

Tax refund claim 2017

With entering into force on 1 July 2017 of the Act LXVIII of 2016 on Excise Tax (hereinafter referred to as *ETL*) and of the Implementing Regulation No. 45/2016 (XI.29.) of the Ministry of National Economy on Certain Provisions of ETL (hereinafter referred to as IR), the legal framework of excise taxes has changed. In relation to the new excise tax rules it is appropriate to publish coherent explanations on how to apply provisions of the law concerning excise tax refund claims.

Common procedures for excise tax refund claims

Frequency of tax refund claims is general, as opted for by an eligible taxpayer. Claims may be submitted

- annually, from 20 January following the actual fiscal year at the earliest,
- quarterly, from the 20th day following the actual fiscal quarter at the earliest, or
- monthly, from the 20th day following the actual fiscal month at the earliest.¹

In excise tax refund cases, claimants may exercise their right until 5 years from the actual period. Taking into account the fact that the relevant provisions of ETL and IR are applicable for tax assessments and tax liabilities that arise following its entering into force it may well happen that the provisions of the earlier laws are applicable for tax refund claims. Example:

- applicant for excise tax refund for commercial gas oil submits his/her tax refund claim on 20 July for the actual period of June 2017: the earlier rules shall be applicable, the taxpayer is eligible for submitting a tax refund claim with 12 months from use of the eligible product,
- applicant for excise tax refund for commercial gas oil submits his/her tax refund claim for the period of July 2014 and next to invoices for use of eligible products in July, he/she also lists invoices in relation to the use of eligible products in June: the taxpayer is eligible for submitting a tax refund claim for the product use in July until the end of the 5th year whereas with regard to the use of products in March, claims may be submitted within 12 months.

The taxpayer may claim a tax refund only upon holding an accounting document issued upon acquisition of the excisable product at a certain price including excise tax.²

In case of claiming a tax refund, the amount of tax computed on the basis of the tax rate in effect on the date of issuing the justifying document about the acquisition of the excisable product at a price increased with the tax amount can be considered as refundable tax.³

The taxpayer may claim a tax refund only after payment of at least the tax amount out of the price shown on the justifying document about the acquisition of the excisable

¹ Paragraph 3 of Section 82 of ETL

² Paragraph 63 of IR

³ Paragraph 1 of Section 82 of ETL

product at a price increased with the tax amount computed with the tax rate in force on the date of issue of the document.⁴

The applicant for tax refund must justify his/her eligibility for tax refund as stipulated in the IR.⁵

Eligible entities for claiming refund of taxes paid

Exporters of taxed excisable products

The person who exports taxed excisable product is entitled for claiming the refund of tax paid.⁶

Tax refund claims may be submitted when holding the following documents:

- certificate of exit from the customs territory of the European Union issued by the customs authority of the European Union Member State,
- in cases defined in Paragraph 2 of Section 77 of ETL, the NATO customs form or in case of transport to none-NATO EU member states, the Single Customs Document, where the Ministry of Defence (MD) or a dedicated organ thereof is shown as the exporter and the addressee is a unit, sub-unit or band of MD deployed abroad.⁷

A tax refund claim may also be submitted if exit from the customs territory of the European Union may clearly be justified in the customs IT system based on the MRN (movement reference number) presented by the client.⁸

Tax refund claims for excisable products with excise seals attached are also contingent on the eligible person removing and destroying the excise seal or invalidating it by over-stamping in the presence of a representative of the tax and customs authority.⁹

The central budgetary authorities are exempt from the obligation to remove and destroy the seal or to invalidate it by over-stamping in the presence of a representative of the tax and customs authority, if they transport (export) excisable products for the use of the Hungarian Armed Forces deployed in a third country¹⁰.

Claim of authorised tax warehouse operators for taxed excisable products that have been rendered permanently unsuitable for consumption, have been destroyed or have been used for producing excisable products

The authorised tax warehouse operator is entitled for claiming the refund of tax paid for excisable products that have been rendered permanently unsuitable for consumption, have been destroyed or have been used for producing excisable products.¹¹

⁴ Paragraph 2 of Section 82 of ETL

⁵ Paragraph 4 of Section 82 of ETL

⁶ Point a) of Section 12 of ETL

⁷ Paragraph 1 of Section 64 of IR

⁸ Paragraph 2 of Section 64 of IR

⁹ Paragraph 1 of Section 77 of ETL

¹⁰ Paragraph 2 of Section 77 of ETL

¹¹ Point b) of Section 12 of ETL

Tax refund claims may be submitted when holding the following documents:

- protocol prepared by the initiator of the return transfer of the excisable product in which the fact and the circumstances of becoming unsuitable for consumption is described,
- protocol as per Section 52 on destruction of the excisable product,
- accounting document justifying the use of the excisable product for the production excise taxable product¹²

Tax refund claims for excisable products with excise seals attached are also contingent on the eligible person removing and destroying the excise seal or invalidating it by over-stamping in the presence of a representative of the tax and customs authority.¹³

The central budgetary authorities are exempt from the obligation to remove and destroy the seal or to invalidate it by over-stamping in the presence of a representative of the tax and customs authority, if they transport (export) excisable products for the use of the Hungarian Armed Forces deployed in a third country¹⁴.

