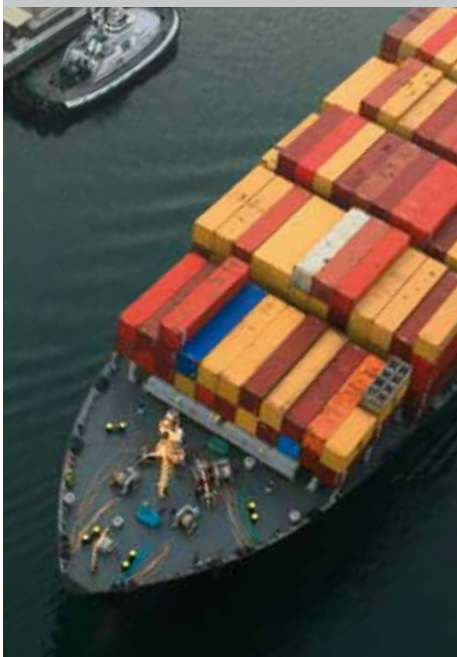


Indirect tax alert

EU VAT refunds

Are you preparing your 2011 EU VAT refund application?

According to an Organization for Economic Cooperation and Development (OECD) survey from 2010,¹ over 80% of businesses incur more than US\$10,000 of VAT on foreign business expenditure every year. Yet, half of such businesses recover 50% or less of this foreign VAT – even when they are entitled to recover it all.



Has your non-EU business incurred VAT in Europe in 2011? If so, you may be able to recover the cost by applying to the relevant EU country(ies) for a refund – provided you comply with the rules. In general, claims by non-EU businesses must be submitted within six months after the end of the calendar year. Although the deadline for applications for 2011 for most EU countries is June 2012, you should be collecting the right information now to support a successful claim.

Most multinational enterprises (MNEs) incur VAT in countries where they are not established. A business may, for example, incur foreign VAT on trade fairs and conferences, meals and accommodation, 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 fulfil the requirements in practice. According to an Organization for Economic Cooperation and Development (OECD) survey from 2010,¹ over 80% of businesses incur more than US\$10,000 of VAT on foreign business expenditure every year. Yet, half of such businesses recover 50% or less of this foreign VAT – even when they are entitled to recover it all.

Not every country allows non-residents 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 your organization's chances of success in reclaiming European VAT on your business expenses.

¹ VAT/GST Relief For Foreign Businesses: *The State Of Play*, OECD, February 2010

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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 27 Member States.² Similar refund rules also apply for expenditure incurred in Norway and Switzerland. You can use the 13th Directive to reclaim VAT paid in the EU if you are registered for business purposes in a non-EU country, provided that all of the following hold:

- ▶ You are not registered, liable or eligible to be registered for VAT in the EU
- ▶ You have no place of business in the EU
- ▶ You do 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 a VATable activity if its activity were carried out in the EU. For example, financial services are generally VAT-exempt in the EU; therefore, a bank established, for example, in India may not be entitled to file a VAT refund application, as it may not be considered a VATable person 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 expenditure 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/services you include must be expenses that would be deductible if your business was carried on locally. For example, if local businesses are not entitled to take a VAT deduction for business entertainment, your non-EU business cannot lodge a VAT refund application for business entertainment incurred in that country.

Non-EU reciprocity

Some EU Member States also require that your country allows similar refunds to EU traders in respect of any turnover taxes levied in your country. This is called the "reciprocity" principle. So, if your country does not levy a VAT or if it does not refund a local VAT to non-residents, you may not

be able to claim VAT incurred in some EU countries. But it is worth remembering that not all EU Member States apply this rule in the same way.

² Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia,

EU 13th Directive claim forms

EU VAT can be claimed quarterly or annually. The EU VAT refund process for non-EU businesses is still largely a paper-based system. A separate claim must be lodged with each country where you want to reclaim VAT. Although the claim form can generally be printed off 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 2011 (invoices dated 1 January to 31 December 2011) the deadline for submission is 30 June 2012. There are, however, certain exceptions to the period covered by claims and the deadline. In the 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. Although six months after the year-end seems

a generous time limit, it can prove difficult to meet without forward planning. Claimants should have all the necessary paperwork, including certificates of taxable status and supporting documentation, ready well in advance to make sure the claim is submitted within the time limit.

Minimum claim amount

All countries have a minimum threshold for the amount of VAT that can be reclaimed. The threshold applies to the claim as a whole, not to every single expense. For example, in Germany the minimum value for a quarterly claim is €500 and the minimum value for annual claims (or the remaining period of the year) is €250. If the VAT incurred for a quarter is less than the minimum claim amount, the VAT can be included in the next claim (subject to the existing time and value limits).

Tax representatives and signatures

Some countries require the appointment of a locally accredited tax representative before a claim for refund can be filed. In addition, countries have strict requirements on who has the right to sign the application form (e.g., president of the board of directors). Again, it is advisable to check these requirements well in advance and certainly before filing the claim. It can take time to appoint a representative, for example, especially if the mandate needs to be translated and notarized.

Case study

A Qatar company participates in a trade fair in Germany in October 2011; it receives invoices with German VAT for the trade fair participation (admission fee, stand, electricity charges, flowers, security, etc.), together with hotel invoices, taxi invoices, and restaurant invoices, etc., incurred by its employees who attended the fair. Provided the participation in the trade show was related to its business activity, the Qatar company may recover the VAT in relation to these costs. To do so, the Qatar company has to:

- ▶ Collect the original invoices it received for the expenses it incurred in Germany
- ▶ Ensure that the German tax authorities' invoice requirements are met in relation to each invoice
- ▶ Obtain a certificate of taxable status (tax certificate) from the Qatar tax authorities
- ▶ Fill in the special claim form (in German)
- ▶ Sign the claim form and send it together with the tax certificate and the original invoices to the German tax authorities by the deadline applicable in Germany, i.e., 30 June 2012

If your business incurred VAT on business expenditure in the EU, Switzerland or Norway in 2011, you should begin identifying this VAT, the supporting invoices and other documentation you will need to make a claim.

