



“Blocked VAT”

What is This? How Can It Be Avoided by Operators of Business Aircraft?

Summary

European VAT law generally provides for refund of VAT incurred in one EU Member State by a business company located in another EU Member State or in a non-EU country. EU-to-EU VAT refunding occurs under 2008 legislation called Council Directive 2008/9/EC, and EU-to-non-EU VAT refunds are provided by the 13th VAT Directive, 86/560/EEC.

There is a range of restrictions and rules imposed under each system, but one central requirement of the VAT refund schemes in all EU countries is that the invoice charging the VAT MUST have been issued by a vendor that is registered to charge VAT in that country, and the invoice charging the VAT MUST recite the vendor’s local VAT registration number.

“Blocked VAT” is a term used by VATAmerica and others to describe a chain of invoicing that fails to meet these central VAT invoice requirements. In the typical case, a VAT-registered vendor may issue its VAT invoice to an intermediary acting as a disclosed agent of its customer, or as a principal in the transaction. When the intermediary is also VAT-registered, it will then issue its own VAT invoice to the customer, with this VAT charge representing the applicable VAT rate applied against the intermediary’s price of the goods and services invoiced to the customer. In this case, assuming all other requirements are satisfied, the customer can present the intermediary’s invoice to the local tax authorities under the applicable VAT refund scheme.

However, if the intermediary is not registered for VAT in the country where the supply of goods or services has occurred (or is deemed to have occurred), then the intermediary’s invoice to the customer cannot be considered as a correct “VAT invoice”. In this case, the customer will receive the intermediary’s non-VAT invoice passing through the actual vendor’s VAT charges, but the customer will not be entitled to VAT refund relief, because the customer does not hold an invoice issued by a VAT-registered vendor. Thus, the VAT charge in this case from the actual vendor to the intermediary, which is passed through to the customer as a cost by the intermediary, is “blocked” and non-refundable.

Examples of Blocked VAT¹

Aviation operators can incur Blocked VAT in a number of ways, but the principal reason is buying VAT-taxable goods and services used to operate aircraft from intermediary vendors that are not registered to charge and collect VAT in the country where the purchase is made.

Here’s a typical fact pattern:



¹ There can be other reasons why a non-EU business operator is not able to recover VAT charges. For example, some countries like Italy and Spain, generally refuse to grant refunds to companies located outside the EU under a “reciprocity” theory, even when the taxpayer’s own country like the US doesn’t even have a VAT. Germany refuses to refund VAT on fuel purchased by non-EU operators under some strange “anti-fraud” thinking.



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How to Identify Blocked VAT

It’s easy. Look at the invoice from your fuel vendor to see if the invoice meets these requirements:

- ➔ The invoice shows the amount of VAT either in the local currency, or in your local currency with a stated foreign exchange to allow a computation of the VAT reported to the vendor’s local VAT agency.
- ➔ The vendor’s VAT Registration Number for the country of uplift is clearly shown. This number normally has a two-letter country identifier followed by a string a 9 or 11 digits. A table showing the VAT number formats in all the EU Member States is available at the European Commission’s website: http://ec.europa.eu/taxation_customs/vies/faq.html. And you can confirm the validity of a specific EU VAT number on the VIES portion of the Commission’s site.
- ➔ The invoice must be a real invoice, not a credit-card chit or a statement of account activity, showing your company’s name and address as the invoicee.
- ➔ For non-EU operators, there is still a requirement in most EU VAT refund countries that your invoice be an “original” – the kind that you might have received 30 years ago before the invention of electronic equipment. (VATAmerica has “workarounds” for this problem for most fuel supplier invoicing.)

If your vendor has sent you an invoice that fails any one of these tests, it is not likely that your claim for VAT refund on that invoice will succeed. VATAmerica does have the ability in some cases to make special representations that can “save” certain defects, but an invoice from a non-VAT registered vendor can never be saved.

What Does Blocked VAT Cost?

Since the EU VAT rates now hover around 20% in the VAT refund countries (a chart of these appear at the Resources tab of www.vatamerica.com), purchasing VATable goods and services with defective vendor invoicing raises the effective after-cost cost of these goods and services by about 16%.

So if you have a pre-VAT fuel quote from a “Blocked VAT” vendor of \$5.00/USG, the non-refundable VAT will be around \$1.00. You’d be better off buying from a VAT-compliant vendor that quoted \$5.75.

How to Avoid Blocked VAT

First, almost all vendors of European goods and services “on-the-ground” are required to be VAT-registered, so the only issue in these cases is obtaining the correct invoicing, including “originals” when required. Thus, Blocked VAT is primarily an issue when purchasing through intermediary vendors.

Many intermediaries of European goods and services are registered for VAT in one or more European countries. In addition to being able to provide their customers with VAT invoicing necessary for VAT refund purposes, these vendors can also apply VAT exemptions when available, for example, to “airlines operating for reward chiefly on international routes” – the so-called “airline” exemption. Since local VAT compliance is expensive, most intermediaries that have become VAT-registered have done so in



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countries where their sales volumes are sufficient to justify the expense associated with VAT compliance.

The best way to determine if a particular intermediary vendor is able to issue you a correct VAT invoice in a particular country is to contact your account representative. If unsure, they will likely contact their firm’s tax department which can readily supply an answer.

The second best way is to contact VATAmerica. In addition to our relationships with many different intermediary vendors, we also have a large flow of invoicing coming through our systems from vendors globally and we may be able to assist in focusing your question.

The information presented above was prepared by VATAmerica, LP who is solely responsible for its content. The information is not intended to provide legal or business advice. Application of European VAT law to particular circumstances should be discussed with your VAT advisor or counsel.

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September 2017