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01. VAT REFUND. REQUIREMENTS

Question:

A tourist with permanent residence outside the EU, who has made purchases in Spain. Can he get a refund of the VAT paid on those purchases?

Answer:

Yes, provided that they are resident in a country outside the EU, or in the Canary Islands, or in the autonomous cities of Ceuta and Melilla, and also meet the following conditions:

- The tourist who proves at the time of purchase his identity and his residence outside the European Union.
- The purchases must be properly documented (commercial invoice and an Electronic Tax-free Document submitted to the Tax Agency).
- The purchases must have been made in the Iberian Peninsula, or in the Balearic Islands, not applying this system to those, which have been made in the Canary Islands, Ceuta or Melilla.
- The goods must not constitute a commercial dispatch, i.e. they must have been acquired on an occasional basis and intended for their personal or family use or offered as gifts and, which, according to their nature and quantity, cannot be presumed to be the subject of a commercial activity.
- The goods acquired actually shall leave the territory of the Community within three months of the month in which the supply took place.

Likewise, the supply of goods intended for the equipping or provisioning of any means of transport for private use (e.g. tyres and fuel) is excluded from this regime.

02. VAT REFUND. PROCEDURE

Question:

When can a traveller, who is not resident in the European Union, get refunded the VAT paid on purchases made in Spain?

Answer:

For the refund of input VAT amounts paid by travellers, who are not resident in the territory of the European Union, those amounts must have been previously charged and documented on an invoice. Likewise, the seller must submit an electronic tax-free document (DER, in Spanish) to the Tax Agency.

In Spain, there are two systems for the refund of the amounts previously paid by non-resident travellers. The traveller can freely choose any of those two systems at any time:

- 1- Directly through the shop. The traveller submits the electronic tax-free document validated by the customs office (authority) to the supplier, who will refund the full amount charged within fifteen days by cheque, bank transfer, credit card payment or any other means supporting the refund. The time limit for the traveller to submit the DER validated by the customs office to the supplier must be the general four-year statute of limitations on the supplier's right to rectify the amounts charged. After this time, the supplier has no obligation to refund VAT.
- 2- Through Collaborating Entities authorized by the AEAT (Tax Agency). In this case, the travellers will present the electronic tax-free documents validated by the customs office to these entities, that will refund the VAT paid in the acquisition of the goods minus the corresponding authorized commission. The traveller must agree to such refund. Subsequently, the Collaborating Entities will submit the electronic tax-free documents validated by the Customs office to the suppliers who will order the corresponding refund, in this case, in full.

The VAT refund to travellers by the Collaborating Entity will be made in cash, by credit card, cheque or bank transfer.

03. VAT COLLABORATING ENTITIES

Question:

Which cooperating entities are authorised by the Tax Agency to refund paid VAT to travellers?

Answer:

- Global Blue España S. A. (formerly European Tax-free Shopping Spain S. A.).
- Planet Payment Spain SAU Premier Tax-free (formerly Cashback and Premier Tax-free).
- Innova Taxfree Spain (formerly Spain Refund S. L.)
- Caja de Ahorros y Pensiones de Barcelona (Barcelona Savings and Pension Bank)
- Open Refund S. L.
- Comercia Global Payments Entidad de Pago S. L.
- Financiera El Corte Inglés, EFC
- Travel Tax Free, S. L. U
- S21 TAX FREE, SL
- KEEP SHOPPING TAX FREE, SL
- HISPANIA TAX FREE, SL.
- B FreeTax Back S.L.
- Safety Tax-free España, S.L.
- Wiblink, S.L
- WOONIVERS SPAIN, SL (antes Getrefund SL)"
- Traveleasy GmbH
- Pucela Brain Storm, S.L.
- Refundit, SL
- Yourtaxback, S.L.
- Upshop Tax Free España, S.L.

Travellers shall present the tax-free document validated by the customs office to the mentioned entities, which will refund the corresponding amount (invoiced amount minus the amount for commission) indicating on record the traveller's conformity.

04. PROOF OF HABITUAL RESIDENCE

Question:

For VAT refund purposes in the tax-free shopping system, how can I prove that I am habitually resident?

