

**REGULATION
OF THE MINISTER OF FINANCE**

of 24 December 2009

on refund of the goods and services tax to certain entities

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

Chapter 1

General provisions

§ 1.

This regulation specifies:

- 1) the terms, time limits and mode of refunding of the goods and services tax, charged upon purchase of goods and services or import of goods and the method of calculation and payment of interest on the amounts of tax not refunded in time to the entities referred to in article 89 paragraph 1 point 3 of the act of 11 March 2004 on the goods and services tax, hereinafter referred to as the "act";
- 2) specimen of the application for tax refund to be submitted by entities referred to in art. 89 paragraph 1d point 2 of the act;
- 3) information that should be included in the application for tax refund submitted by way of electronic communication means;
- 4) method of description of certain information included in the application for tax refund;
- 5) method and cases of confirmation of submission of the application for tax refund;
- 6) cases in which the taxable person applying for tax refund should submit additional documents and types of these documents;
- 7) cases in which the entities referred to in art. 89 paragraph 1 point 3 of the act which perform sales are entitled to tax refund,
- 8) mode of tax refund in cases referred to in article 89 paragraph 1e of the act.

§ 2.

Whenever in this regulation there is a mention of:

- 1) tax refund - shall mean the refund of the goods and services tax charged upon purchase of goods or services or import of goods by an entitled entity from European Community Member States or by an entitled entity from third countries;
- 2) entitled entity from European Community Member States - shall mean a natural person, a legal person or an organisational entity without legal personality which does not have an

establishment, a permanent place of residence, a fixed establishment, ordinary place of business or place where he usually resides within the territory of the country (Poland), applying for tax refund - having their establishment or permanent place of residence in the territory of a Member State other than the territory of the country (Poland);

- 3) entitled entity from third countries - shall mean a natural person, a legal person or an organisational entity without legal personality which does not have an establishment, a permanent place of residence, a fixed establishment, ordinary place of business or place where he usually resides within the territory of the country (Poland) as well as foreign entities referred to in article 131 point 2 of the act, applying for tax refund - not having their establishment or permanent place of residence in the territory of a Member State other than the territory of the country (Poland);
- 4) Member State of the establishment - shall mean the territory of a Member State other than the territory of the country (Poland) where the entitled entity from European Community Member States has its establishment or permanent place of residence;
- 5) country of the establishment - shall mean the territory of a state not included in the territory of the Community where the entitled entity from third countries has its establishment or permanent place of residence;
- 6) Head of the Tax Office – shall mean the Head of the Second Tax Office Warszawa-Śródmieście;
- 7) tax office – shall mean the Second Tax Office Warszawa-Śródmieście.

Chapter 2

Cases of tax refund

§ 3.

1. The tax refund is given to an entitled entity from European Community Member States or an entitled entity from third countries provided that this entity:

- 1) is a registered taxable person of the value added tax referred to in article 2 point 11 of the act, in the Member State of the establishment or a taxable person of the value added tax or of a tax of a similar nature in the country of the establishment;
- 2) is not a registered taxable person of the goods and services tax within the territory of the country (Poland);
- 3) does not carry out within the territory of the country (Poland), in the period for which he claims the tax refund, any sales referred to in article 2 point 22 of the act, except for:
 - a) transport and ancillary services related directly to import of goods, in case the value of these services has been included in the taxable amount,
 - b) air traffic control and supervision services, provided for the benefit of air carriers and other entities operating mainly transport services in the international transport,
 - c) services related to handling of the take-off, landing, parking, handling of passengers and cargo, and other similar services provided for the benefit of air carriers and other entities operating mainly transport services in the international transport,
 - d) services provided in the area of Polish sea ports, consisting in handling of sea-going vessels,

- e) services provided in the area of Polish sea ports, related to international transport, consisting in handling of overland means of transport,
- f) marine rescue services, supervision of the security of sea and inland navigation and services related to the protection of marine environment and maintenance of sea port basins and approach fairways,
- g) services related to handling of ships, listed in PKWiU class ex 35.11 owned by marine ship operators, excluding services provided for personal purposes of the crew,
- h) services consisting in repairs, rebuilding or maintenance of ships, listed in PKWiU class ex 35.11 and their components,
- i) services consisting in repairs, rebuilding or maintenance of air transport vessels and their equipment and devices installed within, used mainly in international transport,
- j) services in respect of which the taxable persons settling the tax on goods and services are the purchasers of the services referred to in article 17 of the act,
- k) supply of goods, for which the taxable person, pursuant to article 17 of the act, is their purchaser.

