cannot perform in Poland activities subject to VAT except for very limited cases.

It is also worth mentioning that VAT refunds may be obtained if based on Polish VAT regulations, in the same circumstances the Polish entity would be entitled to obtain such refund.

VAT refund procedure

Due to the amendment of the Polish VAT refund regulations (effective 2010), VAT refund procedure has significantly changed. A new electronic VAT refund procedure is being introduced across the EU to replace the current paper-based system. A company will no longer be obliged to file a VAT refund claim in each member state where it incurred VAT. As a result of changes an entity authorised to apply for a VAT refund, having its seat or residence in an EU country (other than Poland) submits the application to the 2nd Tax Office Warszawa Śródmieście via electronic communication through tax authorities in its state. Entities from outside the EU submit the written application directly to the 2nd Tax Office Warszawa Śródmieście using the specific application template.

The application should relate to a minimum period of three months and a maximum period of one calendar year. The refund period may be shorter than three months in specific cases only. The application covering any given year has to be filled by 30 September of the subsequent year. The tax amount to be reclaimed cannot be less than:

- EUR 400 if the application refers to a period of at least three months, but not a full calendar year;
- EUR 50 if the application relates to a calendar year or the remaining part of a calendar year.

In most cases the said application should be submitted along with the supporting documentation including invoices or customs duty documents and specific certificate of VAT residence issued by the tax administration of the applicant's country.

The tax authorities have four months to process the claim. In case of any queries, the above mentioned term may be extended. The amount of VAT refunded is transferred in PLN to the bank account of the applicant.