

**National Tax and Customs Administration  
Guidelines 3001/2013**

**on the rules of the electronic procedure of claiming the refund of value added tax in Hungary by taxpayers not established in the domestic territory and of claiming the refund of value added tax in other Member States of the European Community by taxpayers established in the domestic territory.**

The content of the right of claiming the refund of value added tax and the detailed rules of exercising that right and of the electronic procedure are laid down in the Decree of the Minister of Finance No. 32/2009. (XII. 21.) PM (hereinafter Decree) on the rules of claiming the refund of value added tax in the Republic of Hungary by taxpayers not established in the domestic territory and claiming the refund of value added tax in other Member States of the European Community by taxpayers established in the domestic territory, issued, with regard to points 1.-49., pursuant to Chapter XVIII of Act CXXVII of 2007 on value added tax (hereinafter VAT Act), and the authorisation granted in Article 260 (1) b) of the VAT Act and, with regard to points 50.- 86., pursuant to the authorisation granted in Article 175 (25) of Act XCII of 2003 on the rules of taxation (hereinafter Taxation Act), as well as in Annex 9. Chapters I. and II. of the Taxation Act.

In relation to the legal regulations referred to above, I hereby issue these guidelines to assist the application of the rules of claiming the value added tax in Hungary by taxpayers not established in the domestic territory and in other Member States of the European Community by taxpayers established in the domestic territory.

For the purposes of these guidelines:

- a) **„taxpayer not established in the Member State of refund’** means any taxpayer who established a business or, in the absence of such a business, has a permanent address or usually resides in the territory of another Member State (hereinafter referred to as Member State of residence), and not in the Member State of refund;
- b) **„Member State of refund’** means the Member State in which the VAT was charged to the taxpayer not established in the Member State of refund in respect of goods or services supplied to him by other taxpayers in that Member State or in respect of the importation of goods into that Member State;
- c) **„refund period“** means the period covered by the refund request, and defined by the Member State of refund, in compliance with the provisions of the applicable legal regulations;
- d) **„refund request’** means the request for refund of VAT charged in the Member State of refund to the taxpayer not established in the Member State of refund in respect of goods or services supplied to him by other taxpayers in that Member State or in respect of the importation of goods into that Member State;
- e) **„applicant’** means the taxpayer not established in the Member State of refund making the refund request by himself or through a representative.

**I. Provisions on claiming the refund of value added tax in Hungary by taxpayers not established in the domestic territory**

**1. Eligibility to submit a refund request**

- 1.** An applicant may claim the refund of the tax if in the refund period, i.e., in the calendar year covered by the request, the applicant has an established business or, in the absence of such an establishment, has a permanent address or usually resides in any other Member State of the Community, or has an established business or, in the absence of such establishment, a permanent address or usually resides in a third country provided there is a reciprocal agreement between that third country and the Republic of Hungary.<sup>1</sup>
- 2.** Where a taxpayer is established or, in the absence of establishment, has his permanent residence or usually resides not only in another Member State, or a third country in respect of which reciprocal arrangements apply pursuant to Article 244 (2) b) of the VAT Act, but also in a third country in respect of which reciprocal arrangements as defined above do not apply, he shall be entitled to a refund, even where the other conditions are satisfied, only inasmuch as he pursues economic activities giving rise to taxpayer’s status as attributable to the place where he has established his business or, in the absence of such a place, where he has his permanent residence or usually resides, which is situated in another Member State of the Community, or in a third state, with which reciprocal arrangements are effective.<sup>2</sup>
- 3.** Any applicant, whose business establishment or, in the absence of such establishment, whose permanent address, or usual place of residence the provisions of points 1. and 2. apply to, and who does not supply goods or services within the domestic territory, i.e., in the Member State of refund, except transport of goods or supply of services ancillary to the transport of goods pursuant to Article 93 (2), Article 102, Article 111 (3), Article 112 (2) and Article 116 of the VAT Act, passenger transport exempt pursuant to Article 105, the cases listed in Articles 139-141, where the person to whom the

goods or services are supplied is liable for the payment of tax as defined therein, is entitled to the refund of tax.<sup>3</sup>

**4.** The applicant has the right to claim a refund of the input tax [Article 120 *a*), *c*) and *d*) of the VAT Act] on products purchased and imported and services used inasmuch as the goods acquired in the domestic territory or imported, or the services acquired in the domestic territory by the applicant

*a*) are used or applied for deals listed in Article 121 of the VAT Act, or

*b*) are used or applied for deals, where the person to whom the goods or services are supplied pursuant to Articles 139-141 of the VAT Act is liable for the payment of tax as defined therein.<sup>4</sup>

**5.** The applicant may claim the refund of tax in the Member State of refund if in the Member State where he is established he exclusively conducts transactions entitling him to deduct tax during the refund period pursuant to the legal regulations effective there. The applicant can partially claim the refund of tax if in the Member State where he is established he supplies goods and services both entitling him and not entitling him to deduct tax in the particular calendar year.<sup>5</sup>

**6.** The applicant may not claim tax refund of any input tax which was unlawfully passed on by another taxpayer, or which was charged to the purchase of a product the sale of which is exempt of tax, or which is charged on the purchase of a real estate.<sup>6</sup>

## **2. The refund request**

**7.** In the refund request, the applicant must provide the following information<sup>7</sup>:

*a*) the applicant's name and address of his business establishment, or in the absence of such establishment, his permanent address or the address of his usual residence;

*b*) the applicant's address for contact by electronic means, including also contact via e-mail;

*c*) description of the economic (business) activity(ies), for which the applicant purchased products in the domestic territory or imported products, or uses or otherwise applies the service used herein pursuant to Article 247 of the VAT Act;

