

INSTRUCTIONS

VR/2004 FORM TO CLAIM THE REFUND OF A VAT CREDIT

(unless otherwise specified, the statutory provisions referred to, relate to Presidential Decree No. 633 of the 26th of October 1972, as amended)

FOREWORD

The form must only be used by taxpayers who pay VAT, (including those obliged to submit the consolidated declaration), who intend requesting the refund of the tax credit that emerges from the annual return relating to the **2003** tax period.

The amounts must be reflected in euro, rounded up if the decimal is equal to or greater than 50 cents or rounded down, if it is less than this limit. For this purpose, the two final zeros have already been printed after the comma in the spaces for the amounts.

■ RETURN THE FORM

The form must be returned in duplicate directly to the tax collection agent having territorial jurisdiction, commencing from the **2nd of February 2004** up to the deadline envisaged for the submission of the annual VAT return, also in the consolidate form, namely by no later than the **2nd of August 2004**, if the return is submitted to a bank or post office, or by no later than the **2nd of November 2004**, if the annual VAT return is electronically filing.

In terms of par. 7 of article 2 of Presidential Decree No. 322 of the 22nd of July 1998 and the first paragraph of article 38 -bis, penultimate period, the VR form counts as the annual return only to the extent of the data indicated therein; accordingly, **the forms that are considered to be valid are those, which are submitted within 90 days from the expiry of the time limits provided for the submission of the annual VAT return or the consolidate one.**

In relation to guarantees and guarantee policies, as envisaged by article 38-bis, as amended by article 9 of Legislative Decree No. 269 dated the 30th of September 2003, it is specified that the guarantee is effective from the date on which the refund is made, for a period of three years or, if less, to the period remaining until the forfeiture deadline of the assessment act ion of the Office (article 57, par. 1), increased by the number of days of delay in the delivery of the refund documentation, which exceed the fifteenth day from the related claim.

Moreover, you are reminded that in addition to the specific exclusions regarding the submission of the guarantees envisaged by article 38 -bis referred to above, the last paragraph of article 74 -bis provides a possible further exclusion for trustees and liquidators, in respect of refunds for an overall amount not exceeding 258, 228.40 euro (equal to 500 million Lire). This limit refers to all the VAT refunds granted during the insolvency procedure and not to the individual fiscal periods (see R.M. no. 54/E of the 19th of June 2002). In terms of circular no. 84 of the 12th of March 1998, the granting of refunds requested by the trustees of insolvent taxpayers or taxpayers undergoing insolvency proceedings is undertaken only by the offices of the revenue agency. This is because of the particularity of the problems involved and the checks to be carried out.

Finally, it is pointed out that the persons indicated in article 8 of Legislative Decree No. 351 dated the 25th of September 2001, converted into Act No. 410 of the 23rd of November 2001, are excluded from submitting guarantees. This Act introduced provisions relating to the privatisation and development of public real estate and the development of real-estate investment trusts. In relation to the exemption from the requirement of furnishing guarantees, it is also specified that in terms of paragraph 1 of article 38 -bis referred to above, persons who, (with reference to the entire fiscal period) submitted a claim for a refund for an amount not exceeding 5,164.60 euro (equal to 10 million Lire) are in any event exempted from the requirement of furnishing guarantees (see R.M. no. 165/E of the 3rd of November 2000).

■ TAXPAYER AND DECLARANT DATA

To fill the parts relating to the Taxpayer and Declarant please refer to the contents of paragraph 4.1 of the instructions relating to the annual VAT/2004 return.

In the "**activity code**" field, record the code relating to the predominant activity carried out (with reference to the greatest turnover). This may be inferred from the new classification table of economic activities, known as ATECOFIN 2004, which was approved in terms of a provision dated the 23rd of December 2003. The new table of activity codes may be consulted at the offices of the Revenue Agency and may also be found on the web site of the Ministry of the Economy and Finance www.finanze.gov.it, as well as that of the Revenue Agency, www.agenzieentrate.gov.it together with the help publication, which contains the explanatory notes and the table linking the ATECOFIN 1993 and ATECOFIN 2004 tables.

