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■ Tax risk profile does count in VAT refund audits

By law the DGT may finalize a VAT refund request within 12 months. However, it commits to complete an application in not more than eight months. A very low risk company can even receive a VAT refund within three months. It is therefore essential to know your company's risk profile and more importantly how to achieve the very low risk profile.

The importance of tax risk profile in seeking VAT refunds

Where a taxpayer makes a VAT refund application, by law the Tax Office must make a decision about payment of the refund within 12 months of the application date.

Up until December 2008, certain companies engaged in the export of goods, and suppliers to a small number of state owned and PSC companies (which are categorised as "VAT Collectors" under the Tax Law), were allowed to receive VAT refunds in two to four months. That privilege is no longer applicable.

However, a new rule has been introduced which can apply to all companies with a very low tax risk profile. Such companies can now get a refund within three

months, provided they meet certain conditions.

Other companies must wait for four to eight months to get VAT refunds depending on their tax risk profile.

Therefore, it is important to know your company's tax risk profile and, just as importantly, know what you can do to achieve a lower tax risk profile.

In Reg.16/PJ/2009 issued in early February, the Tax Office said that a company's tax risk profile will fit into one of four categories: very low, low, medium, and high. A company will be allocated a very low tax risk profile if it satisfies the following conditions:

- The company is not known to be a user or issuer of fictitious tax invoices
- The refund sought in the VAT return does not contain input tax carried over from more than three preceding months
- One of the following conditions must be satisfied:
 - At least one of the company's financial statements for the past three years, including the year being audited, must be audited by a public accountant
 - The company is an exporter that produces at least 75% of its annual deliveries using its own manufacturing facilities and the Tax Office has conducted a field tax audit of at least one of the two preceding years' Corporate Income Tax Returns
 - The company is a state-owned company (Either the central or regional administration must be majority shareholder of the company).

It is not clearly stated how the risk rating will be notified under the Regulation. However the risk rating is determined by the Tax Office based on the guidelines stipulated in the Regulation, and not based on the taxpayer's own self-assessment.

If a company does not qualify for the very low risk profile, its tax risk profile is determined using an analytical tool which includes a qualitative and quantitative risk analysis. The tool is attached as an appendix to Reg. 16, which taxpayers may use to self-assess their own risk profiles.

Knowing your company's tax risk profile is important. Not only will it indicate when you can reasonably expect to receive your VAT refunds, it also helps you in managing the refund application process with the Tax Office, so you can monitor whether the time limit under Reg 16 for the Tax Office to make a decision on the refund is getting closer.

One possible pitfall is that the Tax Office has a discretion to change the risk profile of a company from that produced by using the analytical tool. However, the Tax Office must notify the taxpayer if it changes the tool-produced risk profile, and we think, therefore, that taxpayers may challenge the Tax Office's reasons for making such a change.

One final word of warning. A request for VAT refunds will, of course, automatically trigger a VAT audit by the Tax Office. If you are seeking a refund, you need to supply all relevant supporting documentation to the Tax Office when you make the request. If you cannot produce correct documentation within a month of the request date, there is a risk the Tax Office will deny the refund request based on any deficiencies in the documentation. Therefore, before making the refund request, you need to make sure that all documentation is in good order.

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