



BREXIT: SPANISH VAT REFUND FOR UK COMPANIES

As we are aware, the United Kingdom (UK) is no longer a member of the European Union (EU). Therefore, the VAT refund procedure regulated by Directive 2008/9/EC¹ for the benefit of taxable persons established in another EU Member State, will no longer apply to companies established in the UK.²

Accordingly, UK companies incurring VAT in Spain (SP), would have to apply for a refund of Spanish VAT pursuant the procedure established on Article 119 bis of Spanish Law 37/1992,³ which constitutes the transposition of European Council Directive 86/560 / EEC⁴, on the harmonization of the laws of the Member States relating to turnover taxes, and arrangements for the refund of value added tax to taxable persons not established in European territory.

RECIPROCITY BETWEEN UK AND SP RELATING TO THE REFUND OF SPANISH VAT FOR UK COMPANIES

Article 119 bis of Spanish Law 37/1992 establishes that professionals or businesses not established in Spain can apply for the refund of Spanish VAT as long as they are located in a estate in which Spanish professionals or business are entitled to obtain the refund of VAT paid in the said estate (reciprocity of treatment).

In this regard, in order to deal with the new legal landscape created as a result of Brexit, on 4th January 2021 the Spanish General Directorate of Taxes has issued a resolution to clarify some aspects related to the VAT refund to companies established in the UK and in Northern Ireland.

The said resolution includes the following:

¹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0009>

² Northern Ireland remains to be part of the EU for purposes of the supply of intra-Community acquisitions but not in case of services.

³ <https://www.boe.es/buscar/act.php?id=BOE-A-1992-28740>

⁴ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31986L0560>

- ✓ SP recognizes the existence of reciprocity with UK for the purposes of Article 119 bis of the Spanish VAT Law and accordingly, UK companies are entitled to claim the refund of the Spanish VAT incurred,
- ✓ UK companies must appoint a tax representative resident in Spain so to apply for the reimbursement of VAT quotas.⁵
- ✓ In the UK the following transactions are excluded from the mentioned reciprocity agreement:
 - i. 50% of the VAT paid for the rental or financial lease of an automobile vehicle.
 - ii. For the acquisition of goods and services that are not used in the business activity.
 - iii. For the acquisition of automobile vehicles.
 - iv. For goods and services to be resold.
 - v. For goods and services that relate to entertainments or recreational services

Accordingly, on a reciprocity basis, UK companies are not entitled to obtain Spanish VAT refund for the transactions mentioned above.

Further information can be found in the following links:

Withdrawal Agreement: <https://www.gov.uk/guidance/refunds-of-uk-vat-for-non-uk-businesses-or-eu-vat-for-uk-businesses>

Guidance on claiming VAT refunds in Northern Ireland or EU (Northern Ireland 'Protocol'): <https://www.gov.uk/guidance/claim-vat-refunds-in-northern-ireland-or-the-eu-if-youre-established-in-northern-ireland-or-in-the-eu>

Laura Gallego Herráez.

The Brexit Law

⁵ The application shall be done through the filing of [Form 361](#)

Operated by Scornik Gerstein LLP - london@scornik.com - (0) 207 831 7070