Pursuant to Article 15 of the Law on Indirect Taxation Authority (Official Gazette of BiH, 89/05), Article 61 (2) of the Law on Administration (Official Gazette of BiH, 32/02, 102/09, and 72/17), Article 53 of the Law on Value Added Tax (Official Gazette of BiH, 9/05, 35/05, 100/08, and 33/17), and Article 95 of the Book of Rules on Implementation of the Law on Value Added Tax (Official Gazette of BiH, 93/05, 21/06, 60/06, 6/07, 100/07, 35/08, 65/10, 85/17, and 44/20), the Director General of the Indirect Taxation Authority adopts the

INSTRUCTION

ON THE IMPLEMENTATION OF THE VAT REFUND TO FOREIGN TAXABLE PERSONS

CHAPTER I – GENERAL PROVISIONS

Article 1

(Subject matter)

This Instruction regulates in detail the manner and procedure of obtaining a registration number with the Indirect Taxation Authority, conditions and manner of representation before the ITA, as well as the conditions, manner and implementation of the value added tax (hereinafter: VAT) refund procedure to taxable persons not established in Bosnia and Herzegovina.

Article 2

(Legal basis)

VAT refund to taxable persons not established in Bosnia and Herzegovina is regulated by:

1. Provision of Article 53 of the Law on Value Added Tax (Official Gazette of BiH, 9/05, 35/05, 100/08, and 33/17) and
2. Provisions of Articles 93, 94, and 95 of the Book of Rules on the Implementation of the Law on Value Added Tax (Official Gazette of BiH, 93/05, 21/06, 60/06, 6/07, 100/07, 35/08, 65/10, 85/17, and 44/20).

Article 3

(Definitions)

Notions used in this Instruction have the following meaning:

1. "foreign taxable person" means a taxable person within the meaning of Article 12 of the Law on Value Added Tax who is not established, does not have the residence, fixed establishment or any other form of established business in the territory of Bosnia and Herzegovina, nor does supply goods and services in the territory of Bosnia and Herzegovina, with the exception of the services referred to in Article 53 (2) 2 a) to c) of the Law,
2. "Application" means a VAT refund application as determined under Article 94 of the Book of Rules on the Implementation of the Law on Value Added Tax,
3. "Law" means the Law on Value Added Tax,
4. "Book of Rules" means the Book of Rules on the Implementation of the Law on Value Added Tax,
5. "VAT" means value added tax,

1) "registration number" means the number assigned by the Indirect Taxation Authority to a foreign taxable person for the purpose of VAT refund as referred to in Article 53 of the Law,

g) "ITA" – means Indirect Taxation Authority.

CHAPTER II – ITA ORGANISATIONAL UNIT FOR RECEIVING AND PROCESSING APPLICATIONS

Article 4

(ITA organisational unit for receiving applications)

Application, charged with a prescribed administrative fee, along with the documents to be enclosed in order to decide on the application, shall be submitted to the Group for Support in the Tax Division of the Regional Centre of the ITA on the form referred to in Article 94 of the Book of Rules, completely filled and submitted in line with the provisions of the Book of Rules and this Instruction.

Article 5

(ITA organisational unit for processing applications)

1. ITA organisational unit that decides on the application is the Group for Support in the Tax Division of the Regional Centre Mostar.
2. In case the application referred to in Article 4 of this Instruction has been received at the Regional Centres Banja Luka, Sarajevo and Tuzla, it shall be forwarded for processing to the organisational unit referred to in paragraph (1) of this Article.

Article 6

(Records)

ITA organisational unit referred to in Article 5 (1) of this Instruction keeps separate records on submitted and processed VAT refund applications.

CHAPTER III – RIGHT TO VAT REFUND

Article 7

(Right to refund)

Right to VAT refund shall be exercised by foreign taxable person who in the territory of Bosnia and Herzegovina is not established, does not have residence, fixed establishment or any other form of established business, nor does supply goods and services in the territory of Bosnia and Herzegovina, for VAT they have been charged with by the taxable persons from Bosnia and Herzegovina for supply of movable goods and rendered services, as well as for VAT they have been charged with on goods imported to Bosnia and Herzegovina.

