

THE MINISTER OF FINANCE REGULATION
of 23 April 2004 concerning the refund of the goods and services tax to some taxable persons

Pursuant to Article 89 paragraph 5 of the Act on the goods and services tax of 11 March 2004 (Journal of Law No 54, item 535) it is ruled as follows:

§ 1

The Regulation sets forth the cases, conditions and way of refunding the goods and services tax, charged upon purchase of goods and services, to entities without an establishment or domicile or the permanent place where activity is carried out in the territory of the country, not registered for the purposes of the tax on goods and services in the territory of the country.

§ 2

1. Eligible for a refund of the goods and services tax, charged upon purchase of goods and services, hereinafter referred to as the "tax refund", shall be a natural person, a legal person and an organisational unit without legal personality, which has no establishment or domicile or the permanent place where activity is carried out in the territory of the country, hereinafter referred to as the "eligible entity", provided that:

- 1) he is a registered taxable person of the value added tax referred to in Article 2 paragraph 11 of the Act on the goods and services tax of 11 March 2004 hereinafter referred to as the "Act", or of the tax of similar nature in the country in which he is established or has his domicile or the permanent place where activity is carried out;
- 2) he is not a registered taxable person of the goods and services tax in the territory of the country;
- 3) in the territory of the country he does not carry out sale referred to in Article 2 paragraph 22 of the Act, except for:
 - a. transport and ancillary services in direct connection with the importation of goods where the value of such services was included in the taxable amount of imported goods in accordance with Article 29 paragraph 15 of the Act,
 - b. air traffic control and supervision services provided to air carriers and other entities operating mainly flights in international transport,
 - c. services related to the take-off, landing, parking, passenger and cargo servicing and other similar in nature services provided to air carriers and other entities operating mainly flights in international transport,
 - d. services provided in Polish seaports, consisting in the servicing of the means of sea transport,
 - e. services provided in Polish seaports, in connection with international transport, consisting in the servicing of the means of road transport,
 - f. sea rescue services, inland-waterways and sea transport safety supervision, as well as services related to the protection of marine environment and the maintenance of sea port basins and fairways,
 - g. services related to servicing of ships, specified in PKWiU ex 35.11 class, owned by sea operators, with the exception of services provided for the crew's private use,

- h. services consisting in the repair, reconstruction and maintenance of ships, specified in PKWiU ex 35.11 and of components thereof,
 - i. services consisting in the repair, reconstruction and maintenance of means of air transport and of fittings and equipment installed therein, operated mainly in international transport,
 - j. services in respect of which the goods and services tax is settled by the taxable persons referred to in Article 17 paragraph 1 point 4 of the Act,
 - k. supply of goods in respect of which their purchaser is a taxable person in accordance with Article 17 paragraph 5 of the Act.
2. Eligible for the tax refund shall be also foreign entities supplying electronic services in the territory of the country to non-taxable persons that have submitted in a Member State in accordance with Article 132 paragraph 1 of the Act a notification that they intend to apply the special arrangements regarding those services for tax settlement for the goods and services tax or the value added tax.
3. Tax refund to foreign entities, referred to in subparagraph 2, shall apply to the acquired goods and services which are exclusively connected with the supply of electronic services by those entities.

§ 3

1. The eligible entities shall obtain the tax refund if the taxable persons referred to in Article 15 of the Act are entitled to the tax refund or reduction of output tax in accordance with the provisions of the Act and of its executive acts.
2. Tax refund to entities from the territory of a third country shall be subject to reciprocity.
3. The provision of subparagraph 2 shall not apply to the taxable persons referred to in § 2 subparagraph 2.

§ 4

1. The eligible entity may apply for the tax refund in respect of the acquisition of goods and services or the imports of goods made during a period of not less than three months and not more than a tax year.
2. The amount of tax refund for which application is made shall not be lower than PLN equivalent of
- 1) EURO 200 in case where the application refers to a period shorter than a tax year, but not less than three months;
 - 2) EURO 25 in case where the application refers to a whole tax year or a period shorter than the last 3 months of that year.
3. The conversions of the amounts, referred to in subparagraph 2, expressed in EURO shall be made in accordance with the average EURO conversion rate published by the National Bank of Poland as for the last day of the period for which the application is submitted.

§ 5

1. Tax refund shall be granted on application of the eligible entity, hereinafter referred to as the “application”.

2. The application shall be submitted to the Head of the Second Tax Office for Warszawa-Śródmieście (Naczelnik Drugiego Urzędu Skarbowego Warszawa-Śródmieście), hereinafter referred to as the “head of the tax office”, not later than by 30 June of the year following the tax year to which the application refers.
3. A specimen of the application shall be included in Annex 1 to the Regulation.
4. The following documents shall be submitted jointly with the application:
 - 1) original invoices and customs documents on the basis of which the amount of tax refund for which application is made is determined;
 - 2) original certificate complying with a specimen included in Annex 2 to the Regulation, attesting that the eligible entity is a taxable person of the value added tax, or of the tax of similar nature, registered in the country of their permanent establishment or residence or the permanent place where activity is carried out;
 - 3) document certifying the identification for the purposes of the value added tax in the territory of a Member State other than the territory of the country, in case where the tax refund refers to the case referred to in § 2 subparagraph 3, and the entity is identified for supplying electronic services outside the territory of the country.
5. In case where the tax refund refers exclusively to the case referred to in § 2 subparagraph 3, the provision of subparagraph 4 point 2 shall not apply.
6. The certificate referred to in subparagraph 4 point 2 shall be issued by the tax authority in the country of permanent establishment or residence or the permanent place where activity of the eligible entity is carried out.
7. In case where the eligible entity submits the application more frequently than once a tax year, the certificate referred to in subparagraph 4 point 2 shall not be enclosed to each application provided that not a year has yet elapsed since the date of its issue and no changes in the matters to which it refers have occurred.

§ 6

1. After the application for tax refund has been examined, each invoice and customs document on the basis of which the amount of tax refund for which application is made shall be stamped with official seal of the Second Tax Office for Warszawa-Śródmieście hereinafter referred to as the “tax office” and punched in order to prevent their re-use.
2. The Head of the tax office shall issue a decision whereby the amount of tax refund is determined and shall refund that amount within six months of the date when the application, accompanied by documents referred to in § 5 subparagraph 4, is submitted.
3. In case where additional examination is required in order to determine the justification of the tax refund, the tax office may prolong the time-limit referred to in subparagraph 2 until the end of the examination proceedings.
4. After refunding tax, the tax office shall return stamped and punched invoices and customs documents to the eligible entity.

§ 7

Tax refund shall be made in Polish zlotys to the bank account of the eligible entity in Poland or in the country of their permanent establishment or residence or the permanent place where activity is carried out. In case where tax refund is made to the bank account in the country of permanent

establishment or residence or the permanent place where activity of the eligible entity is carried out, the tax office shall not incur the bank charges for the transfer.

§ 8

1. Tax which has been unduly refunded shall be reimbursed to the tax office along with interest due.
2. In case where the undue tax refund has not been reimbursed along with the interest due, the eligible entity shall not obtain further tax refunds.

§ 9

The Regulation shall take effect as of 1 May 2004.

MINISTER OF FINANCE