2. The tax refund is also given to entitled entities from third countries supplying within the territory of the country (Poland) to persons who are not subject to taxation electronic services which pursuant to article 132 paragraph 1 of the act submitted in a Member State other than the territory of the country (Poland) a notification informing of the intention to use special procedures of settlement of the goods and services tax or value added tax for these services.

3. The tax refund to the entitled entities from third countries, referred to in subparagraph 2, is applied to the goods and services purchased, related exclusively with the supply of electronic services by these entities.

§ 4.

1. The refund of the tax, in relation to entitled entities from third countries, is vested with the principle of reciprocity.

2. The provision of subparagraph 1 is not applied to taxable persons referred to in § 3 subparagraph 2.

§ 5.

1. An entitled entity from European Community Member States or an entitled entity from third countries may claim a tax refund for a period of no less than 3 months and not longer than one year or for the period shorter than the last 3 months of this year - in relation to tax on goods or services purchased or imported in the period for which the entitled entity claims the tax refund, subject to subparagraph 2.

2. The amount of the claimed tax refund may not be lower than the amount in Polish zlotys equivalent of:

- 1) EUR 400 - in case the application relates to a period shorter than a tax year but no shorter than 3 months;
- 2) EUR 50 - in case the application relates to the entire tax year or a period shorter than the last 3 months of this year.

3. The refund of tax included in prices of goods and services purchased by entitled entities from European Community Member States or an entitled entity from third countries includes the amount of tax determined on the invoice and in case of import of goods in the customs document, made in the period referred to in subparagraph 1, subject to subparagraph 4.

4. Amounts referred to in subparagraph 2, expressed in EUR, are converted according to the average EUR exchange rate published by the National Bank of Poland, applicable on the last working day preceding the day of invoice or customs document issue.

Chapter 3

Conditions for making the tax refund, based on an application submitted by way of electronic communication means, to entitled entities from European Community Member States

§ 6.

1. The tax is refunded upon application of the entitled entity from European Community Member States, submitted by the tax administration of the Member State of the establishment by way of electronic communication means.

2. The entitled entity referred to in subparagraph 1 submits, via the tax administration of the Member State of the establishment, an application using electronic communication means to the Head of the Tax Office.

3. The application referred to in subparagraph 2 shall be submitted in Polish, via the tax administration of the Member State of the establishment, not later than by 30 September of the year following the tax year concerned by the application.

4. Information to be contained by the application for refund of the goods and services tax and method of description of certain information are specified in appendix No. 1 to the regulation.

5. Together with the application referred to in subparagraph 2, the entitled entity referred to in subparagraph 1 submits, via the tax administration of the Member State of the establishment using electronic communication means, a copy of the invoice or customs document, when:

1) the taxable amount stated on the invoice or customs document is equal or greater than the equivalent in Polish zlotys of the sum of EUR 1,000;

2) the taxable amount stated on the invoice evidencing the purchase of fuel is equal or greater than the equivalent in Polish zlotys of the sum of EUR 250.

6. When converting the amounts referred to in subparagraph 5, the provision of § 5 subparagraph 4 is applied accordingly.

7. The tax office immediately confirms in electronic form that the application was received.

8. If the entitled entity referred to in subparagraph 1 makes a correction of the application for tax refund referred to in article 89 paragraph 1e point 2 of the act, the amount of tax, defined as a result of this correction in the decision issued by the Head of the Tax Office, decreasing the amount of the received tax refund, is subject to payment to the tax office within 10 days from the date of receipt of this decision. The time-limits specified in § 9 are applied accordingly.

9. If as a result of this correction referred to in subparagraph 8, a tax amount increasing the amount of received tax refund was appeared, this amount shall be refunded by the tax office - the time-limits specified in § 9 are applied accordingly.

Chapter 4

Conditions for making the tax refund, based on an application submitted in writing, to entitled entities from third countries

§ 7.

