STATUTORY INSTRUMENTS.

S.I. No. 520 of 2009

EUROPEAN COMMUNITIES (VALUE-ADDED TAX) REGULATIONS 2009

(Prn. A9/1829)

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S.I. No. 520 of 2009

EUROPEAN COMMUNITIES (VALUE-ADDED TAX) REGULATIONS 2009

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive 2006/112/EC of 28 November 2006[1], Council Directive 2008/8/EC of 12 February 2008[2], Council Directive 2008/9/EC of 12 February 2008[3] and Council Directive 2008/117/EC of 16 December 2008[4], hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Value-Added Tax) Regulations 2009.

(2) These Regulations come into operation on 1 January 2010.

Object and scope of these Regulations

2. The object of these Regulations is to amend the Value Added Tax Act 1972 (No. 22 of 1972) so as to give effect to the following Directives of the European Parliament and of the Council:

(*a*) Council Directive 2006/112/EC providing for a common system of value added tax[5];

(*b*) Council Directive 2008/8/EC (amending Directive 2006/112/EC) as regards determining the place of supply of services for value added tax purposes[6];

(*c*) Council Directive 2008/9/EC laying down rules for the refund of value added tax (as provided for in Directive 2006/112/EC) to taxable persons not established in the Member State of refund but established in another Member State[7];

(*d*) Council Directive 2008/117/ EC (amending Directive 2006/112/EC) on the common system of value added tax to combat tax evasion connected with intra-Community transactions[8].

[1]OJ No. L 347 of 11 December 2006, p. 1
[2]OJ No. L 44 of 20 February 2008, p. 11
[3]OJ No. L 44 of 20 February 2008, p. 23
[4]OJ No. L 14 of 20 January 2009, p. 7
[5]See Note 1
[6]See Note 2
[7]See Note 3
[8]See Note 4

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 18*th December*, 2009.

"Principal Act" defined

3. In these Regulations, "Principal Act" means the Value-Added Tax Act 1972 (No. 22 of 1972).

Amendment of section 1 of the Principal Act (Interpretation)

4. Section 1 of the Principal Act is amended as follows:

(*a*) in subsection (1), by inserting the following definition after the definition of "business":

" 'calendar quarter' means the period of 3 months beginning with 1 January, 1 April, 1 July or 1 October in each calendar year;";

(*b*) by deleting from subsection (1) the definition of "establishment";

(*c*) by substituting the following definition for the definition of "flat-rate farmer" in subsection (1):

" 'flat-rate farmer' means—

(*a*) a farmer who is not an accountable person, or

(*b*) a farmer who is an accountable person referred to in section 8(1A)(*c*) or (2)(*b*), or

(*c*) a person who, in accordance with section 8(3A), is deemed not to be an accountable person with respect to supplies of a kind specified in the definition of 'farmer' in section 8(9),

insofar as that farmer engages in the supply of agricultural produce or agricultural services within the State;";

(*d*) in subsection (1), by substituting the following for the definition of "taxable person":

" 'taxable person' means a person who independently carries on a business in a place, either in the Community or elsewhere;".

Substitution of section 2 of Principal Act

5. The Principal Act is amended by substituting the following section for section 2:

"2. Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and the Regulations, chargeable, leviable and payable on the following transactions:

(*a*) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State;

(*b*) the importation of goods into the State;

(*c*) the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State;

(*d*) the intra-Community acquisition for consideration by an accountable person of goods (other than new means of transport) when the acquisition is made within the State;

(*e*) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State.”.

Amendment of Section 4B of Principal Act (Supplies of immovable goods)

6. Section 4B of the Principal Act (inserted by section 88 of the Finance Act 2008) is amended by substituting the following subsection for subsection (5):

“(5) If a taxable person who carries on a business in the State supplies immovable goods to another taxable person who carries on a business in the State in circumstances where that supply would otherwise be exempted because of subsection (2) of this section, or section 4C(2) or (6)(*b*), then, despite those provisions, tax is chargeable on that supply, but only if the supplier and the taxable person to whom the supply is made have, no later than the 15th day of the month after the month during which the supply occurred, entered into an agreement to opt to have tax chargeable on that supply.”.