Documentation is key to successful claims

Documentation is key to successful claims. You can increase your chances of making a successful claim by planning ahead and by complying meticulously with the detailed rules in each country with respect to the invoices you submit.

Original invoices

The first requirement is that the claim must be supported by an original VAT invoice for each expense. Generally, PDF copies or other copies are not acceptable. If you wish to reclaim VAT, the first step is to ensure that you receive an original invoice from your suppliers.

VAT invoice requirements

The VAT invoice requirements differ between EU Member States. However, in general, a valid VAT invoice should include all of the following information:

- ▶ Date of issue
- ▶ Invoice number
- ▶ Full name, address and VAT registration number of the supplier
- ▶ Quantity and nature of goods or services received
- ▶ Unit price or the consideration for the service supplied
- ▶ The date of the supply
- ▶ VAT rate applied
- ▶ VAT amount payable

The invoice requirements are subject to change from time to time, so it is advisable to check that the invoice received complies with the latest requirements. As many foreign VAT claims relate to expenses incurred on business trips, it is vital that all employees understand the documentation required to support EU claims.

Electronic invoices

Most EU Member States permit electronic invoices. But not every electronic invoice is considered to be valid for VAT purposes. Most countries require that an electronic invoice contains an advanced electronic signature. In the past, some companies have lost considerable VAT reclaim opportunities because the electronic invoices they submitted did not comply with the rules of the Member State where they wanted to reclaim the VAT. If you wish to include electronic invoices for your refund claim, you should check whether that is permitted by the country where you are seeking a refund and make sure your supplier's invoices comply with the rules in that country – as they differ between member states.



You must comply with the detailed rules for each country, which can prove difficult. It is crucial to be aware of the rules and to adopt robust processes to identify recoverable VAT, obtain the correct documentation to support your claims and submit the forms within the time limits allowed.

What to do now

If your business incurred VAT on business expenditure in the EU, Switzerland or Norway in 2011, you should begin identifying this VAT, the supporting invoices and other documentation you will need to make a claim. This process is likely to be time-consuming. For most countries, the strict filing deadline is 30 June 2012 for 2011 applications – so there is no time to lose!

In gathering the necessary information and documentation, you may want to consider the following approach:

- ▶ Ensure your business does not have an EU establishment and that the other requirements for a refund are met
- ▶ Identify the VAT costs
- ▶ Analyze the VAT costs incurred in each country
- ▶ Gather supporting valid VAT invoices and ensure that the invoice requirements in relation to each invoice are met
- ▶ Determine if it was correct for the supplier to charge VAT
- ▶ Determine if the VAT suffered is refundable in the country concerned
- ▶ Obtain a certificate of taxable status (tax certificate) from the tax authorities where your business is resident
- ▶ Appoint a tax representative where necessary
- ▶ File the application for a VAT refund before the deadline

How we can help?

As a non-EU business you may be entitled to reclaim VAT incurred in Europe. Sometimes these amounts can be substantial, even in connection with travel expenses. However, you must comply with the detailed rules for each country, which can prove difficult. It is crucial to be aware of the rules and to adopt robust processes to identify recoverable VAT, obtain the correct documentation to support your claims and submit the forms within the time limits allowed.

Using our extensive network of indirect tax professionals, at Ernst & Young we can assist your business in identifying opportunities for European VAT claims and help you to develop or improve related business processes to reduce the time and administrative costs associated with making claims and increase your chances of success. We can help you, for example:

- ▶ Develop efficient procedures to capture European VAT incurred
- ▶ Identify VAT incurred in Europe and its eligibility for refund
- ▶ Determine if you have sufficient documentation to support a VAT reclaim
- ▶ Ascertain whether your business is entitled to a VAT refund in the relevant EU Member State
- ▶ Apply for a tax certificate from the domestic tax authorities
- ▶ Review your activities to identify any European VAT compliance issues
- ▶ File the VAT refund application in the local language, where necessary
- ▶ Communicate with the relevant European tax authorities locally
- ▶ If you would like more information about reclaiming VAT in Europe, please contact your usual Ernst & Young indirect tax adviser.



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About Ernst & Young Indirect Tax Services

Indirect taxes, ranging from VAT and customs duties to environmental levies, affect the supply chain and the financial system. They pose unique challenges to multinational tax functions, since they must be managed accurately and in real time. These often invisible taxes can have significant impacts – on cash flow, absolute costs and risk exposures.

Thanks to our network of dedicated indirect tax professionals, who share knowledge and ideas, we can provide a seamless, consistent service throughout the world and deal effectively with cross-border issues. These include advising on the VAT treatment of new and complex transactions and supplies and helping resolve classification or other disputes and issues with the authorities.

We provide assistance in identifying risk areas and sustainable planning opportunities for indirect taxes throughout the tax lifecycle. We provide you with effective processes to help improve your day-to-day reporting for indirect tax, reducing attribution errors, reducing costs and helping to ensure indirect taxes are handled correctly.

We can support full or partial VAT compliance outsourcing, help identify the right partial exemption method and review accounting systems. Our customs and international trade team help you manage customs declarations, audit and review product classifications and evaluate import/export documentation. Our globally integrated teams give you the perspective and support you need to manage indirect taxes effectively. It's how Ernst & Young makes a difference.

About Ernst & Young

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