


# VAT REFUND CLAIM FOR NON-EU ESTABLISHED VAT OPERATORS

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# INTRODUCTION

## 1. REGULATION

- ✓ Council Thirteenth Directive 86/560/ECC, of November 17th, 2013.
- ✓ EU Directive 112/2006/EC, related to the VAT.
- ✓ Spanish VAT Act 37/1992, of December 28<sup>th</sup> (article 119.bis)
- ✓ Spanish Royal Decree 1624/1992, of December 29<sup>th</sup> (article 31.bis)

## 2. GENERAL CONSIDERATIONS

- ✓ Special VAT refund claim procedure for non-EU operators which are **not established for VAT purposes in the EU VAT territory**.
- ✓ The VAT refund claim shall cover a calendar quarter or a calendar year.
- ✓ Definitive deadline: **September 30<sup>th</sup>** of the year following to the one the VAT quotas refer to.
- ✓ Minimum amount: 400 € if quarterly claim or 50 € if yearly claims.

# CONDITIONS FOR CLAIMING THE VAT

## Who can claim the VAT?

- Taxable persons not established for VAT purposes within the EU territory
- Established in a non-EU country with reciprocity agreement in place with Spain\*, except for specific transactions where a reciprocity agreement is not mandatory.
- Which do not become VAT taxpayer in Spain as consequence of supplies of goods and/or services

\*Countries with reciprocity agreement in place at present:

- Switzerland
- Norway
- Canada
- Japan
- Israel
- Monaco

## What VAT can be claimed?

- Input VAT quotas borne in the acquisition of goods and/or services in the Spanish VAT territory and import VAT
- Limitations for recovery for specific goods and services, such as jewellery, food, beverages, tobacco, entertainment shows and any goods or service do not related to a business activity

## When can the VAT be claimed?

- As from the end of each calendar quarter or end of each calendar year
- Definitive deadline is on September 30th, of the following year to which the VAT quotas refer to.

# CHANGES AS OF JANUARY 2015

- ✓ As from 2015 new scenarios have been implemented for the VAT recovery by non-EU operators, thus even if a reciprocity agreement is not in place, any taxable person established in a non-EU territory is enabled to apply for the VAT refund claim corresponding **to the acquisition of the following goods and services:**
  - The provision of jigs, molds and equipment acquired or imported into the VAT territory by the not established taxable person, for putting this at the disposal of a taxable person established in its territory to be used in the manufacture of goods that will be dispatched or transported outside the Community with destination to the non-established taxable person, provided the goods are transported at the end of the manufacture with destination to the non-established taxable person, or destroyed.
  - The services related to the access, accommodation, restaurant and transport, which are linked to the attendance of fairs, congresses and expositions of commercial or professional purposes, which take place in the Spanish VAT territory

# PROCEDURE FOR RECOVERY

- ✓ The refund claim **must be filed by electronic means**, using the official Form 361 provided for such purposes through the Spanish Tax Authorities' website.
- ✓ The claim can refer to a calendar quarter or the full year.
- ✓ A Spanish resident **must be appointed mandatorily as tax representative**, who must comply with the corresponding requirements and procedure established. The tax representative is the one in charge of e-filing the application Form 361.
- ✓ Together with the application Form must be enclosed:
  - Complete data of the company applying for the VAT refund (legal name, address, VAT/tax id. Number, e-mail address, etc)
  - A statement certifying that the company has not carried out transactions within the Spanish VAT territory by which it becomes VAT taxpayer
  - Certification issued by the Tax Authorities of the country of establishment evidencing that the company carries out a business activity subject to VAT in said country
  - **Copies of invoices and import documents** supporting the input VAT quotas. Original documents must be held by the Company in case they are requested by the Tax Authorities
- ✓ The Tax Authorities have 4 months in order to solve the claim. After such period, delay interests are accrued.

# DILIGENS PROPOSAL

- ✓ **Diligens**, as VAT specialist, does offer its customers a **full and experienced service** related to the VAT refund claim through the special procedure for non-EU established operators, according to the requirements of the European Directive and the Spanish VAT Act.
- ✓ The scope of service offered by **Diligens** is:
  - Analysis of customer's transactions carried out in the Spanish VAT territory in order to determine the right to recover through the special procedure.
  - Review of the input VAT invoices and import documents in order to comply with formal and invoicing requirements for VAT deduction.
  - Appointment of **Diligens** as Tax representative.
  - Use of **Diligens** domicile and e-mail for notification purposes.
  - Preparation and e-filing of the VAT refund claim before the Spanish Tax Authorities.
  - To monitor, on a regular basis, the status of the VAT refund claim before the Tax Authorities.

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