Amendment of section 5 of Principal Act (Supply of services)

7. Section 5 of the Principal Act is amended as follows:

(*a*) by deleting subsection (3A);

(*b*) by substituting the following subsections for subsections (5) and (6):

“(5) The following rules apply to determine the place where, for the purposes of this Act, services are supplied:

(*a*) except as provided by paragraphs (*c*), (*d*), (*g*), (i), (*j*) and (*k*), the place of supply of services to a taxable person (in the person’s capacity as such) is—

(i) the place where the person’s business is established, or

(ii) if the services are supplied to a fixed establishment of the person located in a place other than the place where the business is established — the place where the fixed establishment is located, or

(iii) if there is no such place of business or fixed establishment — the place where the permanent address or usual place of residence of the taxable person who receives the services is located;

(*b*) except as provided by paragraphs (*c*) to (*n*), the place of supply of services to a non-taxable person is—

(i) the place where the supplier's business is established, or

(ii) if the services are supplied from a fixed establishment of the supplier located at a place other than the place where the supplier's business is established — the place where the fixed establishment is located, or

(iii) if there is no such place of business or fixed establishment — the place where the permanent address or usual place of residence of the supplier is located;

(*c*) if the supply of services is connected with immovable goods, or is the grant of a right to use those goods — the place where those goods are located;

(*d*) if the supply of services is the provision of passenger transport—the place or the respective places where the transport takes place;

(*e*) if the supply of services is the provision of the transport of goods to a non-taxable person and is not an intra-Community transport of goods — the place or places where the transport takes place;

(*f*) if the supply of services is the provision of intra-Community transport of goods to a non-taxable person — the place of departure of those goods (being the place where the transport of the goods actually begins) irrespective of the distance covered by the means of transport in order to reach the place where the goods are located;

(*g*) if the supply of services, and of any ancillary services, is connected with cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions and the supply of services of the organisers of such activities) — the place where those activities are physically carried out;

(*h*) if the supply of services consists of —

(i) ancillary transport activities, such as loading, unloading and handling goods, or

(ii) carrying out valuations of, or work on, movable goods, or

(iii) contract work,

and is to a non-taxable person — the place where the services are physically carried out;

(*i*) if the supply of services is the provision of restaurant or catering services (other than those mentioned in paragraph (*j*)) — the place where those services are physically carried out;

(*j*) if the supply of services is the provision of restaurant or catering services that are physically carried out on board a ship, aircraft or train during a section of a passenger transport operation undertaken within the Community and the first scheduled point of departure within the Community of that transport operation is in the State — the State;

(*k*) if the supply of services consists of a short-term hiring out of a means of transport — the place where the means of transport is actually placed at the disposal of the customer;

(*l*) if the supply of services is the provision of electronically supplied services that are supplied to a non-taxable person—

(i) who is established in the State, or

(ii) whose permanent address is within the State, or

(iii) who usually resides in the State,

the State, but only if the services are supplied by a taxable person—

(iv) whose business is established outside the Community, or

(v) who has a fixed establishment outside the Community from which the services are supplied, or

(vi) if the person does not have such a place of business or fixed establishment — whose permanent address or usual place of residence is outside the Community;

(*m*) if the supply of services consists of a supply of services specified in subsection (5D) and the supply is to a non-taxable person—

(i) who is established outside the Community, or

(ii) whose permanent address is outside the Community, or

(iii) who usually resides outside the Community,

the place where the person is established, has a permanent address or usually resides;

(*n*) if the supply of services is the provision of services to a non-taxable person by an intermediary acting in the name and on behalf of another person — the place where the transaction underlying the supply is made.

(5A) In subsection (5)(*c*), a supply of services connected with immovable goods includes the following:

(*a*) a supply of services by experts or estate agents;

(*b*) a provision of accommodation in a hotel or guesthouse or in an establishment having a similar function, or in a holiday camp or a site developed for use as a camping site;

(*c*) a supply of services involving the preparation and co-ordination of construction work (including a supply of services of architects and of persons who provide on-site supervision).

(5B) In subsection (5)(*e*), 'intra-Community transport of goods' means any transport of goods in respect of which the place of departure and the place of arrival are located within the territories of two different Member States.