Exempted organisations

Exempted organisations are eligible for claiming refund of taxes paid for taxed excisable products acquired in the domestic territory under the conditions and limitations laid down in Section 13 of ETL.¹⁵

Claims for tax refund for the use of fuel for military purposes may be enforced upon holding an appropriately filled in uploading document and an authorisation issued for foreign troop movements in Hungary according to “annex A” of STANAG 2034 on NATO standard procedures for mutual assistance.¹⁶

Suppliers, as shown on SAD, of excisable products released for free circulation when they are transported from domestic territory to another Member State with commercial purposes

Suppliers, as shown on SAD, of excisable products released for free circulation are entitled to claim refund of taxes paid when these excisable products are transported from domestic territory to another Member State with commercial purposes. In doing so, the supplier must be able to present the copy of the SAD certifying receipt of the excisable goods by the consignee and a certificate from the competent authorities of the Member State of destination as to whether the tax has been paid or guaranteed.¹⁷

Tax refund claims for excisable products with excise seals attached are also contingent on the eligible person removing and destroying the excise seal or invalidating it by over-stamping in the presence of a representative of the tax and customs authority.¹⁸

¹² Section 65 of IR

¹³ Paragraph 1 of Section 77 of ETL

¹⁴ Paragraph 2 of Section 77 of ETL

¹⁵ Point c) of Section 12 of ETL

¹⁶ Section 67 of IR

¹⁷ Point d) of Section 12 of ETL

¹⁸ Paragraph 1 of Section 77 of ETL

The central budgetary authorities are exempt from the obligation to remove and destroy the seal or to invalidate it by over-stamping in the presence of a representative of the tax and customs authority, if they transport (export) excisable products for the use of the Hungarian Armed Forces deployed in a third country¹⁹.

The certificate from the competent authorities of the Member State of destination presented to enforce the right to claim tax refund may be cross-checked by the state tax and customs authority, and as such, it may request information from the competent authority of the Member State of destination within 5 working days from receipt of the tax return on the basis of Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004.²⁰

Mail-order vendor

Mail-order vendors are eligible for claiming refund of taxes paid, if they have paid the excise tax due in another Member State and they present a certificate thereof from the competent authority of that Member State.²¹

The certificate from the competent authorities of the Member State of destination presented to enforce the right to claim tax refund may be cross-checked by the state tax and customs authority, and as such, it may request information from the competent authority of the Member State of destination within 5 working days from receipt of the tax return on the basis of Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004.²²

Claim for tax refund in the case of irregularity

Suppliers and mail-order vendors, as shown on SAD, of excisable products released for free circulation are entitled to claim refund of taxes paid when these excisable products are transported from domestic territory to another Member State with commercial purposes if following an irregularity during transportation that has not occurred in the domestic territory, the tax has been paid as per Section 11 of ETL and the applicant presents a certificate from the competent authority of the other Member State.²³

If any irregularity occurs during transportation – with commercial purposes and in the framework of mail-order selling between Member States – of excisable products released for free circulation outside the domestic territory, and the irregularity occurs in the domestic territory, the tax liability (including tax payment obligation) arises in the domestic territory.²⁴

¹⁹ Paragraph 2 of Section 77 of ETL

²⁰ Section 68 of IR

²¹ Point e) of Section 12 of ETL

²² Section 68 of IR

²³ Point f) of Section 12 of ETL

²⁴ Paragraph 1 of Section 11 of ETL

If an irregularity occurs during transportation – with commercial purposes and in the framework of mail-order selling between Member States – of excisable products released for free circulation outside the domestic territory, and the exact place of irregularity may not be determined, but the irregularity has been detected in the domestic territory, it shall be considered as occurred in the domestic territory.²⁵

If within three years of receipt of the excisable goods it is evidenced that the irregularity was committed in a place other than the domestic territory, the state tax and customs authority shall repay or deduct the tax originally paid in the domestic territory, following payment of the tax in the Member State where the irregularity occurred.²⁶

Entities using taxed excisable products for purposes of excise tax exempt activities

Entities using taxed excisable products for purposes of excise tax exempt activities are eligible for claiming refund of taxes paid.²⁷

The right to claim refund of tax may be enforced upon holding a document – that is in line with the relevant provisions of the Act on Accounting for accounting documents – certifying the use of taxed excisable products for excise tax exempt activities²⁸

With the exemption of authorised tax warehouse operators, enforcement of the right to reclaim refund of tax on excisable products other than natural gas, electricity and coal is contingent on a 5 day prior notification of the intention to purchase excisable products to the state tax and customs authority. In addition to the quantity of the excisable products intended to be purchased, the notification shall include the exact purpose and ratio of use, or the data pursuant to point d) of Paragraph 3 of Section 2, the premises of the use, the authentications determined in the Act on Metrology necessary for financial settlement, the records to be maintained and the necessary permissions. In the case of products for which the right to claim tax refund is enforced records shall be maintained that include detailed information on the acquisition (date, supplier, quantity) and use (date, legal ground of use, quantity) of the products. The records of the registration shall be closed monthly, the changes in the inventory as well as the quantity of the closing stock of tax exempt products shall be determined in each actual month.²⁹

Authorised tax warehouse operators acting on the common area of stores installed in the areas of international airports reserved for ticketed departing passengers exclusively for selling goods to be consumed elsewhere and for the storage facility of these stores.