*d*) the refund period covered by the applicant's tax refund request;

*e*) a declaration by the applicant that he has not supplied any goods or services deemed to have been supplied in the domestic territory pursuant to the provisions of the VAT Act, with the exception of transactions referred to in Article 244 (1) *b*) *ba*)-*bc*) of the VAT Act;

*f*) the applicant's tax number [Article 258 (3) *b*) of the VAT Act];

*g*) data and other information required for transferring the refunded tax to the applicant, including the IBAN number of his bank account and the BIC (SWIFT) code of the account managing bank<sup>8</sup>,

*h*) the following data in documents defined in Article 127 (1) *a*), *c*) and *d*) of the VAT Act, issued to the applicant's name, certifying the performance of the transaction based on which tax refund is claimed:

*ha*) name and full address of the supplier of the product or the service;

*hb*) except in the case of importation, the tax number of the supplier of the product or service [Article 258 (3) *a*) of the VAT Act], which was used for the supply of product or service;

*hc*) except in the case of importation, the prefix referring to Hungary as the Member State of refund („HU“);

*hd*) date and number of the issue of the document, which clearly identifies a document;

*he*) the taxable amount and the tax amount in HUF;

*hf*) the amount within the tax amount, to which the tax refund claim applies pursuant to Articles 247 and 248 of the VAT Act;

*hg*) the deductible proportion, expressed as a percentage, if a taxpayer established in another Member State of the Community can reclaim only part of the tax pursuant to Article 248 (2) of the VAT Act;

*hh*) the code number referring to the name of the product or service or its use or other application (from 1-10)

*i*) any correction specified in Article 251 (1) of the VAT Act if it must be made pursuant to Article 251 (2) of the VAT Act.

**7a.** In case of a transfer to be performed to the payment account of a person different from the applicant, the joint authorization statement of the person established in another Member State of the Community and this person must be attached on paper or in another provable form.<sup>9</sup>

**8.** The information stated in the refund request and any other written information and declaration to be provided simultaneously with the refund request or subsequently may be submitted only in the Hungarian, English, German and French languages<sup>10</sup>. If the applicant presents his request in any

language other than Hungarian, English, German and French, the Large Taxpayers Tax Directorate of the National Tax and Customs Administration (henceforward: LTPD) requests attested translation from the applicant<sup>11</sup>.

**9.** The refund request may contain the input tax of the refund period and the tax amount for which no refund request was submitted earlier, but originated in the particular calendar year<sup>12</sup>.

**10.** With regard to the refund periods of 2012 only one request can be submitted for the same refund period; nevertheless, overlapping refund periods may exist (e.g., 01/01/2012 – 30/04/2012 and 01/01/2012 – 30/06/2012). However, only one annual refund request may be submitted for a particular refund period. If an applicant submits several separate, e.g., annual refund requests, then the first annual refund request submitted by him will be effective, and all other subsequent annual refund requests will be rejected.

**10a.** With regard to refund requests for the refund periods of 2013, the request may contain – besides the input tax incurred in the refund period – the input tax incurred before the refund period if the input tax was incurred in the given calendar year and no refund request had been submitted earlier with regard to it.

**11.** If a refund request relates to a refund period of at least three calendar months, but less than one calendar year, the lowest amount of refundable VAT for which the refund request is submitted<sup>13</sup>, cannot be less than HUF 100,000 (EUR 400). If a refund request relates to a calendar year refund period or for the remaining part of a calendar year of less than three months, then the VAT amount cannot be less than HUF 13,000 (EUR 50)<sup>14</sup>.

**12.** With regard to a submitted refund request, where the applicant's tax refund right relates to input tax applied to the purchase or importation of a product or the use of a service in the case of which the taxable amount of the transaction reaches or exceeds HUF 63,000 (EUR 250) for fuel or, in other cases, reaches or exceeds HUF 300,000 (EUR 1,000), an invoice specified in Article 127 (1) a), documents related to the importation of the product specified in Article 127 (1) c) and an invoice certifying advance payment, specified in Article 127 (1) d) of the VAT Act, issued to the applicant's name certifying the performance of the transaction must be attached electronically to the request<sup>15</sup>.

### ***3. Submission and receipt of the refund request***

**13.** The applicant defined in Article 244 of the VAT Act submits the refund request for the particular calendar year electronically and addressed to LTPD – the agency assigned by legal regulations in the Member State of refund, i.e. Hungary – using the form of the tax authority in the Member State where he is established and via the electronic portal created by that Member State.

**14.** The applicant, his authorised representative, or the contact person specified in the refund request submits the written request<sup>16</sup> electronically, in compliance with the conditions of the VAT Act and the Decree to the tax authority of the Member State of refund, i.e., NTCA, through the electronic portal created by the tax authority of the Member State in which he is established.

**15.** NTCA accepts or rejects refund requests transferred by the Member States where the taxpayer is established by using the error codes specified by the European Commission. If NTCA rejects the refund request, it requests the sending Member State, in the form of an automatic delivery legal assistance, to notify the applicant of the rejection electronically. If it decides to accept the refund request, it sends a separate declaration of acceptance to the applicant electronically.

### ***4. Evaluation of the refund request***

**16.** In the course of the procedure conducted by the Member State of refund, after the acceptance of the request, if after the acceptance of the request there is an authorised representative in the procedure conducted by the Member State of refund LTPD must verify whether or not the authorised representative complies with the provisions of Article 7 of the Taxation Act.

**17.** If there are no other reasons of rejection, LTPD decides effectively on the applicant's refund request for the calendar year covered by the refund period (hereinafter current year) if the applicant submitted his request verifiably by not later than 30 September of the subsequent year following the current calendar year, as defined in point 13. No justification shall be accepted for a missed deadline<sup>17</sup>.