Answer

Travellers must have their habitual residence outside the territory of the European Union. With regard to the evidentiary documents, there is freedom of evidence. Travellers' habitual residence may be accredited by any means of proof admitted by law. It is the traveller who must prove by any legally valid means of proof that he or she is indeed a resident outside the European Union. For example, you can provide your passport, identity document, a registration certificate in another country, a certificate of registration in the Consular Registration Registry of Spanish residents abroad, a "Green Card" or any other resident card of a state outside the European Union.

Citizens of the European Union (that is, nationals of a Member State with a passport of that Member State) who reside permanently in a non-member country of the Union, can also benefit from the exemption of article 21.2 of the Law of the VAT and can request a refund of the tax. This is also the case of Spanish diplomatic and consular personnel residing in countries outside the European Union.

The seller will always check the traveller's identity and residence outside the European Union at the time of sale. This obligation must be fulfilled materially by the seller in any case and at the time and place in which the purchase is made.

It is worth mentioning, at this point, Judgment number 1687/2022 of the Supreme Court, Contentious-Administrative Chamber, Second Section. The Court considers that: "(...) to prove the habitual residence of the purchaser, for the purposes of applying the exemption for the export of goods under the passenger regime provided for in article 147.7 of Council Directive 2006/112/CE, of 28 of November 2006 and 21.2º.A of Law 37/1992, on Value Added Tax, the contribution of the passport is not enough, as contemplated in article 9.2º.B.b) of Royal Decree 1624/1992, of December 29, which approves the Value Added Tax Regulation, when it does not state the habitual residence or domicile of the recipient of the supplies of goods, being necessary in this case, additionally, to present other means of proof that prove the habitual residence of the traveler. In any case, it is the responsibility of the seller or supplier of the goods, subject to VAT, to verify if the document presented by the traveler to be able to enjoy the exemption contains the

data on the habitual residence or domicile of the traveler, and may, where appropriate, be said document, the passport, the identity document or any other means of proof admitted by law. "

The requirements demanded by the VAT in order to enjoy this tax benefit must be met at the time of making the goods available to travellers, so that the habitual residence out of the European Union must be a fact at that time.

05. NON-COMMERCIAL DISPATCH

Question:

For VAT refund purposes in the tax-free shopping system, What does the expression “the goods purchased do not constitute a commercial dispatch” stand for?

Answer

For the purposes of this Law, goods carried by travellers shall be deemed not to constitute a commercial dispatch when they are goods acquired occasionally, intended for the personal or family use of travellers or to be offered as gifts and which, due to their nature and quantity, cannot be presumed to be the object of a commercial activity.

The rule does not establish any quantitative threshold, above which goods are deemed to constitute a commercial dispatch. It must therefore be analysed on a case-by-case basis.

06. MEANS OF PAYMENT

Question:

By what means of payment will the VAT refund to travellers be made?

Answer

If the traveller opts to obtain the refund directly from the salesman, this last one will refund the full amount charged within a period of fifteen days either by cheque, bank transfer, credit card payment or other means that attest the refund.

If the traveller opts for the VAT refund through a Collaborating Entity authorized by the Tax Agency, the VAT refund to travellers shall be made in cash, by credit card, cheque or bank transfer. When the refund is made in cash, it will necessarily have to be made in euros.

07. ELIGIBLE MERCHANDISES

Question:

What kind of goods can benefit from VAT refund to travellers in the Tax-free shopping scheme?

Answer

The mechanism provided for the refund of the VAT to travellers must be understood as directed at the goods acquired by them and that are going to be transported “in the personal luggage” of the travellers, not being applicable therefore to other assumptions of goods that are being transported to a third territory outside of the travellers’s personal baggage. Likewise, the exemption from VAT on the supply of goods in the tax-free shopping scheme excludes the supply of goods intended for equipment (e.g. tyres, fuel) or victualling of any means of transport for private use.

Only goods acquired, which actually leave (the territory of) the European Union are eligible for a refund. The exemption therefore does not apply to services of any kind (accommodation, car hire, catering, etc.) or to goods, which have been totally or partly used within the territory of the Union (drinks, chocolates, perfumes).

It is important to note that the validation of the electronic tax-free document (DER) is carried out or not in its entirety; so that, if only some of the goods included in a DER actually leave, the condition of effective exit of all the goods is not met and will therefore not be validated.