The "**Foreign state VAT identification number**" field must be filled in by persons residing in another member state of the European Union. They must indicate the VAT identification number attributed by the State to which they belong. The "**Foreign country code**" field must be completed by non-resident persons.

If the declarant is a company that is submitting the VR form on behalf of another taxpayer, the "**Tax code of the declarant company**" field must also be completed. In this case the appointment code, which corresponds to the existing relationship between the declarant company and the taxpayer must be recorded. For example, a company appointed as tax agent by a non-resident person in terms of the second paragraph of article 17, a company that enters appointment code 9 in its capacity as the beneficiary company (of a split company) or as the incorporating company (of an incorporated company), as well as the company that submits the VR form in its capacity as the contractual agent of the taxpayer, fall into this category.

■ PART VR - REFUNDS

SECTION 1 – DETERMINING THE AMOUNT CLAIMED AS A REFUND

Line VR1 must reflect the total of the credits resulting from the sum of the amounts reflected in line VL5 column 2 and in lines VL26, VL27, VL28, VL29, VL30 and VL31 of the annual VAT return form for 2003.

Line VR2 must reflect the total of the debts resulting from the sum of the amounts reflected in line VL5 column 1 and in lines VL20, VL21, VL22, VL23, VL24 and VL25 of the annual VAT return form.

Line VR3 must reflect the difference (only if positive) between lines VR1 and VR2, which must coincide with the amount reflected in line VL32 of the annual VAT return. If all or part of this credit has been transferred in terms of article 8 of Legislative Decree No. 351/ 2001 by the savings management companies, the amount of the credit must be reduced by the amount of the credit transferred, which must then be specifically set out in line VL37 of part VL (refer to the instructions for this part). In addition, in the special case in which there has been an overpayment of the tax with respect to the tax due when making the annual declaration (to be reflected in line VX3 or in the case of a consolidated declaration in part RX section 1 of the UNICO 2004 form), line VR3 must also include the amount of the overpayment that has been made, in respect of which (where the legal conditions exist) the taxpayer intends claiming a refund.

Field 1 of line VR4 must contain the amount of the refund claimed, which must in any event coincide with the amount reflected in line VX4 of the annual VAT return or, in the event of a consolidated declaration, with the amounts reflected in the corresponding lines of part RX of the UNICO 2004 form. In order to take into account the circumstances in which the taxpayer is either totally or partially unable to use the refund procedure through the agent, in **field 2 of line VR4** he must reflect the portion of the refund in respect of which he intends making use of this procedure. We point out that the field must not be completed where refunds are claimed for taxpayers undergoing insolvency proceedings, as well as where refunds are claimed by

taxpayers who have discontinued their activity. The granting of this type of refund falls under the exclusive jurisdiction of the offices of the revenue agency (circular no. 34 of the 12th of March 1998).

This portion, added to the amounts that have been or that will be set off during 2004 in the F24 form, cannot exceed the limit provided for by the regulations in force, amounting to 516,456.90 euro (one billion Lire, article 34 of Act No. 388 of the 23rd of December 2000).

SECTION 2 - REASON FOR THE REFUND

In the circumstances provided for by paragraph 3 of article 30 or paragraph 9 of article 34, the refund is only due if the overpayment shown in line VR3 of section 1 exceeds 2,582.20 euro (equivalent to 5 million Lire) but it may also be claimed for a lesser amount. In the case of discontinuance of an activity, the refund is due without limits as to the amount.

In addition to the situations referred to above, the taxpayer may in any event claim the refund where from the declaration for the fiscal period there is a deductible tax surplus and where from the declarations for the two years immediately preceding the current one there are deductible tax surpluses brought forward as a deduction in the following year. In such cases the refund is due for the lesser of the aforesaid surpluses, even if such amount is less than the limit of 2,582.20 euro (equivalent to 5 million Lire) set out above (see section 3).