Article 8

(Performing business activity in Bosnia and Herzegovina)

Foreign taxable person who performs business activity via fixed establishment or any other form of established business in Bosnia and Herzegovina, as well as foreign taxable person who has been registered via tax representative for performing business activity subject to VAT in Bosnia and Herzegovina, does not have the right to VAT refund.

Article 9

(Requirements for VAT refund)

1. Foreign taxable person referred to in Article 7 of this Instruction has the right to VAT refund under the conditions prescribed in Article 53 of the Law, Articles 93, 94 and 95 of the Book of Rules, and Articles 16 and 17 of this Instruction.
2. Foreign taxable person cannot exercise the right to refund for the purchased goods and received services if for those goods and services they would have not be entitled to deduction of input tax, had they performed the business activities:
3. in Bosnia and Herzegovina,
4. in the country of registration for VAT payment.
5. Foreign taxable person, who is not entitled to full deduction in the country of establishment, cannot exercise the right to VAT refund.
6. Refund cannot be made for unfoundedly or wrongly calculated VAT, including VAT calculated for failure to meet the requirements for VAT exemption (‘zero’ rate).
7. Foreign taxable person who does not enclose tax invoices referred to in Article 17 (2) b) of this Instruction cannot exercise the right to VAT refund, even if the amounts are less than BAM 100.
8. Right to VAT refund shall not be granted to foreign taxable person determined by ITA to have exercised right to VAT refund in the period of two years until the date of submission of application for refund based on the application containing the incorrect data.
9. If ITA determines that taxable person has supplied goods and services in Bosnia and Herzegovina in the period for which the application is submitted, foreign taxable person shall be informed via the tax representative on obligation to register as referred to in Article 60 of the Law.

CHAPTER IV – REPRESENTATION OF FOREIGN

 TAXABLE PERSON

Article 10

(Definition of representative)

1. Representative is the person referred to in Article 11 of this Instruction who represents foreign taxable person before the ITA in all procedures related to VAT refund.
2. The representative referred to in paragraph (1) of this Article is authorised for all correspondence with the ITA, including receipt of decisions and other documents related to the refund procedure.
3. ITA can contact foreign taxable person directly for the purpose of the data verification and control.

Article 11

(Conditions and criteria for the representation)

1. The representative of foreign taxable person referred to in Article 10 of this Instruction is the person who meets the following conditions:
2. to have registered with the ITA as being liable for indirect taxes for the purpose of VAT,
3. on the day of verification of the submitted application they have no outstanding due debt for indirect taxes, other revenues and charges under the competence of the ITA according to the regulations that govern the area of indirect taxation;
4. to have complied with tax and customs regulations in the previous period, on which they submit the certificate issued by the competent court on whether they have been sentenced with the final verdict in the past three years and for which tax and/or customs offences;
5. there are no criminal proceedings brought against the applicant and/or the responsible person for the criminal offences relating to the applicant’s business activities and/or for the criminal offences relating to violation of tax or customs regulations, for which a certificate issued by the competent court is to be enclosed;
6. has performed the accounting and/or auditing activities in Bosnia and Herzegovina for at least three years until the day of submission of the application, on which they enclose certificate issued by the competent authority;
7. has employed certified accountants or certified auditors with full-time contract, on which they submit certified copies of valid licences and proofs of registration of the certain employee
8. based on the data from the official records, the ITA shall determine if the conditions from paragraph (1) a) and b) of this Article have been met, and shall also conduct additional verifications in the database on misdemeanours on existence of debt, relating to the condition referred to in the paragraph (1) c) of this Article.
9. compliance with the conditions referred to in paragraph (1) c), d), e) and f) of this Article shall be proved by the representative.
10. certificates referred to in paragraph (1) c) and d) of this Article may not be older than three months from the day of submission of the application for granting the authorisation for representation.Statements and certificates referred to in paragraph (1) e) and f) of this Article may not be older than one month from the day of submission of the application for granting the authorisation for representation.