Shall consumables be purchased in order to benefit from the exemption and to be able to get a refund of paid VAT, these goods must leave the territory of the Union in the same condition as when they were purchased.

08. DOCUMENT AT THE SHOP

Question:

What document does the shop assistant have to provide to the traveller to be sealed at the customs office of exit?

Answer

The shop assistant must issue the corresponding invoice and besides an electronic tax-free document (DER), both at the time of purchase. The DER is available on the website of the State Agency of the Tax Administration, where the goods acquired will be recorded showing, separately, the corresponding tax amount.

The identity country of residence, date of birth and passport number of the traveller must be entered on the electronic tax-free document.

The collaborating entity or the selling store must check the DER validation, as a prerequisite to the awarding of the refund. It is as well required to inform the Tax Agency that the refund has been made.

The copy of the form provided (DER) to the travellers must bear a CSV (secure verification code), which will allow the traveller to know the processing status of his refund, with which the traveller will always be able to know the status of the processing of their VAT refund request, at all times. This information is available at the following web address:

<https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/ZZ05.shtml>

It is important to take into account that the DER issued to the traveller must contain a bar code or a QR code for later reading at time of validation (a simple screenshot of the form does not fulfil this requirement).

09. TIME LIMIT FOR EXIT

Question:

What is the maximum time for a traveller to leave the European Union since the purchase was made?

Answer

It is a condition for the refund of VAT paid on purchases of goods by travellers, who are not resident in the territory of the Union, that they actually leave the territory of the Union within a maximum period of three months following the purchase. Directiva 2006/112/EC on VAT states more clearly that the goods must be transported “outside the Community before the end of the third month following that in which the delivery is made”

Example

- Delivery date May 5 (credited by invoice date)
- Effective date of departure: Before 31 August.

Spanish invoicing regulations allow entrepreneurs and professionals to issue summary invoices. Thus, different operations carried out on different dates for the same recipient may be included in a single invoice, provided that they have been carried out within the same calendar month.

In the event that the sale of the goods being exported corresponds to a summary invoice, the period of three months will be counted from the date of the latter document.

10. TIME LIMIT TO APPLY FOR THE VAT REFUND

Question:

What is the maximum period to apply for the refund of the paid VAT once the proof of exit has been validated?

Answer

The traveller may request the refund of the VAT paid on his purchases in Spain, provided that he complies with all the legally enforceable requirements and that the electronic tax-free document (DER) proving his purchase, is correctly validated by the customs office of exit.

The maximum period for requesting a refund is the general four-year statute of limitations, coinciding with the term of the supplier's right to rectify the VAT amounts charged. Once this period has elapsed, the supplier has no obligation to refund the VAT.

11.EXIT FROM EU WITHOUT VALIDATION IN TAX-FREE DOCUMENT

Question:

Is it possible to claim a refund of paid VAT after having left the territory of the Union without having filled in the invoice at the last point of exit?

Answer

No. It is a condition for the refund of VAT paid on purchases of goods by travellers not resident in the territory of the Community that the traveller presents the goods to the Customs office of export. The validation of the electronic reimbursement document by the Export Customs is the proof that the goods have left the territory of the Union.

Therefore, if the goods have not been presented and the electronic refund document, DER, has been endorsed, the requirements, to which the regulations make the right to the refund of VAT, are not met.

12.DUTY FREE STORE

Question:

What are the differences between buying in a duty free store and one that is not?

Answer

In ports and airports there are duty free shops. These ones (shops) are under customs supervision. In this kind of shops supplies of goods are exempt from tax provided that the purchaser is a traveller to a third country. This circumstance must be proved by showing the

boarding card. This exemption does not apply to goods constituting a commercial dispatch. This means that, under the indicated conditions, the sales made do not include VAT (without prejudice to the Price policy of the duty-free shop).

13. SERVICES ON THE INVOICE

Question:

Two items appear on the purchase invoice: one the item itself and the other the amount paid for an extended purchase guarantee (above the legal limit). Can I claim VAT paid on the purchase of the extended guarantee service?

Answer

Only goods acquired, which actually leave the territory of the European Union, are liable to be refunded (get the VAT refund) under the tax-free system for travellers. However, the exemption does not apply to services of any kind (accommodation, car hire, catering, etc.).

