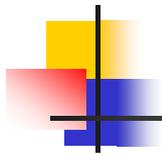


VAT refund to Latvian companies

November 25, 2010

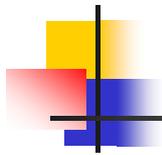
Marina Kuzenko
Head of SRS TD Indirect
Tax Methodology Division



Excess VAT refund procedure

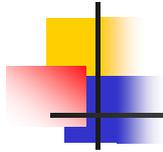
Regulated by:

- Law on Taxes and Fees;
- Law on Value Added Tax, special attention must be paid to Paragraphs 63 and 64 of Transitional provisions of the Law;
- Cabinet of Ministers Regulations No. 149 of April 18, 2000 'Procedure by which Regular Tax Payments and Late Tax Payments are Paid into the Budget'.



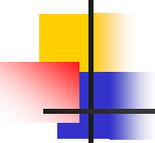
Paragraph 63 of Transitional provisions of the Law On Value Added Tax refers to the excess amount of value added tax accumulated for the taxation periods **before June 30, 2010**.

While according to the **Paragraph 64** of Transitional provisions of the Law On Value Added Tax the excess amount of value added tax accumulated **starting from July 1, 2010**, is refunded under Article 12 Parts 12², 12³, 12⁴, 12⁵, 12⁶, 12⁷, 12⁸, 12⁹, 12¹⁰ and 12¹¹ of the Law on Value Added Tax.



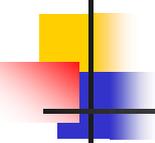
Article 2 Part 2 of the Law On Taxes and Fees states that this law **applies to all taxes and fees if a specific tax law does not provide for other procedures applicable to the specifics of the particular tax or fee, which may not be contrary to this Law.**

Thus, the procedure of refunding of excess amount of value added tax is also regulated by the Law on Taxes and Fees, insofar as the Law on Value Added Tax does not provide for other procedure.



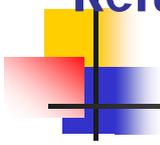
Refunding of excess VAT amounts accumulated before 30.06.2010

Starting from July 1, 2010, the excess amount of value added tax accumulated before June 30, 2010, is refunded based on Paragraph 63 of Transitional provisions of the Law On Value Added Tax.



Refunding of excess VAT amounts accumulated before 30.06.2010

The Law On Value Added Tax **does not provide for the automatic transfer** of the excess amount of value added tax accumulated for the taxation periods before June 30, 2010, **to the next taxation period**



Refunding of excess VAT amounts accumulated before 30.06.2010

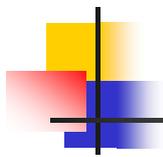
Submission of a well-grounded application



Taxpayer may ask to refund the excess VAT amount paid to SRS to the specified bank account within 30 days after receiving application and performing tax administration measures (Paragraph 63 of Transitional provisions of the Law On Value Added Tax)