Article 12

(Authorisation for representation)

1. Prior to the first representation before the ITA, representative shall submit the application for authorisation for representation, accompanied with the supporting evidence referred to in Article 11 of this Instruction and, subject to compliance with the conditions and criteria for representation, the decision to grant the authorisation for representation shall be issued. The application for the authorisation for representation, charged with proper administrative fee, shall be submitted and processed as provided for in the Chapter II of this Instruction. The application is submitted on the form ‘Application for Authorisation to Represent’ that forms an integral part of this Instruction.
2. The person who has been granted the status of a representative must continue, during the validity period of authorisation, to comply with conditions and criteria for representation. During the validity period of the authorisation for representation, verification of compliance with the conditions and criteria for representation referred to in Article 11 paragraph 1 a), b) and c) of this Instruction shall be conducted ex officio for every submitted refund application.
3. The authorisation referred to in paragraph (1) of this Article shall be granted for an indefinite period of time and shall be valid as long as a representative complies with the conditions and criteria for representation referred to in Article 11 of this Instruction. In case of data changes in the authorisation, a representative is obliged to immediately notify the authorisation issuing authority thereof.
4. When a representative no longer meets the criteria and conditions referred to in Article 11 of this Instruction, or upon their personal request, the procedure for termination of the authorisation referred to in paragraph (1) of this Article shall be initiated.
5. The Tax Department shall compile and update the list of persons who have been granted the status of representative, and it shall be posted on the web site of the ITA.

Article 13

(Change of representative**)**

1. In case that foreign taxable person changes the representative, the data on the newly appointed representative shall be forwarded to the ITA as prescribed under Article 15 of this Instruction, whereby it is necessary that the representative has been granted the authorisation for representation in accordance with Article 12 of this Instruction.
2. The ITA shall be informed about the change of representative during the submission of the first application following change of the representative whereby foreign taxable person shall keep the registration number referred to in Article 16 of this Instruction.

CHAPTER V – REGISTRATION OF FOREIGN TAXABLE

 PERSON

Article 14

(Questionnaire for registration)

1. When submitting the first refund application, the representatives shall submit the filled-in Questionnaire for registration of foreign taxable person based on which the registration number shall be assigned under which the foreign taxable person shall be registered with the ITA for the purpose of VAT refund.
2. The Questionnaire for registration shall be submitted via representative, using the ‘U-SPO’ Form that forms an integral part of the Instruction.

Article 15

(Change of data)

1. Any change of the data about foreign taxable person, as well as about representative, shall be submitted to the ITA on the form referred to in Article 14 of this Instruction, noting that it is an amended form.
2. In case that the representative has been changed, the change shall apply from the day of notifying the ITA on change of the representative made in the official records of the ITA.

Article 16

(Registration number)

1. The ITA shall assign a registration number to foreign taxable person upon request submitted in line with Article 14 of this Instruction.
2. Following completion of the registration procedure, the ITA shall issue a Registration Certificate that forms an integral part of this Instruction.
3. Registration number for the purpose of VAT refund must be entered in the application form. In case of the first refund application, the registration number shall be entered in the application by the authorised officer of the ITA following completion of the registration procedure.
4. Registration number shall be used only for the purpose of VAT refund to foreign taxable person and it does not constitute the identification number of person liable for indirect taxes.

CHAPTER VI – VAT REFUND PROCEDURE Article 17

(Documents for VAT refund)

