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EUROPEAN COMMISSION

Brussels, 15.7.2010  
COM(2010)381 final

2010/0205 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2008/9/EC laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **Grounds for and objectives of the proposal**

Council Directive 2008/9/EC (the Refund Directive) allows for non-established taxable persons to reclaim VAT on business expenses incurred in another Member State (the Member State of refund) via an electronic web portal set up in their own Member State (the Member State of establishment). This electronic system replaced the old paper based system and simplifies the process for businesses, and provides greater legal certainty via the imposition of strict deadlines together with interest on late payments by the Member State of refund. The refund applications should be submitted to the Member State of establishment no later than 30 September of the calendar year following the refund period.

Following a number of problems incurred in the practical application of the procedure at the level of several Member States, it is proposed to amend the Refund Directive in order to give taxable persons more time to submit applications relating to refund periods in 2009. Therefore, exceptionally, the deadline of 30 September 2010 for the submission of applications relating to refund periods in 2009 should be extended to 31 March 2011. This is without prejudice to the Commission taking other actions in order to ensure the correct application of European Union law.

Further to the abovementioned problems, it is also proposed to provide scope for certain implementing measures to be adopted according to the procedure provided for under Council Regulation No (EC) 1798/2003 on administrative cooperation in the field of value added tax. This would allow the Member States and the Commission to agree on the necessary technical aspects of application of the Directive, and hence improve the running of the system.

#### **General context**

Article 15 of the Refund Directive states that applications should be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. As the Directive came into force on 1 January 2010, any applications concerning 2009 are to be submitted to the Member State of establishment by 30 September 2010 at the latest.

While the EU systems for the exchange of information between Member States have been ready on time, problems have occurred at the level of certain individual Member States' portals. Some Member States opened their web portals very late (up to the middle of May 2010) and there have been various technical problems with the operability and access to certain portals.

This lack of availability of the web portals in due time seriously restricts the fundamental right of deduction of the taxable person, and it is for this reason that the Commission is proposing to extend the deadline for applications relating to 2009 in order that taxable persons can properly exercise this right.

Member States have also had divergent views of how the system should operate from a technical point of view, which have only come to light once the system has been operational. Whilst the common IT elements are defined at the EU level, the technical requirements for the electronic communication with taxable persons are defined by each Member State. This has

also contributed to a number of delays and problems in the submission and processing of applications. Therefore it is necessary to provide that the Commission can adopt the necessary implementing measures following the opinion of the Standing Committee on Administrative Co-operation. These areas specifically relate to the electronic application to the web portal; the attachments to applications; the means by which the Member State of establishment confirms receipt and transfer of the application; and the means by which the Member State of refund notifies the applicant it has received the application, or requests further information.

### **Existing provisions in the area of the proposal**

Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State.

Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92.

Commission Regulation (EC) No 1174/2009 of 30 November 2009 laying down rules for the implementation of Articles 34a and 37 of Council Regulation (EC) No 1798/2003 as regards refunds of value added tax under Council Directive 2008/9/EC.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of interested parties**

Informal consultation with businesses has been organised (meetings and conferences with business organisations) and has made it possible to collect feedback. Business representatives notably expressed their strong concerns with the deadline of 30 September 2010 for applications relating to 2009. No formal consultation of the proposed measure can be organised given the urgency of the measure.

### **Impact assessment**

As this measure does not significantly amend the existing measure, no impact assessment is necessary.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed action**

The proposal will extend the deadline for submission of a refund application under Directive 2008/9/EC to 31 March 2011 exceptionally for applications concerning refund periods in 2009, and provide for certain implementing measures to be adopted under the procedure provided for in Council Regulation (EC) No 1798/2003.

## **4. BUDGETARY IMPLICATION**

The proposal has no negative impact on the EU budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State<sup>3</sup> ('the Refund Directive') took effect on 1 January 2010.
- (2) Under the Refund Directive, Member States are obliged to develop a web portal via which taxable persons established in a Member State submit applications for the refund of value added tax incurred in a Member State where they are not established. The web portal should be operational on the date the Refund Directive took effect.
- (3) A number of serious delays and certain technical problems have affected the development and operation of the web portals in some Member States, thereby preventing the timely submission of certain applications. An application is to be submitted to the Member State of establishment by 30 September of the calendar year following that in which the refund period occurs at the latest. Given that deadline, and the inoperability of some of the web portals, some taxable persons risk being unable to exercise their right to deduct expenses incurred in 2009. The deadline should therefore

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ L 44, 20.2.2008, p. 23.

exceptionally be extended to 31 March 2011 for claims relating to refund periods in 2009.

- (4) Taxable persons are also facing difficulties due to a number of technical divergences in the application of the Refund Directive by Member States. To avoid such divergences, it is necessary for certain details of the technical application of the system to be determined by the procedure laid out in Article 44 of Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92<sup>4</sup>.
- (5) The technical details to be determined relate to the electronic applications, the attachments to applications, the means by which the Member State of establishment confirms receipt and transfer of the application and the means by which the Member State of refund notifies reception of the application and requests further information. Standardised references and common technical requirements are indeed necessary for the scheme to function properly.
- (6) The measures necessary for the implementation of the detailed rules, including common forms where necessary, on the electronic submissions and notifications referred to in Directive 2008/9/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>5</sup>.
- (7) In order to ensure that taxable persons will not be required to meet the deadline of 30 September 2010 in respect of claims relating to refund periods in 2009, this Directive should enter into force on the day following that of its publication in the Official Journal of the European Union.
- (8) Directive 2008/9/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2008/9/EC is hereby amended as follows:

- (1) In Article 15(1), the following subparagraph is added:

'Refund applications which relate to refund periods in 2009 shall be submitted to the Member State of establishment on 31 March 2011 at the latest.'

- (2) The following Article 27a is inserted:

#### *'Article 27a*

The Commission shall, in accordance with the procedure referred to in Article 44(2) of Council Regulation (EC) No 1798/2003, adopt measures laying down detailed rules, including

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<sup>4</sup> OJ L 264, 15.10.2003, p.1.

<sup>5</sup> OJ L 184, 17.7.1999, p. 23.

common forms where necessary, on the electronic submissions and notifications referred to in Articles 7 and 10, Article 15(2), Article 18(2), Article 19(1) and Article 20 of this Directive.'

#### *Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 October 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*