Authorised tax warehouse operators selling excisable products to passengers who travel in another Member State, and buying back that product from the passenger are eligible for claiming refund of taxes paid.³⁰

²⁵ Paragraph 2 of Section 11 of ETL

²⁶ Paragraph 3 of Section 11 of ETL

²⁷ Point g) of Section 12 of ETL

²⁸ Paragraph 1 of Section 69 of IR

²⁹ Paragraph 2 of Section 69 of IR

³⁰ Point h) of Section 12 of ETL

The right to claim refund of tax may be enforced upon holding the relevant document – as per Paragraph 3 of Section 36 of IR – issued at the time of sale and of buy back.³¹

The above-referred document issued shall not include the CN-code of the excisable product and shall include the number of the boarding pass instead of the name of the acquirer of the product.³²

Tax exempt entities or organisations based on international agreement promulgated by an act

On the basis of international agreements promulgated by an act, tax exempt entities or organisations not listed in any of the above points are eligible for claiming refund of taxes paid.³³

Claims for tax refund for the use of fuel for military purposes may be enforced upon holding an appropriately filled in uploading document and an authorisation issued for foreign troop movements in Hungary according to “annex A” of STANAG 2034 on NATO standard procedures for mutual assistance.³⁴

Eligibility for claiming refund of tax paid on the basis of reciprocity

In case of reciprocity, entitled to apply for a refund of the tax paid are

- diplomatic missions and consular posts, and international organisations with regard to their purchased excisable products for their official use in connection with their regular operations shown in their accounting records under financial expenses, as follows:
 - alcohol products - 1.500 liter/year of spirit drinks, other alcohol products are not limited,
 - tobacco products - 60.000 cigarettes/year, other tobacco products are not limited
- the staff of diplomatic missions and consular posts and officers of international organisations with regard to purchased excisable products for their personal use in a maximum amount of HUF 300.000 including the sums of value added tax reimbursed in accordance with the Act on Value Added Tax (hereinafter referred to as VAT Act) in connection with other goods and services purchased, as follows:
 - fuels - 2000 liter/year or kg/yea,
 - alcohol products – 150 liter/year of spirit drinks, other alcohol products are not limited
 - tobacco products - 25.000 cigarettes/year, other tobacco products are not limited³⁵

As to whether reciprocity applies shall be determined by the minister in charge of foreign policies.³⁶

³¹ Section 70 of IR

³² Paragraph 3 of Section 36 of IR

³³ Point i) of Section 12 of ETL

³⁴ Section 67 of IR

³⁵ Paragraph 1 of Section 13 of ETL

For the armed forces of any State party to the North Atlantic Treaty, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens as well as for the armed forces of any other State on the basis international agreement promulgated by an act, for the use of those forces and for the civilian staff accompanying them, the right to claim refund of tax is exercised by the organisational unit in charge of finances and accounting of the Hungarian Armed Forces as representative of the Hungarian Armed Forces.³⁷

With regard to the armed forces of any State party to the North Atlantic Treaty the above determined limitations do not apply.

Tax refund claims for sealed exercise products

The authorized operator of a tax warehouse, as well as the registered trader and the importer may file for a refund of the tax paid on tobacco products returned from free circulation if:

- the tobacco products in question are reprocessed or destroyed by the authorized tax warehouse operator in its own tax warehouse, or if destroyed on behalf of the registered trader or the importer,
- in the case of tobacco products other than cigarettes, the authorized tax warehouse operator removes the tax seal, and, at the same time, a new tax seal is affixed.³⁸

The right to claim the refund of tax paid may be exercised when holding the following information/document:

- number of protocol taken about the destruction of the tobacco product ,
- accounting document certifying the use of tobacco product if reprocessed.³⁹

Tax refund claims for transportation activities

The right to claim refund of tax paid may be exercised for gas oils not marked with fiscal marker.⁴⁰

Entities providing railroad transportation services for the carriage of passengers and goods

Taxable entities using gas oil as propellant for railroad transportation services - as defined by the Act on Railroad Traffic – for the carriage of passengers and goods, and for the related railway car traction and shunting activities shall be entitled to a refund of the tax paid on such propellant with the purchase price.⁴¹

The right to claim the refund of tax paid on the use of propellant in railroad transportation may be exercised when holding the following information/documents:

³⁶ Paragraph 2 of Section 13 of ETL

³⁷ Paragraph 3 of Section 13 of ETL

³⁸ Paragraph 3 of Section 77 of ETL

³⁹ Section 66 of IR

⁴⁰ Paragraph 6 of Section 113 of ETL

⁴¹ Paragraph 1 of Section 113 of ETL

- statement on the descriptions of the means of transportation used for the given activity as well as their mode of identification and their identification code,
- a statement that shows - on a continuous basis - the quantity of gas oil used per mean of transportation and in total,
- real or average consumption, moreover a document that facilitates determining the eligible time or distance covered,
- accounting documents certifying the quantity of gas oil released for use and – out of this quantity – the eligible amount for claiming the refund of tax paid.⁴²

The claim for tax refund and other state aids, de minimis aids may not accrue.⁴³

The claim for tax refund includes state aid falling within the scope of decision NN 29/2008 of the European Commission.⁴⁴

Entities registered as operator of floating equipment/machines

Entities registered as operator are eligible to claim the refund of HUF 103/liter of the tax paid on the use of gas oil in floating equipment/machines determined by the Act on Waterways.⁴⁵