The provision of an extended warranty service is an ancillary service to the good, and as a service it cannot be refunded for the VAT to which it is subject.

14. INVOICE VALIDATION BY CUSTOMS OFFICE OF EXPORT. MEANING

Question:

Invoice validation by Customs Office of Export. Meaning

Answer

For the refund of input VAT amounts paid by travellers, who are not resident in the territory of the European Union, those amounts must have been previously charged and documented on an invoice.

When the traveller leaves the territory of the Union, he/she must present the goods together with the invoice and the DER before the Customs Office of Departure for its validation, provided that all legal conditions for doing so are met.

If the Customs Office of Departure is located in Spanish territory, this DER visa will always be electronic when it refers to purchases made from 1st of January 2019.

Concerning purchases made before January 1st 2019, the validation of the invoice or of the DER could be made either manually or electronically. The manual validation, using a rubber stamp, was carried out either on the DER, or directly on the invoice or goods or on the tax free form submitted together with the sales invoice.

During this transitional period, manual validation (stamping) has the same effect as digital validation.

15. PORTS AND AIRPORTS AVAILABLE FOR VALIDATION

Question:

Spanish ports and airports where you can find a digital validation terminal.

Answer

The electronic tax-free document can be validated at any of the points of exit of the territory of the European Union, through our country. For more information:

[https://www.agenciatributaria.es/AEAT.internet/Inicio/La Agencia Tributaria/Aduanas e Impuestos Especiales/ Presentacion/Procedimientos y gestiones en la Aduana/ PA RTICULARES/Viajeros/ INFORMACION/Compras Devolucion IVA/ INFORMACION/ Puertos y aeropuertos con DIVA / Puertos y aeropuertos con DIVA .shtml](https://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Aduanas_e_Impuestos_Especiales/ Presentacion/Procedimientos_y_gestiones_en_la_Aduana/ PA RTICULARES/Viajeros/ INFORMACION/Compras_Devolucion_IVA/ INFORMACION/ Puertos_y_aeropuertos_con_DIVA / Puertos_y_aeropuertos_con_DIVA .shtml)

16. DIGITAL VALIDATION AT A DIVA TERMINAL

Question:

Digital Validation at a DIVA terminal

Answer

- If you are a traveller with habitual residence outside the territory of the European Union and have made purchases in Spain, the salesman in the shop must have issued to you, together with the corresponding invoice, an electronic tax free document (DER) with the word “DIVA” on the top. If you leave the territory of the Union through a Spanish port or airport that has a DIVA terminal, you will be able to complete your RCD digitally by going directly to the terminal.

To do this:

Locate the terminal at your departure airport // port

Choose your language

Scan the DER barcode

Follow the instructions on the screen

If the result is OK (green circuit), you already have a DER validated. You only need to claim your money to the shop or to the collaborating entity, by means of (the) remittance of the already endorsed DER in electronic form.

If the result is not OK (red circuit), a message will appear informing you of the need to carry out additional checks for the validation of the DER, and you will have to go to the nearest Customs office or Tax Free Stamp Office. Customs authorities will be able to verify if all the conditions for the validations of the DER are met and also for the VAT refund. To do this, you will have to go to that office accompanied by the goods purchased and that you must necessarily transport in your personal luggage, as well as your passport, your invoice, the boarding pass and some document that proves your residence outside the EU. These offices are easily identifiable with signs of the following type:



17. DISCOUNTS ON DIVA

Question:

What is the DIVA treatment for discounts?

Answer

In the DIVA tax-free shopping scheme, discounts may appear as a product category of their own, expressly identified, that allows negative monetary values.

18. PREVALENCE OF THE DIGITAL VALIDATION

Question:

During the transitional period, what happens if a DER that is recorded in the system as nonconforming later obtains a manual stamp validation?

Answer

In case of discrepancies between the manual stamp and the digital validation, the result of the electronic system prevails, as it is much more guarantor for all the actors involved in the process.

19. EMPLOYEES OF EMBASSIES AND CONSULATES

Question:

VAT refund under the tax-free shopping scheme to employees of Embassies and Consulates.