**18.** If subsequent to the receipt of the refund request by NTCA the scope of eligibility to tax refund stated in the refund request has changed because the interim deductible proportion applied during the year and the final deductible proportion applied for the whole year are not the same, then the applicant

a) must adjust the input tax requested to be refunded, or already refunded to a third party in proportion to the change, if the scope of the eligibility to tax refund has reduced due to the change referred to above;

b) may adjust the input tax requested to be refunded, or already refunded to a third party in proportion to the change, if the scope of the eligibility to tax refund has increased due to the change referred to above<sup>18</sup>.

**19.** The correction must or may be made in the first refund request prepared following the establishment of the final deductible proportion for the whole year and is submitted after the calendar year<sup>19</sup> of the refund period, stated in the refund request received and registered pursuant to point 18. NTCA takes into account this correction of the refunded tax during the evaluation of the refund request. LTPD shall adopt a separate decision on the total amount of the requests for the relevant period in case the correction was received and registered after the evaluation of the refund request.

**20.** If the correction cannot be made pursuant to point 19 because the applicant does not submit a refund request, the correction must and may be provided subsequently within the deadline specified in Article 251/C (1) of the VAT Act in a written declaration addressed to NTCA (correction statement). The correction statement is also submitted electronically, similarly to the refund request, through the tax authority of the Member State where the taxpayer is established.<sup>20</sup> NTCA decides on the correction of the tax refund after the assessment of the correction statement and arranges for establishing the obligation to repay, or for transferring the difference involved in the correction.

**21.** LTPD registers each applicant when they submit the first refund request.

**22.** The system automatically registers each accepted request, and then LTPD registers the data of the request among the applicant's master data in the taxpayers' register (hereinafter master database) and it also simultaneously creates a technical ID for the applicant (from the Directorate Code 51). If the applicant already has a technical ID, then the procedure continues with that number.

**23.** Each applicant can have only one technical ID. If several technical IDs have already been created for him, then NTCA will delete any ID created erroneously and subsequently.

**24.** NTCA notifies the applicant of the receipt and registration date of the refund request electronically within 2 days from the receipt (by using the citizen portal and the central electronic system if the applicant is registered, or by using the e-mail address if the applicant is not registered). Simultaneously with such notification, NTCA informs the applicant of the main procedural rules, including especially the deadlines and means of contact with the authority in a statement of acceptance<sup>21</sup>.

**25.** If the applicant reports to NTCA the termination of the e-mail address, specified in his refund request or if NTCA concludes from the available data that the electronic means of contact specified by the applicant in the refund request is not feasible due to any technical or other reason, then the rules of using electronic mail as means of contact can no longer be applied. After such notification or failed communication, NTCA will send its decisions and other notices to the applicant by post, and the applicant will submit his documents to NTCA by post or deliver them in person<sup>22</sup>.

**26.** The refund requests are judged by LTPD as the authority of first instance<sup>23</sup>.

**27.** An applicant may reclaim tax only if all the conditions specified in the VAT Act and the Decree have been fulfilled and only if he possesses the documents<sup>24</sup> supporting eligibility to tax refund, issued to his name or to the name of the trade representation in the domestic territory, if pursuant to Article 37 (1) of the VAT Act, the taxpayer's trade representation is the most directly concerned fixed establishment.

**28.** LTPD or NTCA Priority Tax and Customs Directorate General (hereinafter PTCDG) may contact authorities of the Member State of establishment having jurisdiction and competence to verify data and other information contained in the applicant's declarations [point 7 e)]. The request assessment and legal remedy proceedings are suspended until the request is fulfilled<sup>25</sup>.

**29.** The applicability of and compliance with the conditions of Article 244, 246-251/B of the VAT Act and Article 4 of the Decree must also be reviewed during the assessment of the request. Based on the above, the following are prerequisites of claiming tax refund:

a) the applicant supplies all mandatory data of the refund request (point 7) and, at the same time, states in a form that

aa) during the refund period, he did not supply products or services, the place of performance of which is in the territory of the Member State of refund according to the laws and regulations of the Member State of refund, other than the supply of tax exempt transportation services and ancillary activities referred to in Article 3 b) i. and ii. of the Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxpayers not established in the Member State of refund but established in another Member State, and the supply of products and services, where the person to whom the goods or services are supplied is liable for the payment of the value added tax (hereinafter VAT),

ab) the data and other information contained in the request are true and accurate, and

ac) the applicant undertakes to repay any tax refunded to him unlawfully, or erroneously due to any other reason,

b) the applicant should attach to the refund request electronically (in pdf, jpeg, jpg, tif or zip format)

ba) a copy of the invoice, production importation document if the taxable amount stated in the invoice, product importation document reaches or exceeds HUF 63,000 (EUR 250) for fuel, or HUF 300,000 (EUR 1,000) in other cases;

bb) the decision on putting the product into free circulation, issued to the applicant's name in relation to the importation of products in case a customs representative is employed and the written declaration of the customs representative on the performance of the tax liability and on the establishment and declaration of the tax payable.

**30.** NTCA rejects the applicant's refund request if the request was transferred despite the fact that

a) pursuant to the legal regulation of the Member State transposing Article 15 (1) of the Directive it would not have been eligible for submission (incomplete request, missing codes, harmonised code) or

b) pursuant to the legal regulation of the Member State transposing Article 18. (1) of the Directive it could not have been transferred (the applicant is not a taxpayer for VAT purposes, only supplies goods or services which are exempt without deductibility of the VAT paid at the preceding stage, he is covered by the exemption for small enterprises, or the applicant is covered by the common flat rate scheme for farmers)<sup>26</sup>.