The right to claim the refund of tax paid on the use of gas oil in floating equipment/machines may be exercised when holding the following information/documents:

- statement on the descriptions of the floating equipment/machine used for the given activity as well as their mode of identification and their identification code,
- a statement that shows - on a continuous basis - the quantity of gas oil used per floating equipment/machine and in total,
- real or average consumption, moreover a document that facilitates determining the eligible time or distance covered,
- accounting documents certifying the quantity of gas oil released for use and – out of this quantity – the eligible amount for claiming the refund of tax paid.⁴⁶

Entities providing urban and inter-city bus services by M2 and M3 category vehicles fuelled with natural gas

Entities providing urban and inter-city bus services by M2 and M3 category vehicles as determined by the Ministerial Decree on the Technical Inspection and Valuation of Motor Vehicles are eligible for claiming the refund of tax included in the price of natural gas used to perform this activity.⁴⁷

⁴² Paragraph 1 of Section 72 of IR

⁴³ Paragraph 2 of Section 72 of IR

⁴⁴ Paragraph 2 of Section 95 of IR

⁴⁵ Paragraph 2 of Section 113 of ETL

⁴⁶ Paragraph 1 of Section 72 of IR

⁴⁷ Paragraph 3 of Section 113 of ETL

The right to claim the refund of tax paid may be exercised when holding the following information/document:

- statement on the registration/licence number of the M2, M3 category buses/coaches used for passenger transportation and fuelled with natural gas,
- in the case of filling at the premises, statement on the quantity of gas oil released for use and – out of this quantity – the eligible amount for claiming the refund of tax paid, moreover, on the date of release and the registration/licence number of the bus/coach.⁴⁸

National or municipal, or other public service bodies using natural gas for transportation purposes in direct relevance of their public services

National or municipal, or other public service bodies, defined as such in any relevant act, are eligible for claiming the refund of tax included in the price of natural gas used in direct relevant to their public service transportation activities.⁴⁹

The right to claim the refund of tax paid may be exercised when holding a statement on the registration/licence number of vehicles used for public service transportation activities.⁵⁰

Registered operators or hirers, lessees of commercial vehicles

Commercial gas oil used for the following purposes:

- the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 7.5 tons,
- the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in the Decree on the Inspection and Technical Valuation of Motor Vehicles.⁵¹

The operator of a commercial motor vehicle or lessee/hirer of a commercial motor vehicle in the case of leased commercial vehicles is eligible for claiming refund of the tax included in the price of commercial gas oil

- if purchased at a fuel filling station by means of a fuel card,
- if purchased at the domestic establishment/premises from a fuel storage tank specifically designated for the storage of fuel and fitted with an automated fuel pumping device complete with an electronic measuring instrument

up to a tax amount of HUF 7/liter in the case of an applied tax rate of HUF 110.350/thousand liter and up to a tax amount of HUF 17/liter in the case of an applied tax rate of HUF 120.350/thousand liter.⁵²

⁴⁸ Section 73 of IR

⁴⁹ Paragraph 4 of Section 113 of ETL

⁵⁰ Section 74 of IR

⁵¹ Point 21 of Paragraph 2 of Section 3 of ETL

⁵² Paragraph 5 of Section 113 of ETL

Based on Article 44 of the Block Exemption Regulation the claim for the refund of tax is considered as state aid provided in the form of tax reduction linked to environmental protection as stipulated in Council Directive 2003/96/EC.⁵³

As per points a) and b) of Paragraph 4 of Section 6 of the Government Decree 37/2011 on (III.22.) on the Proceedings Related to State Aids Within the Meaning of European Union Competition Law and on the Regional Aid Map no state aid may be granted to ventures in difficult financial position, or, to ventures having delinquent reimbursable amount from earlier decision of the Commission declaring an aid unlawful and incompatible with the internal market.⁵⁴

The right to claim the refund of tax paid may be exercised when holding the following information/documents:

- in the case of commercial natural gas oil purchased at a fuel filling station by means of a fuel card with the license plate number recorded on the invoice that contains details of the venue and time of the gas oil purchase price including the tax and is issued by the fuel card issuer,
- in the case of commercial natural gas oil purchased at the domestic establishment/premises from a fuel storage tank specifically designated for the storage of fuel and fitted with an automated fuel pumping device complete with an electronic measuring instrument, a statement is necessary containing data on the dates and quantities the filling of the vehicle at the domestic establishment/premises, and the licence plate number.⁵⁵

The state tax and customs authority has to record the operator of the motor vehicles or articulated vehicle combinations, or the lessee/hirer, in the case of leased commercial vehicles on its own register as eligible entity for claiming tax refund.⁵⁶

Claim for refund of tax in the event of a major disruption in the supply of natural gas

In the event of a major disruption in the supply of natural gas, the natural gas user shall be entitled to apply for a refund of HUF 103 HUF/liter of the tax paid in the price of gas oil used to substitute natural gas during the aforesaid period of supply disruption, plus two working days thereafter, if it was purchased during the period of major disruption in the supply of natural gas, or not more than five working days previously.⁵⁷

In order to exercise the right of tax refund the eligible entity shall

- enclose a copy of his contract with the natural gas supplier,
- enclose a breakdown of his average daily consumption of natural gas for the month preceding the month when the supply of natural gas was disrupted for each service location (showing separately the use for each gas burning equipment or gas burning technology) and also on the aggregate, where gas oil was used as a substitute for natural gas,