If more than one condition exists justifying the claim for a refund, the taxpayer can set out the information relative to one or more cases. For further information on the various circumstances giving rise to a refund, particular reference should be made to the undermentioned circulars issued by the Revenue General Management: circular no. 2 of the 12th of January 1990, circular no. 13 of the 5th of March 1990 and circular no. 5 of the 31st of January 1991 and, in relation to the criterion for calculating the average rate, circular no. 81/E of the 14th of March 1995.

Line VR5, a few clarifications on the cases for refunds provided for, are set out below.

Article 30, paragraph 2

1) Box 1 – Discontinuance of activity

Box 1 must be crossed by taxpayers who during the 2003 year discontinued their activity. As specified in circular no. 84 of the 12th of March 1998 owing to the particularity of the problems involved and the checks to be carried out, only the offices of the Revenue Agency can grant this type of refund.

Article 30, paragraph 3

2) Box 2 – Average rate

Taxpayers who claim the refund in terms of article 30, paragraph 3 letter a) must cross Box 2. The provision is directed at persons who habitually carry out asset transactions subject to lower rates than those applicable to purchases and imports. The asset transactions must also include, (for the purposes of the refund they must be included among the zero-rated transactions) those transactions relating to gold and pure silver carried out in terms of paragraph 5 of article 17, as well as the sale of scrap in terms of paragraph 7 and 8 of article 74, based on the new regulations introduced by article 35 of Legislative Decree No. 269/2003.

The right to the refund exists if the rate on average applied to the purchases and imports exceeds that on average applied to the asset transactions carried out, increased by 10%.

In calculating the average rate:

- the purchases (and/or imports) and sales of depreciable assets must be excluded;
- general expenses must be included among the purchases;
- the average rate must be calculated to the second decimal place.

3) Box 3 - Non-taxable transactions

Box 3 must be crossed by taxpayers who claim the refund in terms of article 30, paragraph 3, letter b), in that during the year they carried out non-taxable transactions with reference to articles 8, 8 bis and 9, as well as the non-taxable transactions set out in articles 40, paragraph 9 and 58 of Legislative Decree No. 331/93, for an amount, which is 25% greater than the overall amount of all the transactions, carried out in the **2003** fiscal period.

It must be borne in mind that in the calculation of letter b) of article 30, paragraph 3 referred to above, the intra-community sale of gold and pure silver (see the Appendix to the instructions relating to the VAT/2004 annual declaration, at the item: "Transactions relating to gold and silver") must be included.

In particular this is concerned with the non-taxable transactions derived from:

- exports, assimilated transactions and international services provided for in articles 8, 8-bis and 9, as well as equivalent transactions in terms of the law, for example, articles 71 (transactions with the Vatican and San Marino) and 72 (transactions with particular international bodies etc.);
- sales in terms of articles 41 and 58 of Legislative Decree No. 331/1993 and services (intra-community transport and ancillary services) provided for in terms of article 40, paragraphes 4 bis, 5, 6 and 8 of Legislative Decree No. 331/93 referred to above, rendered to community customers who are taxable persons;
- intra-community sales of goods drawn from a VAT warehouse with consignment in another member State of the European Union (article 50-bis, paragraph 4, letter f) of Legislative Decree No. 331/1993);
- the sale of goods drawn from a VAT warehouse with transport or consignment outside the territory of the European Union (article 50-bis, paragraph 4, letter g) of Legislative Decree No. 331/1993).

Transactions carried out outside the European Union by the travel and tourism agencies, which fall within the special regime provided for by article 74-ter (see R.M. no. VI-13-1110/95 of the 5th of November 1994), as well as the exports of used goods and the other goods referred to in Legislative Decree No. 41/1995 must be included among the non-taxable transactions referred to above.

To determine the overall amount of the asset transactions carried out during the fiscal year, reference may be made to the sum of the absolute values of lines VE39 and VE40 of the annual VAT return form. Where more than one form is completed, reference must be made to the sum of the corresponding lines of the forms.