**31.** If based on the available data and other information LTPD deems that a well-grounded decision cannot be made on the refund request, then, for the purpose of clarifying the facts, it may request further supplementary data from the applicant, any authority of the Member State of establishment having jurisdiction and competence or from a third party in the framework of a tax administration procedure in writing, electronically and on no more than two occasions within the 4-month deadline specified in Article 251/E (1) of the VAT Act<sup>27</sup>. The request may also relate to the electronic submission of the original copy or an attested copy of documents (invoices/import documents) certifying the performance of the transaction, issued to the applicant's name, without any limitation in the amount from the e-mail address stated in the request<sup>28</sup>. The tax authority registers but does not return the electronically submitted invoices. If a document was not created in an electronic form, the request is not fulfilled electronically either.

**32.** The deadline for responding only electronically is one month, calculated from the electronic submission of the request<sup>29</sup>. If contact is maintained via electronic mail, then decisions and all other notices sent by NTCA (decisions, rulings, other documents) must be deemed made on the fifth day from the date of sending; on the other hand, any document submitted by the applicant must be deemed submitted on the day when it is received by NTCA<sup>30</sup>. Pursuant to this provision, the date of sending and the first day after submission mean the starting dates of deadline calculation. If the actual date of electronic acceptance is not certified to LTPD, then the deadline for response is calculated from the fifth day from sending.

**33.** The deadline for response cannot be extended and a decision must be made within two months from the receipt of the response to the request. If the applicant does not submit all the requested data within the deadline, then LTPD will make a decision based on the available data and other information within 2 months from the deadline for response<sup>31</sup>.

**34.** LTPD shall decide on the refund request in a decision and/or a ruling<sup>32</sup>. LTPD shall decide on the tax refund in a decision adopted in the case<sup>33</sup>. The administration deadline is calculated from the first day after the request is received by the authority having competence and jurisdiction for the proceedings<sup>34</sup>. LTPD shall adopt its decision as an authority of first instance within four months calculated from that day provided that no supplementary data are required. In case supplementary data are required<sup>35</sup>, the administration deadline cannot be longer than 7 months, or if such data are requested, then 8 months<sup>36</sup>.

**35.** The applicant receives the tax refund and default interest specified in point 44 in HUF.

**36.** Contact may be maintained by electronic means in the following ways<sup>37</sup>:

a) through the client gate and the central electronic service system;

b) with the use of the e-mail address specified in the Taxation Act. Contact may be maintained through an e-mail address in the following ways:

ba) using the applicant's ordinary e-mail address, or

bb) with the use of Elekáfa portal.

**36a.** Contact may be maintained through the citizen portal or the central electronic system only if the taxpayer has a tax number effective in the domestic territory and if he is registered on the citizen portal. Registration may be made in person:

In any Governmental Window,

a) In any Document Service Centre or in any central agency of personal data and address registration in the territory of Hungary (Central Document Service Centre operated by the Central Office of Administrative and Electronic Public Services), at the central customer service of NTCA's taxation

organisation, in the county seats and in Budapest (1096- Budapest, Vaskapu u. 33-35.; 1139- Budapest, Petneházy u. 6-8.; 1144- Budapest, Gvadányi u. 69.; 1132-Budapest, Kresz Géza u. 15.), or

b) In Hungary's consular offices in other EEA Member States

(the contact information of consular offices are available on the following websites: [www.kormany.hu/hu/kovetsegek-konulatusok](http://www.kormany.hu/hu/kovetsegek-konulatusok))

**36b.** If contact is maintained through the Elekáfa portal, accessible at <https://elekafa.nav.gov.hu> website, then all documents can be sent to the tax authority's e-mail address [elekafa@elekafa.nav.gov.hu](mailto:elekafa@elekafa.nav.gov.hu). The first step in this procedure is 'Request a password' (*Jelszó kérése*), on the opening page, followed by the typing in of the e-mail address, which is indicated in the refund request. If the 'Send activation link' (*Aktivációs link elküldése*) is pressed, the *activation link* is sent to that address shortly, which contains the login password. This password must be changed after the login procedure in the 'Change password' (*Jelszóváltás*) menu point. Uploading supplementary data can be done by using the 'Supplementation' (*Hiánypótlás*) menu point by completing the basic data and attaching the required documents. The total size of attachments sent concurrently cannot exceed 30 Mb, with the following possible extensions: pdf, jpg, jpeg, tif and gif. The reference to the case number must always be included in the subject of the message. The 'Help' (*Segítség*) menu point contains a detailed user manual for the Elekáfa portal. If electronic communication fails due to a technical or any other reason, then the information is sent by post.

**37.** NCTA may accept any document sent by the applicant only from the e-mail address stated in the VAT refund request.

**38.** If, despite his commitment, the applicant does not voluntarily – or upon NTCA's order issued in the form of a decision – repay the tax refunded to him unlawfully or wrongly due to any other reason, NTCA may deduct that amount from the subsequent due tax refund payable to the applicant or, if the other regulatory measures to collect the amount fail, then NTCA may suspend any further tax refund proceedings to be executed for the applicant until the taxpayer complies with its obligation to repay<sup>38</sup>.

**39.** NTCA communicates/sends its decision on the refund request (decision/ruling) only electronically to the applicant, the person authorised for maintaining contact or the applicant's authorised representative, and communicates the contents of its decision to the competent authority of the Member State of establishment by using the standard codes published by the European Commission through the CCN/CSO network.