⁵³ Paragraph 3 of Section 95 of IR

⁵⁴ Paragraph 5 of Section 95 of IR

⁵⁵ Paragraph 1 of Section 75 of ETL

⁵⁶ Paragraph 1 of Section 40 of ETL

⁵⁷ Paragraph 1 of Section 114 of ETL

- indicate the opening inventory of gas oil available on the first day of the actual time of use for each service location (showing separately the use for each gas burning equipment or gas burning technology) and also on the aggregate,
- indicate the quantity of gas oil used during the actual time of use and the closing inventory of gas oil available on the last day of the actual time of use for each service location (showing separately the use for each gas burning equipment or gas burning technology) and also on the aggregate,
- the use of gas oil as a substitute for natural gas shall be documented by way of internal documents.⁵⁸

Claim for refund of tax in relation to engine development

Any entity pursuing engine development activities may apply for refund of the tax chargeable on use of fuel used to this activity up to a certain amount.⁵⁹

The amount of excise tax refunded shall not exceed 25 per cent of the costs of the engine development project actually incurred, provided that these costs are identified as eligible costs according to Article 25(3) of the Block Exemption Regulation.⁶⁰

Based on Article 25 of the Block Exemption Regulation the claim for the refund of tax is considered as state aid allocable to research & development projects.⁶¹

As per points a) and b) of Paragraph 4 of Section 6 of the Government Decree 37/2011 on (22.03) on the Proceedings Related to State Aids Within the Meaning of European Union Competition Law and on the Regional Aid Map no state aid may be granted to ventures in difficult financial position, or, to ventures having delinquent reimbursable amount from earlier decision of the Commission declaring an aid unlawful and incompatible with the internal market.⁶²

In the case of engine development the claim for refund of tax is contingent on notifying the state tax and customs authority about the activity by the eligible entity at the latest 30 days before commencement of engine development. ⁶³

The right to claim the refund of tax paid may be exercised when holding the following information/documents:

- accounting document certifying the use of fuel in the actual time of engine development,
- breakdown of eligible costs and eligible expenditures allocable to engine development state aids,
- records shall be maintained – on a continuous basis – about the fuel used per engine and in aggregate,
- records shall be maintained – supported by internal documentation – about eligible costs and state aids provided in relation to experimental development as

⁵⁸ Section 76 of IR

⁵⁹ Paragraph 1 of Section 115 of ETL

⁶⁰ Paragraph 2 of Section 115 of ETL

⁶¹ Paragraph 4 of Section 95 of IR

⁶² Paragraph 5 of Section 95 of IR

⁶³ Paragraph 1 of Section 77 of IR

per Article 25(3) of the Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty,

- sustainability certificate in case bio-diesel is used.⁶⁴

Eligible costs in relation to state aids provided to engine development activity:

- payroll related expenditures of researchers, technicians and support personnel to the extent of their involvement in the project,
- costs of assets, equipment to the extent and in the timeframe of their use for the purposes of the project, provided that eligible depreciation costs are only those accounted for the duration of the project according to the generally accepted accounting principles, where the useful lifetime of these assets and equipment are beyond that of the project,
- costs of buildings and land to the extent and in the timeframe of their use for the purposes of the project, provided that – in the case of buildings – eligible depreciation costs are only those accounted for the duration of the project according to the generally accepted accounting principles, and - in the case of land – eligible expenses are only those of commercial and realised investment costs,
- costs of contract based research, of arm's length purchased or of licenced technical knowledge and patent, furthermore, the costs of consultancy and of similar services, provided they are used exclusively for the purposes of the project,
- additional general cost and other costs of operation, including the costs of materials, supplies and similar products incurring directly during the lifetime of the project.⁶⁵

The maximum amount of excise tax claimable for refund in the actual period is 25% of the of eligible costs of the state aid provided to engine development reduced by identical eligible costs of engine development in the same actual period linked to other state aids.⁶⁶

Claim for refund of tax in relation to other industrial use

Eligible for claiming the refund of tax included in the price of used-up energy products are:

- entities using natural gas as chemical raw material,
- entities using natural gas to secure - for its proper functioning - the upload or maintenance of the necessary gas level in the storage layers of an underground gas storage as determined by the Act on Natural Gas Supply, furthermore, to secure the upload or maintenance of the necessary gas level in supply or distribution gas pipelines,
- as authorised network operator, entities using energy products in order to cover the loss caused in the network,
- entities using coal, however, not as propellant, heating fuel or material.⁶⁷

⁶⁴ Paragraph 2 of Section 77 of IR

⁶⁵ Paragraph 3 of Section 77 of IR

⁶⁶ Paragraph 4 of Section 77 of IR

⁶⁷ Paragraph 1 of Section 116 of ETL

If eligible entities – for claiming the refund of tax of electric energy used for producing electric energy input to distribution or transmission networks as defined by the Act on Electric Energy – do not have to hold a licence for energy producers, they may claim the refund of tax - in the relevant filing period - on the quantity of natural gas computed at 40% efficiency ratio to the electric energy quantity effectively inputted in the distribution or transmission network.⁶⁸

The right to claim the refund of tax paid may be exercised when holding the following information/documents:

- internal accounting document certifying therein the purpose the energy products have been used for,
- the total of energy products purchased shall be presented in two categories, eligible and non-eligible use of energy products for claiming tax refund,
- breakdown of the quantity of natural gas computed at 40% efficiency ratio to the electric energy quantity effectively inputted in the distribution or transmission network.⁶⁹

The invoice about the purchase price of the excisable product including the excise tax may be accepted even if issued by a user in connection with the transmission of energy that has been lawfully acquired the tax inclusive and according to the contract. A copy of the invoice addressed to the entity transmitting the energy about the purchase of the transmitted energy product from the taxpayer should also be attached.⁷⁰

Claim for refund of the tax on gas oil used in the agricultural sector

Farmers are eligible for the refund of 82 per cent of the excise tax charged on gas oil in the case of an applied tax rate of HUF 110.350/thousand liter and of 83,5 per cent in the case of an applied tax rate of HUF 120.350/thousand liter, up to 97 liters per hectare, used

- in the cropland, gardens, orchards, vineyards, grassland in their sole use for agricultural activity, cultivation of land for agricultural production and transportation directly linked to harvesting,
- in forests in their sole use for forestry activities and activities with the purpose of afforestation,
- in fishponds with water-use facility operating licence in their sole and direct use for fish farming considering the effective net water surface of the fishpond area.⁷¹

If farmers make use of mechanized services under contract to their activities of land cultivation, afforestation and fish farming, they are also eligible for the refund of excise tax on the used quantity of gas oil shown on the invoice issued by the provider of the mechanized services.⁷²

⁶⁸ Paragraph 2 of Section 116 of ETL

⁶⁹ Paragraph 1 of Section 78 of IR

⁷⁰ Paragraph 2 of Section 78 of IR

⁷¹ Paragraph 1 of Section 117 of ETL

⁷² Paragraph 2 of Section 117 of ETL

The right to claim excise tax on gas oil used in the agricultural sector may be exercised in the case of mechanized services under contract if holding an invoice addressed to the receiving party.⁷³

The right to claim excise tax on gas oil used in the case of mechanized services under contract may be exercised, if the provider of the mechanized services under contract is able to prove the origin of the gas oil used.⁷⁴

If – during a tax examination – the provider of the mechanized services under contract is not able to present a proof of origin about the gas oil used for the activity in question (not able to comply with this obligation), the receiver of the mechanized services under contract is obliged to repay the tax refunded and to pay a late payment surcharge on the amount of the tax refunded from the date of the effective refund to the date of the repayment as per Act XCII. of 2003 on the Rules of Taxation.⁷⁵

If a family farm defined by the Act on the turnover of agriculture and forestry lands as such is registered as an organisation of agricultural production, the family farmer is eligible for claiming the refund of tax on behalf of the family farm when holding an invoice addressed to him/her.⁷⁶

The right to claim the refund of tax may not be exercised in connection with the given afforestation or its completion if the deadline stipulated in any law or defined in a decision of the forestry authority is over.⁷⁷

If the area of cultivated land, restored forest or fishpond in use of the farmer changes within a given calendar year, one twelfth of the maximum quantity of gas oil used per hectare multiplied by the number of months of the land use by the farmer, rounded up to whole liter, may be taken into account. If an activity is commenced in a given month on a given area by a given farmer, that month should be taken into account for the farmer first using the area in that given month.⁷⁸

The maximum quantity of gas oil described above to be considered for the purposes of claiming the refund of tax is not decreased by any temporary limitation of use indicated in the water-use facility operating licence.⁷⁹

Farmers are obliged to include the data shown on the invoice of gas oil purchase or acquisition of mechanized services under contract in their tax returns that should support the claim of the refund of tax – and in the case of ‘de minimis’ agricultural state aids provided to farmers to the cultivation of vineyards and orchards – also the ‘de minimis’ agricultural state aids provided to the cultivation of vineyards and orchards.⁸⁰

⁷³ Paragraph 1 of Section 79 of IR

⁷⁴ Paragraph 3 of Section 117 of ETL

⁷⁵ Paragraph 4 of Section 117 of ETL

⁷⁶ Paragraph 5 of Section 117 of ETL

⁷⁷ Paragraph 2 of Section 79 of IR

⁷⁸ Paragraph 3 of Section 79 of IR

⁷⁹ Paragraph 4 of Section 79 of IR

⁸⁰ Paragraph 5 of Section 79 of IR

Farmers claiming 'de minimis' agricultural state aids for the purposes of cultivation of vineyards and orchards shall indicate the fact of the claim as well as present data of the associated invoices in their tax returns separately. The state tax and customs authority shall transmit the data of these farmers included in their request for 'de minimis' agricultural state aids for the purposes of cultivation of vineyards and orchards, furthermore, – based on point a) of Paragraph 1 of Section 54 of the Act on the Rules of Taxation in relation to the refund of excise tax – also the data determined in the decree of the minister responsible for agricultural policy on 'de minimis' agricultural state aids provided for the purposes of cultivation of vineyards and orchards to the authority of support for agriculture and rural development within 5 calendar days from adjudging the claim for tax refund. The state tax and customs authority shall notify farmers about the fact of transmission of their data included in their request for 'de minimis' agricultural state aids for the purposes of cultivation of vineyards and orchards to the authority of support for agriculture and rural development within 5 calendar days from the actual transmission.⁸¹

The tasks of the authority of support for agriculture and rural development have been taken over by the Hungarian Treasury with effect from 1 January 2017.