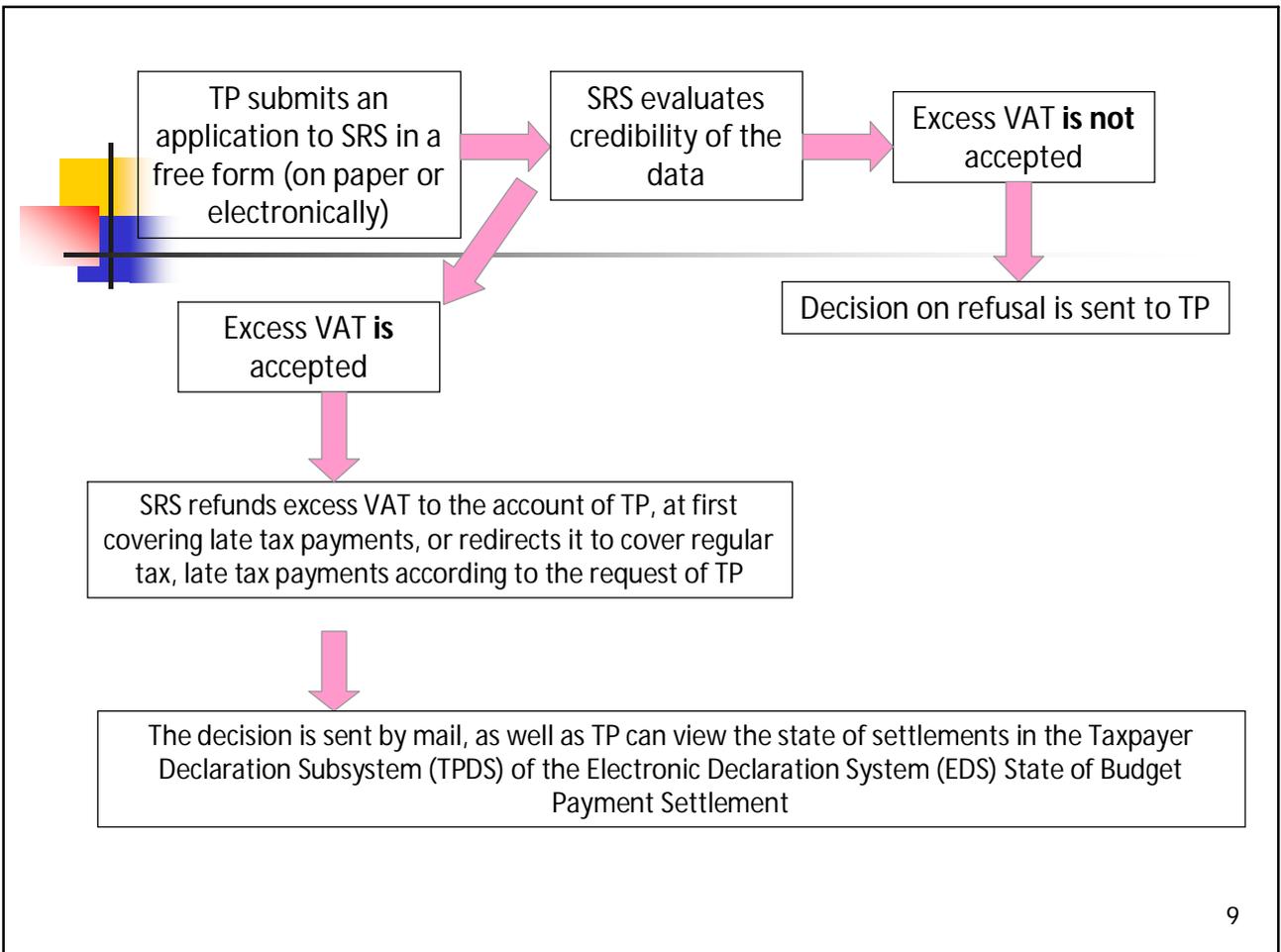
Taxpayer may ask to redirect the excess VAT amount to cover late or regular tax payments in conformity with Article 28 Part 2 of the Law On Taxes and Fees (also to cover current VAT payments)

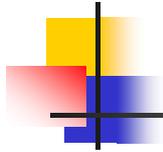


Refunding of excess VAT amounts accumulated before 30.06.2010

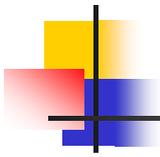
In conformity with Article 28 Part 4 of the Law On Taxes and Fees SRS has a duty, without taxpayer's application, to redirect the excess tax amounts to cover late payments.

In conformity with Article 23 of the Law On taxes and Fees SRS has the right to perform a tax review (audit), to update the value added tax amounts specified in the tax return and value added tax calculations and to impose fines.



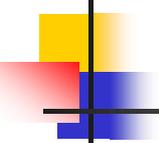


A taxpayer has the right to request the excess VAT amount accumulated for the taxation periods before June 30, 2010, within a period of three years specified in Article 16 Paragraph 10 of the Law On Taxes and Fees.



Refunding of excess VAT amounts accumulated after 01.07.2010

Paragraph 64 of transitional provisions of the Law On Value Added Tax lays down that the excess VAT amount accumulated **starting from July 1, 2010**, is refunded under Article 12 Parts 12², 12³, 12⁴, 12⁵, 12⁶, 12⁷, 12⁸, 12⁹, 12¹⁰ and 12¹¹ of the Law On Value Added Tax



Refunding of excess VAT amounts accumulated after 01.07.2010

Submission of the VAT return

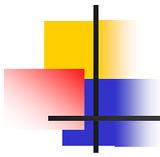
(Article 12 Part 12³)