**40.** LTPD returns any document by registered mail (with confirmed receipt) issued to the applicant's name and certifying the performance of the transaction and referred to in Article 127 (1) a), c) and d) of the VAT Act, submitted either in its original form or as an attested copy and not originally created in an electronic form to the address specified by the applicant and no later than concurrently with the adoption of the decision on the refund request.

**41.** The applicant (or his authorised representative) may challenge the decision or ruling eligible for an appeal on an individual basis in an appeal addressed to PTCDG but submitted in one copy with the payment of stamp duty to LTPD (tax authority of first instance) within 15 days from the electronic communication of the decision or ruling<sup>39</sup>. The procedure of second instance is conducted and notification is sent about the decision only on paper.

**41a.** Appeals submitted following deadline, appeals submitted by persons unauthorized to submit appeals and appeals against non-challengeable orders will be rejected by LTPD without consideration<sup>40</sup>.

**42.** LTPD may only transfer the tax refund – due to the applicant in HUF – to the applicant's bank account specified in writing in his request. The bank account must be managed by a bank established in the Community and the account holder must be the applicant – or in case of a joint authorization statement – another person (e.g. an agent). If the applicant does not have any other recorded and overdue debt at NTCA, the amount approved in the decision closing the procedure will be transferred not later than within 10 working days from the approval of the decision. If the applicant has an overdue debt registered by NTCA, LTPD sends a separate ruling by post on withholding the amount of debt from the value added tax amount which had been approved for disbursement. The costs of any transfer made abroad must be borne by the applicant and they shall be withheld from the tax refund<sup>41</sup>.

**43.** The applicant does not need to specifically request the disbursement, it is automatically arranged by LTPD. The date of refund is the day on which NTCA issues the transfer order.

**44.** If NTCA is in default with the tax refund, the applicant is entitled to default interest for each day of the delay at the rate identical with the default penalty, calculated and transferred automatically by the IT Institute from the default penalty revenue account related to taxation activities of the NTCA and kept by the Hungarian State Treasury (SWIFT code: MANEHUHB, IBAN number: HU75-10032000-01076985-00000000)<sup>42</sup>.

**45.** NTCA does not need to pay default interest if the applicant did not provide a satisfactory response to the request specified in Article 251/F (1) and (2) of the VAT Act within the deadline for decision-making<sup>43</sup>.

**46.** If during the assessment of the request LTPD, or in the course of the legal remedy proceedings PTCDG comes across any circumstance in relation to the relevant entity obliged to issue an invoice in the domestic territory, or his representative authorised to issue the actual invoice indicating any irregularity, they can turn to the county (Budapest) tax directorate entitled to conduct an audit.

**47.** The county (Budapest) tax directorate entitled to conduct an audit informs LTPD or, if the request was made in a legal remedy proceedings, PTCDG of the findings of the audit conducted at the obligor of issuing an invoice in the domestic territory or at the representative authorised to issue the actual invoice in line with the request not later than within 30 days.

**48.** The request assessment and legal remedy proceedings are suspended until the request is fulfilled<sup>44</sup>.

**49.** LTPD or PTCDG shall adopt a ruling on the suspension of the procedure. An appeal may be lodged against the ruling on the suspension of the procedure<sup>45</sup>. The term of suspension of the procedure is not included in the administrative deadline.

## **II. Rules of claiming the refund of value added tax in other Member States of the European Community by taxpayers established in the domestic territory.**

### ***5. Eligibility to submit a refund request***

**50.** An applicant may claim the refund of the tax if in the refund period, i.e., in the calendar year covered by the request, the applicant has an established business or, in the absence of such an establishment, has a permanent address or usually resides in the domestic territory pursuant to the VAT Act.

**51.** No taxpayer established in the domestic territory is entitled to file a refund request who (which)

a) carries out only such activities listed in Articles 85-86 and Article 87 a) of the VAT Act that do not entitle him to exercise the right of deduction; or

b) has opted for individual exemption; or

c) qualifies as a taxpayer pursuing only agricultural activities according to Chapter XIV. the VAT Act<sup>46</sup>.

### ***6. The refund request***

**52.** In the refund request, the applicant must provide the following information<sup>47</sup>:

a) the applicant's name and address of his business establishment seat, permanent establishment), or in the absence of such business establishment, his permanent address or the address of his usual residence in the domestic territory;

b) the applicant's electronic e-mail address used for contact with the tax authority of the Member State of refund in compliance with its national laws and regulations;

c) description of the economic (business) activity(ies), for which the applicant purchased products in the Member State of refund or imported products, or uses or otherwise applies the service used therein;

d) the refund period covered by the applicant's tax refund request;

e) the applicant's declaration stating that during the refund period, he did not supply products or services, the place of performance of which is in the territory of the Member State of refund according to its national laws and regulations, other than the transactions referred to in the provisions transposing Article 3 b) i. and ii. of the Directive;

f) the applicant's tax identification number; and the group's identification number in the period of a group tax subject status and also the member's tax number<sup>48</sup>;

g) data and other information required for transferring the refunded tax to the applicant, including the IBAN number of his bank account and the BIC (SWIFT) code of the account managing bank;

h) the refund request must also contain the following data for each invoice and product importation document:

ha) name and full address of the supplier of the product or the service;

hb) with the exception of product importation, the tax identification number or the tax registration number issued by the Member State of refund to the supplier of the product or

service in compliance with the provisions transposing Articles 239 and 240 of the 2006/112/EC Council Directive of 28 November 2006 (hereinafter VAT Directive) on the common system of value added tax);

hc) with the exception of product importation, the prefix of the Member State of refund in compliance with the provisions transposing Article 215 of the VAT Directive;

hd) the date and number of the invoice, or product importation document;