The area of the agricultural lands, forests, fishponds shall be defined in line with the general rules of rounding in hectares expressed in 2 decimal places.⁸²

Within the framework of its tax audit and risk analysis activity, the state tax and customs authority examines the eligibility for claiming the refund of taxes on gas oil used in agricultural sector based on the information provided by the

- county government offices acting as competent agricultural administrative bodies (hereinafter referred to as agricultural administrative body) about the effective completion of the work based on the registered lot number of the land cultivated concerning cropland, gardens, orchards, vineyards, grassland used for agricultural activity by farmers,
- county government offices acting as competent forestry authorities (hereinafter referred to as forestry authority) in the case of farmers engaged in forestry activities based on the forest identification number of the land under afforestation as per the status of registration on 30 June or 31 December in the year of activity on which the claim for the refund of tax is based about the area of the land under afforestation obligation, compliance with afforestation or the deadline for completion of afforestation and the eligible entities for the use land for the purposes,
- competent water administration organisation (hereinafter referred to as water administration organisation) in the case of farmers engaged in fish farming activities about the existence of the water-use facility operating licence issued for the fishponds – including the area data thereof,

to justify the works done upon request of the state tax and customs authority sent via electronic means.⁸³

⁸¹ Paragraph 6 of Section 79 of IR

⁸² Paragraph 7 of Section 79 of IR

⁸³ Paragraph 1 of Section 84 of IR

The agricultural administrative body and the water administration organisation keep records of uncultivated agricultural lands and of areas of fishponds in order to certify completion of agricultural work. This registration data serve as the basis of data and information supply to the state tax and customs authority about the completion of agricultural work. If the database does not contain information about the agricultural land or part of the agricultural land indicated in the request of the state tax and customs authority, the agricultural land not included in the registration/database – from the aspect of excise tax refund – shall be deemed cultivated, unless the authority is authentically informed about the opposite fact.⁸⁴

The agricultural administrative body keeps records of uncultivated agricultural lands also on the basis of information received from the Hungarian Agriculture, Food and Rural Economic Development Association (hereinafter referred to as HAFREDA). The on-site audits of the agricultural administrative body necessary to keep accurate records – if considered so – are performed with the involvement of HAFREDA. The Hungarian Agriculture, Food and Rural Economic Development Association – pursuant to point d) of Paragraph 1 of Section 3 of the Government Decree 525/2013 (XII.30.) on Determining the Administrative and Other Tasks of the Network of Village Farmers – participate in the survey of uncultivated agricultural lands through the network of village farmers acting in the sphere of activities of the agricultural administrative body, in doing so, upon request of the agricultural administrative body it prepares site inspection protocols, which shall be provided to the agricultural administrative body in an electronic way and free of charge within 7 calendar days from receipt of the request.⁸⁵

The eligibility for claiming the refund of excise tax is assessed by the state tax and customs authority. In doing so, it may cross check the area of the cultivated agricultural land – as per paragraph 2 – and whether the use of land is lawful in the case of farmers engaged in agricultural production activities in cropland, gardens, orchards, vineyards, grassland based on information available in the Land Registry Information Database (TakarNet).⁸⁶

Checking the eligibility for claiming the refund of excise tax is a proceeding launched ex officio by request of the authority pursuant to point a) of Paragraph 5 of Section 99 of Act CCXII of 2013 on Certain Provisions of and Temporary Rules in Relation to Act CXXII of 2013 on the Turnover of Agricultural and Forest Lands.⁸⁷

In the framework of its tax audit and risk analysis activity, the state tax and customs authority may send requests to the agricultural administrative body, the forestry authority and the water administration organisation, which shall supply data by way of sending the relevant official certificates electronically to the state tax and customs authority within 10 calendar days from the date of receipt of the request.⁸⁸

⁸⁴ Paragraph 2 of Section 84 of IR

⁸⁵ Paragraph 3 of Section 84 of IR

⁸⁶ Paragraph 4 of Section 84 of IR

⁸⁷ Paragraph 5 of Section 84 of IR

⁸⁸ Paragraph 6 of Section 84 of IR

Claim for the refund of tax on distillates purchased from private distillers or contract distillation customers

Claim for the refund of tax on distillates purchased from private distillers

The right to claim the refund of excise tax on distillates purchased from private distillers may be exercised by authorized tax warehouse operators when holding the following documents:

- sales contract upon purchase of distillates from the private distiller,
- tax stamp issued on distillates,
- document pursuant to Paragraph 16 of IR certifying the use of the taxed distillate.⁸⁹

Claim for the refund of tax on distillates purchased from contract distillation customers

The right to claim the refund of excise tax on distillates purchased from contract distillation customers may be exercised by authorized tax warehouse operators when holding the following documents:

- sales contract upon purchase of distillates from the contract distillation customer,
- certificate of origin of the distillate,
- document pursuant to Paragraph 16 of IR certifying the use of the taxed distillate.⁹⁰

In the case of use of taxed excisable products under tax suspension arrangement in the tax warehouse an accounting document shall be prepared pursuant to the act on accounting containing the following information

- description, CN-code and quantity (in the measurement unit the excise tax is based on, except for the production waste) of the excisable product used,
- purpose, legal ground and date of the use.⁹¹

Claim for the refund of tax in connection to exemption

The new excise regulation – with special regard to point g) of Section 12 of ETL – allows the claim for the refund of tax in connection with tax exemption from the obligation to pay the tax according to certain types of activities rather than to specific legal grounds as listed in earlier excise regulations. In other words, the entities using taxed excisable products for tax exempt activities (exemption from tax payment), is eligible for claiming the refund of excise tax.⁹²

Entities providing air transport service for non-private purposes

The possibility of claiming the refund of tax on air transport services for non-private purposes (i.e. scheduled, research, emergency, law enforcement, agricultural, forestry and water management or public health related, pilot training) shall remain.