Answer

Citizens of the European Union (that is, nationals of a Member State with a passport of that Member State) who reside permanently in a non-member country of the Union, can also benefit from the exemption of article 21.21 of the law of the VAT and can request a refund of the tax. This is also the case of Spanish diplomatic and consular personnel residing in countries outside the European Union. Travellers who provide services in Spanish embassies or consulates located abroad can benefit from the exemption provided for exports under the passenger regime, regardless of whether they are considered taxpayers for IRPF.

The requirements demanded by the VAT regulations in order to enjoy this tax benefit must be met at the time of accrual (time of making the goods available to travellers), so that the habitual residence outside the EU must be a fact at the time the tax is due.

With regard to supporting documents, there is freedom of evidence. Habitual residence outside the European Union may be accredited by any means of proof admitted by law. It is the traveller who must prove by any means of proof valid in law that, in fact, he or she is a resident outside the European Union.

In the case of acquisitions of goods by staff of accredited foreign diplomatic missions resident in Spain and career consular offices, the exemption regime applicable is that provided for in Article 22. eight of Law 37/1992 and its implementing regulations.

20. CANARY ISLANDS, CEUTA AND MELILLA

Question:

Is it possible to obtain an electronic validation at DIVA for purchases made by residents of the Canary Islands, Ceuta and Melilla?

Answer

In the case of residents in Ceuta and Melilla, the electronic documents of reimbursement of purchases made in the Peninsula and Balearic Islands may be electronically validated in the customs of such territories.

In the case of residents in the Canary Islands, the validation, for the time being, remains solely manual.

21. ADJUSTMENT IN SALES EQUALIZATION TAX

Question:

What adjustments have to be made by the supplier under the Sales Equalization Tax scheme, who refunds the input VAT to the traveller?

Answer

See Answer to the Question number 139437 of INFORMA

You have this information available (by clicking) on the yellow coloured link below

22. RETURN OF GOODS

Question:

What is the handling of the return of goods by the traveller?

Answer

- Re-importations of goods definitely exported to third countries are not exempted.

When the goods are rejected because they are defective, a re-importation takes place, which is exempted since it cannot be considered to have been preceded by a definitive export.

The corresponding amount of the defective goods must therefore be refunded.

The delivery of the new good will be subject to VAT, being able to enjoy the exemption if the requirements of article 21.2 of Law 37/1992 and 9 of R.D.1624/1992 are fulfilled.

23. “DER” IMPRESSION

Question:

Does the validation of a Tax-free Shopping Document (in Spanish ERD) require a printed document?

Answer

- In DIVA the whole process may be ascertained in a paperless environment.

To this end, travellers, who so wish, may present themselves before the customs office of departure holding the tax-free shopping document in digital form.

However, it is recommended that shops provide a paper copy of the tax-free shopping document to provide for the eventuality in which the traveller leaves through a Member State other than Spain.

24. TRANSIT PASSENGERS

Question:

Where should the validation of the tax-free shopping document be done, in the case of a traveller who leaves Europe through Spain, but must make a stop-over at another point of the European territory?

Answer

In the event that the traveller leaves the European Union transiting through any other European airport, the validation of the tax-free shopping document corresponding to the goods invoiced will necessarily be carried out at the Spanish customs office of departure (beginning of the journey).

The formalities and customs controls applicable to hand luggage will be carried out at the last international airport in the Union. Hand luggage may only undergo additional formalities at the airport of departure of the flight within the Union, exceptionally, when they are considered necessary after the control of the checked baggage.

25. SHOPPING IN ANOTHER EU STATE

Question:

When a traveller leaves the territory of the Union through Spain and arrives at a port or airport, what should he or she do to apply for a refund of VAT on purchases made in another Member State?

Answer

- If the purchases have been made in a country of the Union other than Spain, you will have to look for the customs office, identified as “**Oficina de Sellado Tax Free**” and “**Tax-free Customs Office**” and readily identifiable with posters of the following type:

Tax-free Customs Office

Tax-free Stamping Office

- At the validation office, you must show your passport, boarding pass, the corresponding invoice and the goods. The invoice will be stamped with a physical seal (rubber seal) and in order to make the right of refund effective, you must proceed as provided by the regulations of the country where the purchases were made.

26. PASSENGER (TAX FREE SHOPPING) SCHEME: DELIVERY OF TYRES

Question:

A resident in Ceuta changes the wheels of his passenger car in the Spanish territory in which the tax applies. Is the exemption provided for the supply of goods to travellers whose residence is outside the territory of the Community applicable?