he) the taxable amount and the tax amount in the national currency of the Member State of refund;

hf) the amount of deductible tax calculated in line with the legal regulations of the Member State of refund transposing Articles 5 and Article 6 paragraph two of the Directive and Article 123 of the VAT Act, expressed in the national currency of the Member State of refund;

hg) deductible proportion, expressed as a percentage in compliance with Article 123 and Annex 5 of the VAT Act if the applicant's tax refund right is restricted;

hh) the code number referring to the name of the product or service or its use or other application in compliance with the legal regulations of the Member State of refund transposing Article 9 of the Directive;

i) the applicant's refund request must contain also the following data and electronic attachments if they are required under the laws and regulations of the Member State of refund:

ia) description of the economic (business) activity referred to in point c), defined with the harmonised codes pursuant to Article 34a. paragraph (3) second subparagraph of Council Regulation (EC) No. 1798/2003 of 7 October 2003 on administrative co-operation in the field of value added tax and repealing regulation (EEC) No. 218/92;

ib) a copy of the invoice, product importation document as an electronic attachment if the taxable amount stated in the invoice, product importation document reaches or exceeds the amount equivalent to EUR 250 for fuel or EUR 1,000 in other cases, expressed in the national currency of the Member State of refund.

**53.** The guidelines for the completion of „ELEKAFAs describe in detail the data and information required by the Member State of refund.

### **7. Submission of the refund request**

**54.** The applicant can apply for the refund of the value added tax charged in the Member State of refund by filing the form available at NTCA in the Hungarian and English languages (ELEKAFAs), to NTCA electronically only, in the language(s) defined by the Member State of refund by 30 September of the calendar year following the period which the refund concerns. To be able to file the form electronically there are some software products available on the NTCA website (<http://www.nav.gov.hu>) under the "Nyomtatványkitöltő programok" menu item which provides help in the process of filing the refund request.

**55.** The form consists of two parts: the 'ELEKAFAs and the 'ELEKAFAs forms. These forms cannot be filed separately but only together; you can download them only together. One refund request is designed to contain the data of the tax refund from one Member State; if the applicant wishes to reclaim VAT from several Member States then he must complete as many requests as many Member States he intends to reclaim tax from. The applicant must complete form SZ for all invoices and import documents.

**56.** The "ELEKAFAs completed with **ANYK ABEVJava** software program may be submitted only electronically, through the citizen portal. The refund request can be submitted to NTCA by the applicant and his authorised representative previously named on form „T180 Notification and registration form for the electronic handling of tax matters' through the [www.magyarorszag.hu](http://www.magyarorszag.hu). eBEV sends a receipt of acceptance or rejection to the applicant/representative about the receipt of the refund request according to the outcome of the eligibility review.

**57.** If a foreign representative intends to represent the applicant as a proxy during the entire VAT refund procedure phase in the domestic territory, then, in addition to the requirements of point 56, the foreign representative must apply for a tax identification number/tax number in compliance with the general rules of electronic administration and must also be registered in order to be able to establish itself on the citizen portal and/or to use it. If the foreign representative intends to provide cross-border tax advisory, tax expert or accountancy services in the territory of Hungary, he must separately notify the Ministry of National Economy about it.

**58.** If the Hungarian/foreign representative intends to represent the applicant in the VAT refund procedure only towards the tax authority of the Member State of refund, then the applicant must specify the representative as contact person in the first block of page 01 of the "ELEKAFAs form and provide the respective data and information, especially the e-mail address. The tax authority of the Member State of refund will establish and maintain contact with the individual specified as such using the provided e-mail address during the refund procedure. In the Hungarian phase of the procedure, the contact person's status does not qualify as a proxy, and therefore the contact person is not entitled to proceed towards the Member State of establishment. The Member State of refund may



request the contact person stated in the request to provide the effective letter of authorisation in that respect within the framework of a supplementation request.

**59.** If an applicant submits a refund request (correction declaration) during the effective period of a VAT group, for the period of VAT grouping, the member is considered the applicant when the request is filed, and therefore the group member is entitled to submit the request. In such cases, not only the applicant member's tax number, but also the group identification number must be entered into block (A) of the "ELEKAFKA\_K form.

**60.** The refund period shall not be more than one calendar year or less than three calendar months. Refund requests may, however, relate to a period of less than three months where the period represents the remainder of a calendar year<sup>49</sup>. If the refund request relates to a refund period of less than one calendar year but not less than three months, the amount of VAT for which a refund is applied for may not be less than EUR 400 or the equivalent in national currency. If the refund request relates to a refund period of a calendar year or the remainder of a calendar year, the amount of VAT may not be less than EUR 50 or the equivalent in national currency<sup>50</sup>.

**61.** The information stated in the refund request and any other written information and declaration to be provided simultaneously with the refund request or subsequently may be submitted only in the language(s) specified by the Member State of refund. If the Member

State of refund does not specify the language to be used for providing information in the refund request, then any official language of the European Community may be used<sup>51</sup>.

**62.** With regard to a submitted refund request, and provided that the Member State of refund requests it, where the applicant's tax refund right relates to input tax applied to the purchase or importation of a product or the use of a service in the case of which the taxable amount of the transaction reaches or exceeds EUR 250 for fuel or, in other cases, reaches or exceeds EUR 1,000, expressed in the national currency of the Member State of refund, an invoice specified in Article 127 (1) a), documents related to the importation of the product specified in Article 127 (1) c) and an invoice certifying advance payment, specified in Article 127 (1) d) of the VAT Act, issued to the applicant's name certifying the performance of the transaction must be attached electronically to the request<sup>52</sup>. Those Member States in which the attachment of invoices and other documents is not a mandatory requirement may decide, during the assessment of the refund request, to call for the invoices/import documents so they be attached electronically in the framework of a separate supplementation request<sup>53</sup>.