1. The right to refund shall be exercised by the application. The data in the application must be complete, sufficient, understandable and accurate, particularly as regards the purpose of using the purchase goods and/or received services, in order to check if the requirements for granting VAT refund per application have been met.
2. The following documents are to be enclosed to the application:
3. original power-of-attorney, certified by a competent authority, given to the representative by foreign taxable person for the purpose of VAT refund, and not older than one year from the day of issue,
4. original tax invoices on the goods purchased and services received in Bosnia and Herzegovina, made out to foreign taxable person and issued in line with Article 55 of the Law,
5. original single administrative documents by which the goods have been imported, should it concern importation,
6. original certificate issued by tax authority of the country of foreign taxable person’s establishment containing the identification number of taxable person for the purpose of VAT (VAT number), confirming that they exercise the right to full deduction of input tax, as well as the information on type of business activity performed by foreign taxable person, which may not be older than six months from the date of issue.
7. Power-of-Attorney referred to in paragraph (2) a) of this Article shall be submitted on the ‘Punomoć’ form (Power-of-Attorney form) that makes an integral part of this Instruction.
8. the documents referred to in paragraph (2) d) of this Article must be officially translated into one of the official languages in Bosnia and Herzegovina. For the purpose of providing all necessary data, foreign taxable person may use the form ‘Certificate of Taxable Person Status’ that forms an integral part of this Instruction.
9. The amounts, for which VAT refund is claimed, must be indicated in convertible marks.
10. If more than 30 tax invoices are enclosed to the refund application, the representative is obliged to submit, in electronic form, the itemised list of tax invoices containing the data referred to in ‘PDV-SPO’ form, in an ‘Excel’ format, on an appropriate medium or USB.
11. In case that not all tax invoices are enclosed to the application submitted for the relevant quarter, based on which foreign taxable person can exercise the right to refund, the missing tax invoices shall be submitted via the application submitted for the calendar year.

Article 18

(Elimination of shortcomings)

(1) If the application does not contain all necessary data or the representative does not meet the conditions referred to in Article 11 (1) of this Instruction, and if all prescribed documents have not been enclosed to it, the representative of foreign taxable person shall be required to eliminate the shortcomings within fifteen days from the day of receipt of the notification.

(2) If the shortcomings are not eliminated within the deadline

 referred to in paragraph (1) of this Article, the application

 in question shall be processed in line with the provisions of

 the Law on Administrative Procedure.

Article 19

(Decision on refund)

1. When the ITA competent organisational unit determines that the conditions referred to in Article 9 of this Instruction have been met, the Head of the Group for Support shall issue a decision on application for refund, in line with the provisions of the Law on Indirect Taxation Procedure.
2. In case the ITA denies the application in whole or in part, they shall issue a decision on rejecting the application for refund or decision indicating the VAT refund amounts to which foreign taxable person is entitled.
3. The decision shall be made within six months from the day of submission of the complete application.
4. The procedure on appeal against the decision is to be conducted in line with the provisions of Article 136 of the Law on Indirect Taxation Procedure. The first-instance decision on appeals against the decisions shall be issued by the Head of Tax Division in the Regional Centre Mostar.
5. The decision shall be delivered to the representative established in Bosnia and Herzegovina.
6. In case the ITA grants the right to refund, they shall invalidate the enclosed original invoices with the inscription ‘used’ and stamp of the ITA and shall return them to the taxable person while the copies shall be kept in the records.

Article 20

(Refunding)

1. Refunding, based on the decision, shall be done by the ITA Business Services Department.
2. VAT refund shall be made from the Single Account to the account of the representative or the account of foreign taxable person opened in Bosnia and Herzegovina, which has been indicated in the form ‘PDV-SPO’.
3. VAT refund amounts shall be paid in convertible marks.
4. If VAT has been refunded, and subsequently it has been determined that the data from the application have been inaccurate, the paid amount shall be returned to the ITA within 10 days from the day the official document issued by the authority referred to in Article 5 (1) of this Instruction imposing the obligation to return the unfoundedly paid amount have been delivered to the representative.

CHAPTER VII – FINAL PROVISIONS

Article 21

(Integral part of the Instruction)

The integral parts of the Instruction shall be:

1. ‘Power-of-Attorney’ form (‘Punomoć’),
2. ‘U-SPO’ form (Questionnaire for obtaining registration number for foreign taxable person for the purpose of VAT refund),
3. ‘Certificate of Registration of Foreign Taxable Person’ form,
4. ‘Certificate of Taxable Person Status’,
5. ‘Application for Authorisation to Represent’,
6. ‘Authorisation for representation of foreign taxable person’.

Article 22

(Entry into force)

This Instruction shall enter into force on the eight day from its publication in ‘Official Gazette of Bosnia and Herzegovina’.

Ref. 01-02-2-2436/20 Director General

24 November 2020 Miro Džakula, PhD