



## Brexit: Federal Central Tax Office provides guidance on application for input VAT refund of non-residents

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### 1 Background

With Brexit expected to be forthcoming, the UK will become a third country. Among other things, this will have an impact on the input VAT refund procedure for non-residents. Under the 8th Directive (2008/9/EC), EU-based companies must apply for a VAT refund in another EU member state via the electronic portal of the tax authorities in their country of residence. The application is then forwarded to the Member State, which is to reimburse the input VAT. Under the 13th Directive (86/560/EEC), non-EU companies are required to apply for the refund directly in the Member State that is to refund the input VAT. The UK's change of status will therefore have a concrete impact on the application process. The electronic connections to and from Great Britain will no longer operate. Applications submitted after 29.03.2019 will therefore no longer be forwarded.

### 2 Guidance by the Federal Tax Office

On 27 February 2019, the Federal Central Tax Office (FCTO), which is responsible for input VAT refunds to non-residents, published two letters on its website explaining the effects of a hard Brexit as of 30 March 2019, in the absence of any transitional arrangements. The Brexit Information Sheet - Residents ([Link](#)) provides guidance to taxable persons resident in Germany who wish to apply for a VAT refund in the UK. The Brexit Information Sheet – Non-Residents ([Link](#)) provides information for UK-based taxable persons who wish to apply for a VAT refund in Germany.

### 3 Guidance for German residents

Refund applications for the calendar year 2018 can still be sent to the UK via the FCTO's online portal (BOP) until 29.03.2019. According to the FCTO, in order for the application to be valid, it must be forwarded to the UK by 29.03.2019.



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The FCTO has 15 days after receipt to forward applications. The FCTO therefore recommends that refund applications for 2018 be filed by 14.03.2019 so that they can be forwarded to the UK in time.

Taxable persons wishing to apply for an input VAT refund in the UK for 2018 can now, of course, follow the FCTO's recommendation and file an application via the BOP. This should be done as soon as possible. However, there is no reason for hectic activity. The right to the refund of the input VAT arose in 2018. Hence, the refund can, alternatively, be directly claimed in the UK after 29.03.2019. The UK will probably publish relevant information after the final decision on the timing and details of the Brexit has been made. Any application for a VAT refund would then have to be filed by 30.09.2019, as provided for in the 8th Directive for EU residents. However, the opinion has been expressed that the application must be filed by 30.06.2019. In this respect, attention should be paid to the future announcements of the HMRC and the application should be filed by June 2019, if necessary, in order to avoid any risks.

For input VAT incurred after 31.12.2018, refund applications must also be submitted directly to the HMRC. For the period from 01.01.2019 to 29.03.2019, no application under the 8th Directive on the BOP can be made due to the fact that the minimum application period is three months. After 29.03.2019, it is doubtful that either the 8th or the 13th Directive will be applicable. It will therefore remain to be seen which regulations the UK will have available for use in the event of a hard Brexit.

#### 4 Guidance for UK residents

The HMRC previously indicated, in a guideline it issued at the beginning of February, that refund applications for 2018 should be filed by 5 pm on 29.03.2019 via the British portal so that they can be forwarded to the other Member States in good time. It remains to be seen whether this will be sufficient for the applications to reach the FCTO by the end of 29.03.2019. The FCTO will only process refund applications filed and forwarded via the UK portal if they reach the FCTO before 30.03.2019.

Applications received after that date will be rejected as inadmissible. In this case, applications must be filed directly with the FCTO via the BOP. This requires prior registration with the BOP. Registration involves several processing steps and experience has shown that it can take several weeks to months. Taxable persons should therefore pay particular attention to applying for registration in good time prior the application deadline of 30.09.2019. If this time restriction becomes too tight, British taxable persons could, for example, use the BOP access of a consultant.

The FCTO also points out that, for applications via the BOP after 29.03.2019, original invoices must be received by the FCTO in paper form by 30.09.2019 and a certificate of taxable status from the HMRC must also be submitted.

Refund applications for the year 2019 can no longer be filed via the HMRC electronic portal. These must be filed directly with the BOP. The formal requirements for taxable persons established in a third country will then apply. There is no need to submit separate applications for the period up to Brexit and beyond. In addition, the refund of all input VAT for 2019 can be applied for, according to the FCTO, until 30.09.2020, even if the UK is likely to be a third country from 30.03.2019. Only for refund periods from 2020 onwards must applications be filed within six months of the end of the calendar year.