SRS examines within 30 days



Redirects to next taxation periods till the end
of the taxation year



Refunding of excess VAT amounts accumulated after 01.07.2010

If there are other tax debts



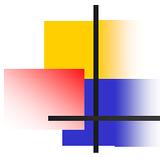
Before redirection the excess amount covers regular tax payments, other tax debts



Redirects to next taxation periods till the end of the taxation year



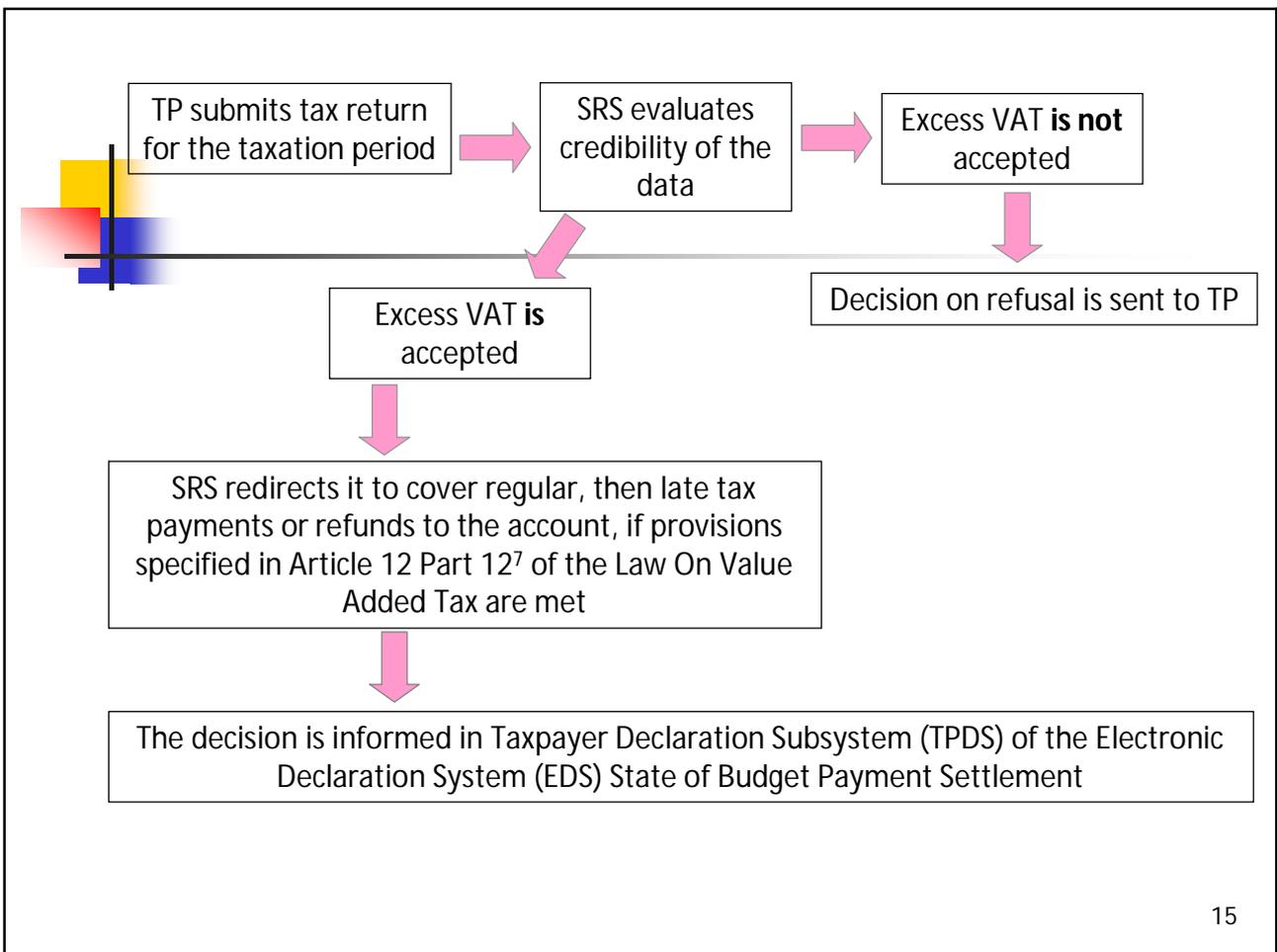
When the taxation year ends, refunds to the current account