You are reminded that the percentage must be rounded up to the higher decimal place and that the refund is due if the percentage relationship between the sum of the non-taxable transactions and the overall amount of the transactions carried out, as determined above, is greater than 25%.

4) Box 4 - Purchases and imports of depreciable goods and of goods and services for study and research purposes

Box 4 must be crossed by taxpayers that claim the refund in terms of article 30, paragraph 3, letter c) limited to the tax relating to the purchase or import of depreciable goods as well as of goods and services for study and research purposes.

As regards the tax discharged on the purchase and import of depreciable goods, we point out that what is due is the refund of the deductible tax relative to the purchases recorded during 2003, as well as to the purchases of the abovementioned goods recorded in previous years, where the refund was not claimed or where it was set off in the F24 form, but where from the accounting entries it appears that the tax was either entirely or partially brought forward as a deduction in subsequent years (see circular no.13/1990).

We clarify that for agricultural producers referred to in article 34, box 4 must only be crossed if there is a balance of tax, relative to purchases of depreciable capital goods made until the 31st of December 1993, which is refundable in terms of article 6 of Legislative Decree No. 746 of the 24th of December 1983.

Further, the refund is due not only for the purchase and import of depreciable goods, but also for the purchase of same in the execution of procurement contracts or leasing agreements (see circular no. 2/1990).

We point out that in terms of Legislative Decree No. 351 of the 25th of September 2001, converted into Act No. 410 of the 23rd of November 2001, the refund is due for the purchases of immovable property, as well as for maintenance costs incurred in respect of such assets, where the maintenance was effected by the persons referred to in article 8 of the Decree referred to above, in the manner and within the time limits established therein.

5) Box 5 - Transactions which are not subject to the tax (article 7)

Box 5 must be crossed if the refund is claimed by taxpayers in terms of article 30, paragraph 3, letter d), who during **2003** predominantly carried out transactions, which were not subject to the tax by virtue of article 7.

These are transactions outside application VAT,

in terms of article 7, carried out abroad by national traders that have not set up an established organization there.

We wish to make it clear that with the aim of establishing the prevalence of the aforesaid transactions with respect to the overall amount of the transactions carried out, it is also necessary to include among the aforesaid article 7 transactions the exports and assimilated transactions in terms of articles 8, 8-bis and 9, as well as the transactions in terms of articles 40, paragraph 9 and 58 of Legislative Decree No. 331/93.

In addition, we advise you that the exact total of the transactions "outside application" in terms of the article referred to above, which do not need to be recorded for VAT purposes, must be calculated with reference to the time when they were carried out, which is determined using the criteria provided in article 6.

6) Box 6 - Conditions provided for by paragraph 2 of article 17

Box 6 must be crossed by non-resident traders, who have registered themselves directly in Italy in terms of article 35-ter or who have formally appointed a fiscal agent within the State, in terms of paragraph 2 of article 17, which agent is authorized to claim the VAT refund.

By virtue of a provision of the 7th of August 2002, published in Official Gazette No. 200 of the 27th of August 2000, the office of Rome 6 was identified as the office with jurisdiction to manage the relations with persons who have registered themselves directly in Italy in terms of article 35-ter. Accordingly, the claim for a refund using the VR form by the aforesaid non-resident persons must be submitted to the Rome Tax Collection Agent (see circular no. 44 of the 1st of August 2003).

Article 34, paragraph 9

7) Box 7 - Exports and other non-taxable transactions carried out by agricultural producers

Box 7 must be crossed if the refund is claimed by agricultural producers who sold agricultural products included in Table A - part one, in terms of paragraph one of article 8, article 38-quater and article 72, including the intra-community sale thereof. The refund is due for the total amount corresponding to the (theoretical) VAT relative to the non-taxable transactions carried out during 2003 or even in earlier years, if no refund has previously been claimed or, if it was set off in the F24 form but included as a deduction when making the annual return. The refundable amount, like the deductible amount, must be calculated by the application of the set-off percentages in force during the relevant period (see Departmental circular no. 145/E of the 10th of June 1998).