Answer

No. The exemption from VAT on the supply of goods under the tax-free shopping system excludes the supply of goods intended for the equipment (e.g. tyres, fuel) or victualling of any means of transport for private use.

This exclusion applies both to the supply of such goods to travellers and to the supply of such goods in duty-free shops.

27. POST-VISA OBLIGATIONS

Question:

Once the validation has been carried out, is it necessary for the supplier or the collaborating entity to carry out any additional procedures in order to be able to make the refund? What if the sealing customs office is located in a Member State other than Spain?

Answer

- Once the electronic tax-free shopping refund document has been validated, the supplier or the collaborating entity must check its validation at the “Sede Electrónica” (online office) of the State Agency of Tax Administration or through the web server before proceeding with the refund of VAT.

Once the amount owed to the tourist has been refunded, he must communicate electronically, that such payment has been made.

In the case where the validation has taken place in another Member State and therefore through a manual procedure, the supplier or the collaborating entity must check that the stamp is affixed on the refund document as well as electronically report the VAT refund.

28. Relation between SII and DIVA

Question:

Is there any relation between the Immediate Supply of Information System (Spanish SII) and the VAT refund to travellers system at customs (Spanish DIVA)?

Answer

Yes. Both electronic systems present a coordinated mechanism for the record of supplies of goods exempt from VAT due to VAT refund to travellers.

This mechanism is explained in the information note on Order HFP/187/2018 (concerning keys A5 and A6), as well as in the document “Preguntas frecuentes v.1” (FAQs v.1) in Question number 3.13 (concerning key A3).

Several documents are available in the SII section of the Spanish Tax Agency website:

https://www.agenciatributaria.es/static_files/AEAT/Contenidos_Comunes/La_Agencia_Tributaria/Modelos_y_formularios/Suministro_inmediato_informacion/FicherosSuministros/Nota_Orden_HFP_187_2018.pdf

https://www.agenciatributaria.es/static_files/AEAT/Contenidos_Comunes/La_Agencia_Tributaria/Modelos_y_formularios/Suministro_inmediato_informacion/V_1_0/FAQ_version_1.0_1-1-2018.pdf

29. DER NOT IDENTIFIED IN THE SYSTEM

Question:

Can an electronic tax-free document (DER), that is not registered in the Tax Agency system, support the VAT refund to travellers?

Answer

The electronic tax-free document is an electronic message sent by the supplier, or by the collaborating entity on its behalf, (and) which is recorded in the Tax Agency.

The regulations condition the right to obtain the refund to the electronic validation of the DER. A sensu contrario, if at the time of validating, the electronic document of the

delivery of goods is not in the AEAT system, no refund will be possible on a tax-free shopping scheme basis, without prejudice to the eventual existence of a contingency (backup) plan in the event of the AEAT systems collapsing.

30. PERSONS MAKING THE REFUND

Question

Which persons are entitled to carry out the VAT refund under the tax-free shopping scheme?

Answer

In accordance with the legislations, it is the seller's obligation to issue the invoice and the electronic reimbursement document (DER). This obligation may be fulfilled personally or through a collaborating entity in the refund of VAT for travellers, under the mandate of the former (with the corresponding contractual relationship). Regardless of the form of issuance, the obligation to issue the DER must be materially fulfilled by the taxpayer and person in charge of the operation, that is, the seller of the good, who must give the traveller a copy of the DER.

The seller must always verify, at the time of the sale, the identity of the traveller and their residence outside the European Union by displaying their passport, identity document or other documents.

The previous obligation must be materially fulfilled by the seller in any case and at the time and place in which the purchase is made.

31. ISSUER OF THE ELECTRONIC TAX FREE DOCUMENT

Question

Who is the issuer of the electronic tax-free document?

Answer

According to the legislation, it is the obligation of the seller to issue the invoice and the electronic tax-free document. This obligation may be fulfilled personally or through an

entity collaborating in the refund of VAT to travellers, under the mandate of the latter (with the corresponding contractual relationship).

In this sense, it is not possible to issue any electronic refund document on behalf of the traveller.