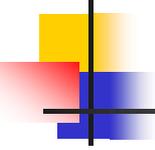


Refunding of excess VAT amounts accumulated after 01.07.2010

Refunds sooner, **without waiting for the end of the year**, if:

- 1) the amount of transactions liable to 0 percent tax rate or transactions closed outside inland of the taxable person makes at least 90 percent from the total value of transactions liable to the tax;
- 2) the excess amount of tax exceeds 1000 lats and the amount of transactions liable to 0 percent tax rate, 10 percent tax rate or transactions closed outside inland of the taxable person makes at least 20 percent from the total value of transactions liable to the tax;
- 3) the excess amount of tax exceeds 100 lats and is established for fixed assets;
- 4) the excess amount of tax exceeds 1000 lats and is established for goods purchased and services received to secure transactions with lumber;
- 5) the excess amount of tax exceeds 15 000 lats.

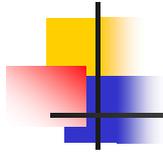




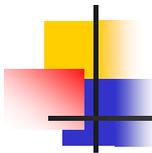
Amendments to the Law On Value Added Tax, which have entered into force as of 01.07.2010

Upon exclusion of a person from the State Revenue Service Register of Value Added Tax Taxable Persons, **the tax administration, within one month, shall redirect the excess amount of tax** to cover tax debts, other debts in taxes, fees or other payments set by the state.

The person excluded from the State Revenue Service Register of Value Added Tax Taxable Persons, **upon its request, but not later than four months after the decision about its exclusion from the register has been taken**, shall be refunded the excess amount of tax to the bank account specified by this person, if there is still excess amount of tax after the excess amount of tax has been redirected.

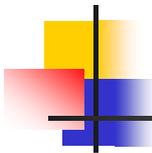


If the person excluded from the State Revenue Service Register of Value Added Tax Taxable Persons, **did not submit an application for refunding of the excess amount of tax within four months after the decision about its exclusion from the register has been taken**, The State Revenue Service shall **cancel it**.



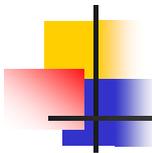
Input tax deduction procedure

- The basic principle of deduction of input tax is set forth in Article 10 Part 2 Paragraph 1 of the Law On Value Added Tax and it lays down that input tax may be deducted for goods and services to secure own taxable transactions.



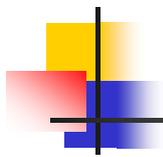
Court practice

- The Department of Administrative Cases of the Senate of the Supreme Court (hereinafter referred to as the Senate) has acknowledged in several judgments that a taxable person may deduct input tax from the amount to be paid into the budget, upon the following prerequisites:
 - 1) when the transaction is closed, both transaction partners are registered as VAT taxable persons in SRS Register of VAT Taxable Persons;
 - 2) the person has received goods or services and a tax invoice meeting requirements of laws and regulations;
 - 3) goods and services received are used to secure own VAT taxable transactions, i.e., new VAT taxable goods or services are created.



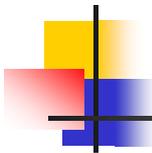
Court practice

- The Senate considers that as the deduction of input tax is a preemption, the statement of mandatory prerequisites is essential.
- The right to use input tax deduction exists only when goods (services) have been actually received to use it in the economic activity of the taxpayer, creating new VAT taxable goods (services), namely, the goods (services) have been actually received, received for the purposes of using them in the economic activity. Thus, not only the formal execution of relevant documents shall be evaluated, but also the fairness of information included therein (Administrative Regional Court judgment in cases No. A42401607 and No. A42456006).



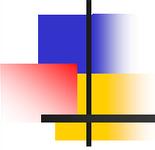
European Community court practice

- It is acknowledged in the European Community court practice that in order to have an opportunity to deduct input tax, there must be a direct and immediate link between the input tax and taxable transactions. It is also necessary for VAT to be paid for goods and services, which are really necessary to secure the economic activity and taxable transactions (*see Eiropas nodokļi Latvijā, Latvijas Ekonomists, Ernst&Young, Rīga 2004, p.49*).



Case C-255/02

- C-255/02
- Operative part of the judgment:
- 1) *The Sixth Directive must be interpreted as meaning that a taxable person has no right to deduct input VAT where the transactions on which that right is based constitute an abusive practice.*



... questions ?