**63.** The attachments can be attached to the „ELEKAFKA“ form by selecting "Csatolmányok kezelése" (Manage attachments) from the "Adatok" (Data) menu with which files may be attached in pdf, jpeg, jpg, tif, zip format. The size of attachments cannot exceed 4 MB. If the size of the documents to be attached exceeds 4 MB, the invoices/import decisions must be scanned in black and white to reduce the size of attachment, and only the invoices containing the highest amounts should be attached to the request; the rest of the documents may be submitted in a manner specified by the Member State of refund, e.g., in the framework of a supplementation request.

**64.** The prerequisites of claiming tax refund are that the applicant supplies all mandatory data of the refund request (point 52) and, at the same time, states in the ELEKAFKA form (by putting an „X“ in the code box next to the statement) that<sup>54</sup>

a) during the refund period, he did not supply products or services, the place of performance of which is in the territory of the Member State of refund according to its national laws and regulations, other than the supply of tax exempt transportation services and ancillary activities referred to in Article 3 b) i. and ii. of the Directive, and the supply of products and services, where the person to whom the goods or services are supplied is liable for the payment of the VAT,

b) A taxpayer with VAT code „1“ does not qualify as a taxpayer pursuing only agricultural activities, defined in Chapter XIV of the VAT Act,

c) the data and other information contained in the request are true and accurate, and

d) the applicant undertakes to repay any tax refunded to him unlawfully, or erroneously due to any other reason,

**65.** The code number (point 52. hh) referring to the name of the product or service or its use or other application in compliance with the legal regulations of the Member State of refund transposing Article 9 of the Directive is a mandatory content component of the refund request. The list of codes provided by the Member States is contained in the guidelines for the completion of the "ELEKAFKA form<sup>55</sup>. Some Member States do not apply sub-codes, so whenever tax is reclaimed from those Member States, the products and services stated in the invoice/import document must be classified according to the main codes 1-10<sup>56</sup>.

**66.** Refund request is deemed submitted if the applicant submits it to NTCA electronically, with the data required in the Decree in one of the official languages of the European Commission. If the Member State of refund defines the business activity of the applicant by using the harmonised codes

(so-called NACE codes) and it informs NTCA about it in compliance with Article 34a. (3) of the EC Council Regulation, then reference to the activities in that form is another prerequisite of the submission of the request<sup>57</sup>.

**67.** NTCA informs the applicant of the receipt of the successfully submitted refund request and its time electronically and immediately<sup>58</sup>.

**68.** NTCA rejects the refund request within 15 days from the registered date of its receipt if any condition of exclusion defined in the legal regulations applies to the taxpayer (point 51). NTCA informs the applicant electronically about the decision rejecting the forwarding of the refund request. Legal remedy may be claimed against the decision of rejection in compliance with the general rules, and submitted by post. If the adopted decision accepts the applicant's appeal, then the decision must be registered in the information system and the request will be automatically forwarded accordingly.

**69.** If the request cannot be rejected due to the reason stated in point 68, then NTCA forwards the request to the competent authority of the Member State of refund pursuant to Article 34a. (1) of the EC Council Directive within 15 days from its registered receipt<sup>59</sup>.

**70.** No legal remedy can be requested against the forwarding of the refund request. If in an ex officio legal remedy procedure conducted after the forwarding of the refund request within the statutory limitation period of the right to impose tax NTCA concludes that the forwarding of the refund request violated the law, it informs electronically the competent authority of the Member State of refund and concurrently also the applicant about it<sup>60</sup>.

**71.** If following the electronic notification referred to in point 67 the deductible proportion stated in the refund request is corrected in compliance with Article 123 and Annex 5. of the VAT Act, then the applicant must modify the reclaimed amount<sup>61</sup>.

**72.** The applicant may apply the modification in a refund request presented in the subsequent calendar year after the refund period affected by the correction or, if there is no such request, then in a declaration submitted to NTCA electronically (correction declaration: "ELEKAFK\_KIIGNY").<sup>62</sup> The provisions of point 54 must be applied to the correction declaration electronic form, while the provisions of point 61 must be applied to the language requirements of the information contained in the declaration. The correction declaration is deemed submitted if the applicant submits it in the form specified in this point, in any of the official languages of the European Commission, with the data stated in Article 8 (5) of the Decree.<sup>63</sup>

**73.** If the applicant makes the correction referred to in point 71 in a refund request submitted in the calendar year that follows the refund period affected by the correction, then it is indicated in the request with the data specified by the Member State of refund. If the Member State of refund does not especially provide for the data contained in the correction among the preferences specified by it, then at least the following must be stated in the refund request:

- a) the refund period affected by the correction,
- b) the correction amount in the national currency of the Member State of refund and;
- c) the modified deductible proportion, specified in point 52. hg), expressed as a percentage<sup>64</sup>.

**74.** If the applicant applies the correction referred to in point 71 in a correction declaration, as there is no refund request to be submitted in the calendar year that follows the refund period, then the correction declaration must contain the data specified by the Member State of refund or, if there are no such regulations, then the following data:

- a) the applicant's name and address of his business establishment seat, permanent establishment), or in the absence of such business establishment, his permanent address or the address of his usual residence in the domestic territory;
- b) the applicant's electronic e-mail address used for contact with the tax authority of the Member State of refund in compliance with its national laws and regulations;
- c) the applicant's tax identification number and, in the case group taxpayers, also group identification number and the member's tax number;
- d) the refund period affected by the correction;
- e) the correction amount in the national currency of the Member State of refund<sup>65</sup>;
- f) the modified deductible proportion, specified in point 52. hg), expressed as a percentage.