32. UK resident travellers' scheme as of January 1st 2021

Question

Right to VAT refund in case of British travellers following UK's exit from the European Union as of January 1st 2021

Answer

UK residents will be entitled to VAT refunds under the Tax-free Shopping Scheme as of January 1st 2021, provided that they comply with the requirements laid down in the regulations, with the exception of those resident in Northern Ireland, where EU VAT regulations continue to apply.

To this end, it is important to make the following clarifications:

- these requirements must be met at the time the tax becomes chargeable (at the time the goods are made available to such travellers) in order to benefit from this tax advantage.

This means that purchases made by British residents prior to the end of the transitional period foreseen in the Withdrawal Agreement do not give rise to a right to a refund of the tax (for failure to comply with the requirement of habitual residence outside the European Union), irrespective of when those residents leave the European Union.

Therefore, only purchases made by UK residents as of January 1st will be eligible for a VAT refund.

- Northern Ireland residents are not entitled to a VAT refund to travellers pursuant article 8 of the Protocol on Northern Island.

33. TAX FREE SHOPPING SCHEME APPLICABLE TO RESIDENTS IN THE UNITED KINGDOM DURING THE YEAR 2020.

Question

Right to a refund of VAT in case of British travellers during the year 2020.

Answer

After the ratification of the withdrawal agreement, the United Kingdom will leave the European Union on February 1, 2020 but a transitional period is established until December 31, 2020.

During this transitional period both the Union's customs legislation and the VAT legislation continue to apply in the United Kingdom. This means that the United Kingdom remains part of the customs territory of the Union and therefore goods moved to the United Kingdom do not leave the European Union. Movements between the two parties continue to be considered as intra-community and therefore VAT refunds to travellers will not apply until the end of the transitional period. In other words, as of 1 January 2021.

34. TAX FREE SHOPPING SCHEME. ONLINE SHOPPING

Question

Right to a refund of VAT in case of online shopping

Answer

One of the requirements to be entitled to a VAT refund is that the goods are delivered to travellers, who are resident in a country outside the European Union. This habitual residence must be proved by means of an identity card, passport or any other legally accepted means of proof.

Therefore, it will only be possible to refund VAT to travellers, who are non European Union residents, when in the delivery of goods it can be verified in a reliable manner by the employer who makes the sale, the identity of the traveller and his status as a resident outside the European Union. This reliable verification cannot always be made when the purchase is made online; therefore, in these cases, there would be no right to a VAT refund.

On the other hand, online purchases destined for a third country or a territory in which the VAT is not applied are classified as export, subject and exempt operation with the right to deduct the fees borne, in accordance with articles 21 and 94 LIVA. Therefore, the price set by the seller should be without the chargeable VAT rate, which would be identical to that of the refund in the event of delivery of goods to travellers.

In the “click and collect” purchase system, the purchase is made online but the purchaser must go in person to collect the goods, at which time the identification task is carried out and the right to a VAT refund may arise as long as the purchaser proves that he is a resident outside the territory of the Union. In these cases, the period of three months following that in which the delivery was made must be counted from the moment the merchandise is made available. This will happen even if the merchandise is not delivered to the interested party or is not delivered to another person in the territory of application of the tax. It will also happen in the hypothetical case that the merchandise remains in the seller’s warehouse until it is picked up by the buyer (The seller becomes the depositary and is no longer entitled to dispose of said good as if was its owner)

35. OBLIGATION OF THE RETAIL ESTABLISHMENT TO ISSUE THE “DER”

Question

Is the retail establishment obliged to issue the electronic tax free document regarding sales made to travellers, who are not resident in the Union territory?

Answer

YES.

For sales made after January 1, 2019, Value Added Tax refunds under the tax free shopping scheme must be documented, in addition to the corresponding invoice, by means of the electronic tax free document (DER, hereinafter).

The shop assistant must issue the corresponding invoice and besides an electronic tax-free document (DER), available on the website of the State Agency of the Tax Administration, where the goods acquired will be recorded showing, separately, the corresponding tax amount.

Thus, the issuance of the electronic tax free document by the shop assistant is not an optional or discretionary circumstance for him, but rather a genuine legal obligation at the same level as the obligation to issue an invoice, as appears to be clear from the wording of Article 9 of the Tax Regulation, approved by Royal Decree 1624/1992, of December 29 (BOE of December 31).