1. The refund of the tax is made on application of entitled entities from third countries, hereinafter referred to as the “application”.
2. The application shall be submitted to the Head of the Tax Office, not later than by September 30th of the year following the tax year the application concerned.
3. The specimen of the application is included in appendix No. 2 to the regulation.
4. The following shall be enclosed to 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 which is an appendix to the application, which indicates that the entitled entity referred to in subparagraph 1 is a taxable person of the value added tax or a tax of a similar nature registered in the country of the establishment, issued by the tax authority of the country of the establishment of this entitled entity;
 - 3) document confirming the identification for the purposes of the value added tax within the territory of a Member State other than the territory of the country (Poland), if the tax refund relates to the case referred to in § 3 subparagraph 3, and if the entitled entity referred to in paragraph 1 is identified for the supply of electronic services outside of the territory of the country (Poland).
5. If the tax refund relates only to the situation referred to in art. 3 subparagraph 3, the provision of subparagraph 4 point 2 is not applied.
6. If the entitled entity referred to in subparagraph 1 submits an application more often than once a year, the certificate referred to in subparagraph 4 point 2 is not attached to every application, provided that it was issued not earlier than one year before and there were no changes in the scope included in the certification.
7. If the entitled entity referred to in subparagraph 1 makes a correction of the tax refund application, referred to in article 89 paragraph 1e point 2 of the act, the provisions of § 6 subparagraph 8 and 9 are applied accordingly.

§ 8.

1. After examination of the application, each invoice or customs document, evidencing the amounts for tax refund, shall be stamped with a stamp of the tax office and obliterated in order to avoid their re-use.
2. After the refund is made, the tax office returns the stamped and obliterated invoices and customs documents to the entitled entity referred to in § 7 subparagraph 1.

Chapter 5

Time-limits and conditions for making the tax refund, based on an application submitted by way of electronic communication means, to entitled entities from European Community Member States and based on an application made in writing to entitled entities from third countries

§ 9.

1. The Head of the Tax Office issues a decision about the amount of approved tax refund within 4 months from the day of application receipt with any documents referred to:
 - 1) in § 6 subparagraph 5 – in case of entitled entities from European Community Member States;
 - 2) in § 7 subparagraph 4 – in case of entitled entities from third countries.
2. If the Head of the Tax Office does not have all the information needed to make the decision referred to in subparagraph 1, he may request, using electronic communication means, if the request is addressed to entitled entities from European Community Member States, the submission of additional information within the time limits referred to in subparagraph 1.
3. If on the basis of additional information received referred to in subparagraph 2, the Head of the Tax Office cannot make the decision concerning the approved amount of tax refund, he may request, using electronic communication means, if the request is addressed to entitled entities from European Community Member States, the submission of further additional information.
4. The information referred to in subparagraph 2 and 3 shall be submitted in the Polish language within one month from the date of receipt of such a request.
5. In case of requesting the submission of additional information and further additional information, the Head of the Tax Office issues a decision concerning the approved amount of the tax refund within the following time limits:
 - 1) two months from the date of receipt of additional information and further additional information referred to in subparagraph 2 and 3;
 - 2) two months from the expiry of the time limit referred to in subparagraph 4, in case of not receiving additional information and further additional information, however no longer than:
 - 6) 6 months from the date of receipt of application in case of requesting additional information referred to in subparagraph 2,
 - 8) 8 months from the date of receipt of application in case of requesting further additional information referred to in subparagraph 3.
6. The tax office makes the refund of the approved amount of tax not later than within 10 working days from the date of issuing the decision about the approved amount of tax refund.

§ 10

1. The tax refund is made in Polish zlotys to the bank account:
 - 1) in Poland or in the Member State of the establishment or in other Member State – in case of entitled entity from European Community Member States;

- 2) in Poland or in the country of the establishment – in case of entitled entity from third countries.
2. If the tax refund is made to the account:
- 1) in the Member State of the establishment or in other Member State of entitled entity referred to in subparagraph 1 point 1,
 - 2) in the country of the establishment of entitled entity referred to in subparagraph 1 point 2.
- the tax office does not cover the charges related to the refund.
3. The costs referred to in subparagraph 2 are deducted from the amount of refund specified in the decision on approved amount of the tax refund.

§ 11.

Interest is calculated on the amount of tax not refunded by the tax office within the time limits referred to in § 9 subparagraph 6 similarly like for the taxable persons referred to in article 15 of the act in cases of untimely refund of the tax to these taxable persons. Provisions of the act of 29 August 1997 - Tax Ordinance (Journal of Laws of 2005, No. 8, item 60 as amended) are applied in this scope accordingly.

Chapter 6

Final provisions

§ 12

The regulation of the Minister of Finance of 23 April 2004 refund of the goods and services tax to certain entities (Journal of Laws No. 89, item 851, of 2007, No. 207 item 1472 and No. 248, item 1848) becomes ineffective.

§ 13.

The regulation enters into force on 1 January 2010.

MINISTER OF FINANCE