SECTION 3 - REFUND OF THE LESSER OF THE DEDUCTIBLE SURPLUSES OF THE THREE-YEAR PERIOD - ARTICLE 30, PARAGRAPH 4

In addition to the situations examined in Section 2 above, the VAT refund is due when the declarations relative to the last 3 years (2001-2002-2003) show surplus of the input tax, even if it is less than 2,582.20 euro (equal to 5 million Lire). In this case the refund is due, for the lesser of the aforesaid deductible surpluses (obviously relative to the portion not already requested as a refund or which has been set off in the F24 form). In practice the comparison must be carried out between the totals of the VAT computed in deduction with reference to the two preceding years (to be reflected in lines **VR6 and VR7** respectively):

- **for the year 2001**, the amount is the one resulting from the difference between the input tax deducted or set off, indicated in line VX4 or in the corresponding line of part RX of the UNICO and the amounts reflected in line VL22 of the VAT/2003 return relative to the 2002 year, only for that portion relating to the set-offs carried out in the F24 form with taxes different to VAT.

- **for the year 2002**, the amount is the one resulting from the difference between the input tax deducted or clearance (set-off), indicated in line VX4 or in the corresponding line of part RX of the UNICO and the amounts to be reflected in line VL22 of the VAT/2004 return relative to the 2003 year, only for that portion relating to the set-offs carried out in the F24 form with taxes different to VAT.

NOTE

If the taxpayer completes section 3 (relating to the refund of the lesser of the deductible surpluses of the three year period) he may also cross box 4 of section 2. This is so where in the presence of purchases of depreciable goods or goods and services for study and research purposes, the tax relating to said purchases is not already included in the lesser credit claimed as a refund in section 3.

NOTICE FOR CONTROLLING AND SUBSIDIARY COMPANIES

The VR form must not be submitted by the companies taking part in the group payment that have transferred credit surpluses, which are not set off within the ambit of the group, in respect of which the controlling company intends requesting a refund. In fact, as regards these surpluses, the refund can only be claimed by the controlling entity or company when it submits the summarizing return VAT 26 PR/2004, which must be submitted together with the form VAT 26LP - Periodic Payments Return. On the other hand the VR form must be submitted where control ceased during the course of the year, in order to show the existence of the conditions provided for in section 2 in connection with the refund claimed independently by the declarant company for the transactions carried out after the period of control.

Section 3 of this form must be completed by a company already taking part in the group payment only if, during the year it stopped forming part of the group by reason of the cessation of control and it subsequently incorporated during the same fiscal period, another company that can legitimately claim the refund for the lesser of the deductible surpluses of the three year period.

CONFIRMATION BY OPERATIONAL COMPANIES AND ENTITIES

We emphasize that in terms of paragraph 45 of article 3 of Act No. 662 of the 23rd of December 1996, the non-operational companies and entities referred to in paragraph 37 of article 3 of the aforesaid Act have no right to claim the refund in respect of the credit surplus resulting from the annual VAT return.

The companies and entities, which have the right to claim the refund are therefore obliged to furnish a declaration in the form of an affidavit, given in terms of Act No. 15 of the 4th of January 1968, to confirm the absence of the conditions which would qualify the companies and entities as non-operational (Departmental Circular no. 146/E of the 10th of June 1998).

This declaration can be made by signing the section reserved for companies and entities, enclosing with the VR form a photocopy of the identity document of the declarant, in compliance with the regulations provided for by article 38 of the T.U. Consolidated Act of the regulating legislative provisions concerning administrative documentation approved in terms of Presidential Decree No. 445 of the 28th of December 2000.

FORM SIGNATURE

We emphasize that the claim form for the refund, which is also used by persons who submit the consolidated declaration with the UNICO 2004 form, which includes the VAT return, must be signed by the taxpayer or by the legal or contractual agent and must be submitted to the tax collection agent in duplicate. **Both copies must be signed in the original.** The form will be invalid if it is not signed as set out above.

For further clarification regarding the signature of the form kindly refer to paragraph 4.1.4 of the general instructions.