⁸⁹ Paragraph 1 of Section 80 of IR

⁹⁰ Paragraph 2 of Section 80 of IR

⁹¹ Section 16 of IR

⁹² Point g) of Section 12 of ETL

Entities providing air transport service for non-private purposes are exempt from the payment of tax on gas oil not marked with fiscal marker (taxed gas oil), and as such, may claim the refund of the tax in connection with this activity of theirs.⁹³

The right to claim the refund of excise tax may be exercised when holding the following documents/information:

- report presenting the type of and registry number of the aircraft;
- data, duration and the purpose of the flight in accordance with any required document format by law or aviation authority;
- document suitable for verifying completion of the flight.⁹⁴

It is important to emphasize that in the case of entities providing air transport service for non-private purposes, the reporting obligation pursuant to Paragraph 2 of Section 69 of IR shall not be applied, i.e. the right to claim the refund of tax may be exercised only if the intention of purchase is reported to the state tax and customs authority at least 5 days before the actual purchase of the excisable product.

Entities engaged in commercial ship transport

The possibility of claiming the refund of tax on commercial ship transport services (i.e. inland waterways carrying of passengers or goods) shall remain.

Entities engaged in commercial ship transport are exempt from the payment of tax on gas oil not marked with fiscal marker (taxed gas oil), and as such, may claim the refund of the tax in connection with this activity of theirs.⁹⁵

The right to claim the refund of excise tax may be exercised when holding the following documents/information:

- statement on the descriptions of the means of transportation used for the given activity as well as their mode of identification and their identification code,
- a statement that shows - on a continuous basis - the quantity of gas oil used per mean of transportation and in total,
- real or average consumption, moreover a document that facilitates determining the eligible time or distance covered,
- accounting documents certifying the quantity of gas oil released for use and – out of this quantity – the eligible amount for claiming the refund of tax paid.⁹⁶

The claim for tax refund and other state aids, de minimis aids may not accrue.⁹⁷

The claim for tax refund includes state aid falling within the scope of decision NN 29/2008 of the European Commission.⁹⁸

It needs to be highlighted that in the case of entities engaged in ship transportation, the reporting obligation pursuant to Paragraph 2 of Section 69 of IR shall not be applied, i.e.

⁹³ Point a) of Paragraph 1 of Section 112 of ETL

⁹⁴ Section 71 of IR

⁹⁵ Point b) of Paragraph 1 of Section 112 of ETL

⁹⁶ Paragraph 1 of Section 72 of IR

⁹⁷ Paragraph 2 of Section 72 of IR

⁹⁸ Paragraph 1 of Section 95 of IR

the right to claim the refund of tax may be exercised only if the intention of purchase is reported to the state tax and customs authority at least 5 days before the actual purchase of the excisable product.

Entities as operators of power plants and installations for district heating

Operators of power plants or installations for district-heating (including district-heating and hot-water production as laid down in the government decree on district-heating and hot-water production) using energy products for the production of tied heat energy, electric power, and of tied heat for household energy consumption are exempt from the payment of tax, and as such, may claim the refund of the tax in connection with this activity of theirs.⁹⁹

The right to claim the refund of excise tax may be exercised when holding the following documents/information:

- internal accounting document certifying therein the purpose the energy products have been used for,
- the total of energy products purchased shall be presented in two categories, eligible and non-eligible use of energy products for claiming tax refund.¹⁰⁰

Entities using energy products in chemical reduction, mineralogical, electrolytic and metallurgical processes

Entities using energy products in chemical reduction, mineralogical, electrolytic and metallurgical processes are exempt from the payment of the tax, and as such, may claim the refund of the tax in connection with this activity of theirs.¹⁰¹

The right to claim the refund of excise tax may be exercised when holding the following documents/information:

- internal accounting document certifying therein the purpose the energy products have been used for,
- the total of energy products purchased shall be presented in two categories, eligible and non-eligible use of energy products for claiming tax refund.¹⁰²

Entities engaged in activities listed under exemption items determined in Paragraph 1 of Section 133 of ETL

It is important to emphasize – also with regard to point g) of Section 12 of ETL – that in the cases listed under exemption items of the above-mentioned section, there is a possibility to claim the refund of tax as provided for by the law. The tax may be refunded on condition that taxed excisable products are used to tax exempt activities listed in this provision.

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⁹⁹ Sub-point cb) of Point c) of Paragraph 1 of Section 112 of ETL

¹⁰⁰ Paragraph 1 of Section 78 of IR

¹⁰¹ Sub-point cc) of Point c) of Paragraph 1 of Section 112 of ETL

¹⁰² Paragraph 1 of Section 78 of IR