**75.** NTCA forwards any successfully submitted correction declaration to the competent authority of the Member State of refund, indicated in the request without any assessment electronically and immediately and, concurrently, also notifies electronically the applicant about the registration of receipt of the declaration and its time.<sup>66</sup>

**76.** The applicant may correct the refund request. In the third block of sheet „ELEKAFK-K-01“ the bar code (case number) of the previous refund request to be rectified must be entered and the corrected

request can be submitted with the rectified data. If a taxpayer applies the correction the “new” data must be given in every request relevant in the taxpayer’s correction. If the corrected request contains data which are unaffected by the correction, these data also have to be provided again! If an applicant submits several corrected requests for the same period, then always the bar code of the request submitted last for the particular period must be applied. Each individual modification overwrites the previously submitted request, and renders it null and void.

### **8. Proceedings of the Member State of refund**

**77.** The Member State of refund accepts or rejects refund requests transferred by NTCA by using the error codes defined in the specifications of the European Commission. If it rejects the refund request, it shall notify only NTCA of this decision which then notifies the applicant of the rejection electronically. If it decides to accept the refund request, it sends a separate declaration of acceptance to the applicant and to NTCA electronically.

**78.** The assessment of refund requests falls within the scope of competence of the Member State of Refund according to its own national laws and regulations. The Member State of refund assesses compliance with the deadline of submission of the refund requests after the receipt of the request.

**79.** The Member State of refund notifies the applicant about its decision on the acceptance or rejection of the refund request within four months from its receipt.<sup>67</sup>

**80.** If the Member State of refund needs further information for adopting a well-based decision, then within the four-month period it may request supplementation electronically in the language(s) specified by it specifically from the applicant or from the authority of the Member State of establishment having jurisdiction and competence. If the supplementation is requested from the applicant or any person other than the competent authority of a Member State, the request may only be made electronically providing that the addressee of the request is equipped with such devices.<sup>68</sup> The deadline of response is one month from the communication of the request,<sup>69</sup> and a decision is made within two months from the receipt of the full response or from the expiry of the deadline without a result or, in a justified case, a second supplementation may also be requested within the same period, also with a one-month deadline of response.<sup>70</sup> The overall deadline for decision making may not be longer than 4 months without any supplementation request, 7 months if supplementation is required once, or 8 months if data are requested twice.

**81.** The competent authority of the Member State of the particular refund communicates/sends its decision on the refund request (decision/ruling) only electronically to the applicant, the person authorised for maintaining contact or the applicant’s authorised representative. The Member State of refund notifies the applicant about the decision, the reasons of rejection<sup>71</sup>, as well as the available legal remedy options.

**82.** If the refund request is accepted, the Member State of refund refunds the approved amount not later than within 10 working days after the deadline referred to in point 79 or, if supplementary or further supplementary information is requested, then from the deadlines referred to in point 80.<sup>72</sup>

**83.** The Member State of refund may transfer the tax refund to the applicant in the national currency of the Member State of refund only into the applicant’s bank account [point 52.g.], specified in writing in his request.<sup>73</sup> The transfers cannot be made into the bank account of any other person (e.g., agent). The costs of any transfer not made into the Member State of refund must be borne by the applicant and they shall be withheld from the tax refund.<sup>74</sup>

**84.** If the tax is refunded after the deadline referred to in points 79 and 80, then the Member State of refund must pay default interest unless the delay was caused by the applicant failing to supply the requested supplementary information to the Member State of refund within the specified deadline.<sup>75</sup>

**85.** The applicant (or the authorised representative) may claim legal remedy against a decision of full or partial rejection by submitting a claim to the Member State of refund according to its national laws and regulations within the deadline calculated from the electronic notification of the decision and defined in the legal regulations of the Member State of refund.<sup>76</sup> The procedure of second instance is conducted and notification is sent about the decision only in line with the legal regulations of the Member State of refund.

### **9. Request for delivery**

**86.** The Member State of refund may request the delivery of its decision sent by it electronically, through the CCN/CSI network, or any other message sent electronically within the framework of a notification request,<sup>77</sup> which NTCA performs by uploading the information into the applicant’s storage space on the citizen portal. Otherwise, NTCA always sends notification of rejection to the applicants together with the reasoning provided by the Member State of refund. NTCA can deliver the decision in compliance with the regulations only if the Member State of refund attaches also the attested electronic copy of the decision to its message.

### **III. Closing provisions**

**87.** These guidelines are effective from the fifth working day counted from publication. .

**88.** From the effective date of these guidelines, the provisions of the Guidelines no. 3014/2012 issued by the President of the National Tax and Customs Administration on 17 April 2012 on the rules of the electronic procedure of claiming the refund of value added tax in Hungary by taxpayers not established in the domestic territory and of claiming the refund of value added tax in other Member States of the European Community by taxpayers established in the domestic territory are no longer applicable, and the provisions of these guidelines are to be approved.

**89.** In passing decisions regarding cases in progress on 31 December 2012 the present Guidelines are applicable with the exception that point 41a does not apply regarding appeals posted before 1 January 2013 and instead of point 8 of the present Guidelines, point 8 of the Guidelines effective on 31 December 2012 are to be applied with the understanding that wherever the Priority Affairs Tax Directorate of the National Tax and Customs Administration is mentioned, the Large Taxpayers Tax Directorate of the National Tax and Customs Administration is to be understood.

**Budapest, 25 January 2013**

**Dr. Ildikó Vida**

**National Tax and Customs Administration**

**President**