

An update on the implementation of the Refund Directive

Introduction

As part of our ongoing series of information updates regarding EU VAT legislative changes that came into effect on 1st January 2010, this special edition of our VATtrends publication is dedicated to providing you with an update on the new electronic procedure for cross-border VAT recovery within the EU – the “Refund Directive”.

If you already attended one of Meridian’s webinars on the subject of the Refund Directive, and/or received our information updates by email, you will be aware that from 1st January 2010, VAT reclaim applications must be filed electronically for EU established businesses recovering VAT in another EU member state.

If you did not attend this webinar, which provides an insight into the key legislative changes, it is still available for you to view on our website at:

www.meridianglobalservices.com/The-Refund-Directive-Webinars

Background

The thinking for the new procedure was to allow for VAT reclaim applications to be filed via an electronic portal developed by the Tax Administration of the Member State in which the claimant is established (the Member State of Establishment – MSE). The applications should then be electronically forwarded to the EU jurisdiction where the VAT was incurred (the Member State of Refund – MSR).

The refund applications would then still be assessed and refunded by each MSR in accordance with their specific criteria and rules for eligibility: valid invoice rules, claimable expenditure in that country, number of applications filed, claim period restrictions, VAT Groupings.



In information updates, we outlined the state of readiness of the Member States and some of the practical difficulties faced by businesses in filing applications through these new portals, managing applications between Member States, and handling MSR queries and decisions under the new procedure.

Current Status

Over four months since the new legislation came into effect, fundamental problems still exist with portal functionality and working interfaces between Member States.

Meridian has heard of many applications that have gone missing between Member States. We would like to stress that none of our claims are missing as we have undertaken rigorous testing and follow-up procedures regarding all our claims with the Authorities.

By way of example, the following notice may be seen on the UK HMRC website (posted 12th April 2010):

“We are working with our EU partners to resolve issues with claims being sent to France and the Netherlands. We strongly recommend that you do not make a claim to either of these countries at present. We will update this advice as soon as possible”.

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Meridian, as the largest agent serving clients, continues to proactively work with all the Tax Administrations to help solve the issues at hand. As well as the problem of missing claims highlighted above, we are working with the Authorities to help solve the following issues:

- Incompatibilities in the treatment of applications for VAT Groups between Member States. For example, the UK Administration require that applications for VAT Group members are consolidated and filed under the Head of the Group, whilst the Belgian Administration state that applications must be received for their assessment from individual members. This inconsistency is present in many Member States, and will result in many claims being fully rejected. We are working with the Commission and the Member States to try and resolve these fundamental inconsistencies.
- MSE portal restrictions on the number of invoices that may be entered (e.g. the French portal limits the number of invoices per application to 100). Again, this is a common problem across Member States.
- Detailed information must be input to the portal for every invoice included in the application. This includes supplier name, supplier address, supplier VAT id, invoice number, invoice date, invoice amounts (gross, net, VAT) as well as selecting the appropriate expenditure sub code for each invoice to describe the nature of the goods/services on which the VAT is being claimed. (In excess of 150 expenditure codes (and sub-codes) exist from which to select, depending on the claim jurisdiction).
- The absence of a 'Save' function on many portals means that an application must be completed in full and submitted in a single 'online session'. Therefore, it is not possible to save a draft application in progress, for the purpose of adding invoices to this application at a later point. With many claimants having large amounts of invoices coupled with the level of detail required per invoice, this presents a very real dilemma for applicants.
- The process for acknowledging receipt of applications, initially by the MSE and finally by the MSR, varies across Member States. In some cases, both MSE and MSR provide confirmation (though not necessarily using the same application reference), in cases, confirmation is received from the MSE only, and in other cases, confirmation is received from the MSR only. Even within these combinations, inconsistencies have been noted. This difficulty extends to the query process also, where for example, the MSE acknowledges receipt of the electronic application using one reference, and the MSR raises a query relating to the same application using a completely different reference.
- Many portals do not show the total VAT value of the reclaim application, therefore a significant audit trail risk exists. With different references being used by the MSR than the MSE, the follow-up of claims is proving impossible for those without adequate tracking systems. Even with the small volumes of claims that have been submitted electronically, Meridian is hearing of many difficulties encountered in following up on applications filed.

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In one case we received from an MSR, an e-mail notification for a claim we submitted, and contained in the notification were 65 other misdirected notifications for claimants who do not work with Meridian. These claim notifications were for a third Member state.

- The number of applications allowed annually continues to be limited, with constraints around claim periods which vary across Member States so the submission of claims needs to be managed very carefully.

Meridian, through its large team of technical VAT experts in each country, has gained a thorough understanding of the Member States' implementation processes, and the key deficiencies therein.

Many issues escalated by us to Member States and the Head of the EU Commission's VAT unit have not yet been clarified / resolved by the Tax Administrations. However, Meridian has successfully developed parallel system solutions to overcome many of the difficulties outlined above. We are not dependent on the Tax Administrations to deliver on these, and believe this is probably unlikely in the short-term given the pace at which the Administrations move.

If you have any questions we would be delighted to assist. Please contact your Client Service Manager or email us at info@meridianglobalservices.com. Alternatively Meridian has set up a new group on LinkedIn specifically designed to allow you share your issues on the refund directive "[The European Refund Directive Group](#)".