(5C) In subsection (5)(*k*), 'short-term' means the continuous possession or use of a means of transport throughout a period of not more than 30 days or, if the means of transport is a vessel, not more than 90 days.

(5D) The following services are specified for the purpose of subsection (5)(*m*):

(*a*) services that consist of transferring or assigning copyrights, patents, licences, trade marks and similar rights;

(*b*) advertising services;

(*c*) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;

(*d*) services that consist of obligations to refrain from pursuing or exercising, wholly or partially, a business activity or a right referred to in this subsection;

(*e*) services that consist of financial or insurance transactions;

(*f*) services that consist of supplying staff;

(*g*) services that consist of hiring out movable tangible property, other than a means of transport;

(*h*) services that consist of providing access to, or transmission through, natural gas and electricity distribution systems, and providing other services directly linked to those systems;

(*i*) telecommunications services;

(*j*) radio and television broadcasting services;

(*k*) electronically supplied services.

(5E) In subsection (5D)(*e*)—

'financial transactions' include banking transactions and financial fund management transactions, but do not include the provision of safe deposit facilities;

'insurance transactions' include reinsurance transactions.

(6) If, in the case of a supply of services that consists of hiring out movable goods, the place of supply of the services would, apart from this subsection, be a place outside the Community but the services are in effect used and enjoyed in the State, the place of supply of those services is nevertheless taken to be the State for the purposes of this Act.

(6AA) If, in the case of a supply of services that consists of hiring out a means of transport, the place of supply of the services would, apart from this subsection, be the State but those services are in effect used and enjoyed outside the Community, the place of supply of those services is nevertheless taken to be outside the Community for the purposes of this Act.

(6AB) If, in the case of a supply of services that consists of the provision to a non-taxable person of a telecommunications service, a radio or a television broadcasting service or a telephone card, the place of supply of the service or card would, apart from this subsection, be outside the Community but the service is in effect used and enjoyed in the State, the place of supply is nevertheless taken to be the State for the purposes of this Act.

(6AC) If, in the case of a supply of services that consists of the provision by a taxable person established in the State of a telecommunications service or a telephone card to a non-taxable person, the place of supply of the service or card would, apart from this subsection, be outside the Community but the service is in effect used and enjoyed in the State, the place of supply is taken to be the State for the purposes of this Act.

(6AD) If, in the case of a supply of services that consists of the provision to a non-taxable person of financial services or insurance services, the place of supply of the services would, apart from this

subsection, be a place outside the Community but the services are in effect used and enjoyed in the State, the place of supply is nevertheless taken to be the State for the purposes of this Act.

(6AE) In subsection (6AD)—

'financial services' include banking services and financial fund management services, but do not include the provision of safe deposit facilities;

'insurance services' include reinsurance.

(6AF) If money transfer services provided to a person in the State are in effect used and enjoyed in the State, the place of supply of intermediary services that are provided in respect of, or in relation to, those services to a principal established outside the Community, is taken to be the State for the purposes of this Act.";

(*c*) in subsection (6A)(*b*), by substituting "section 8(1A)(*aa*) or (*ab*)" for "section 8(2)(*a*)";

(*d*) in subsection (6A), by deleting paragraph (*e*);

(*e*) by deleting subsection (7);

(*f*) in subsection (8)(*a*), by substituting the following subparagraph for subparagraph (i):

"(*i*) an accountable person to a taxable person who carries on a business in the State, or";

(*g*) by inserting the following subsections after subsection (8):

"(9) For the purpose of applying subsection (5), every person registered for value-added tax is a taxable person.

(10) In this section, 'telephone card' means a card, or a means other than money—

(*a*) that confers a right to access a telecommunications service, and

(*b*) that, when the card or other means is supplied to a person other than for the purpose of resale, entitles the supplier of the service to a consideration for the supply under circumstances that preclude the user of the card or means from being liable for any further charge for access to the service.".

Amendment of section 5A of Principal Act (Special scheme for electronic services)

8. Section 5A of the Principal Act is amended as follows:

(*a*) in the definition of “Member State of consumption” in subsection (1), by substituting “Article 58” for “Article 57(1)”;

(*b*) in subsection (6)(*a*), by substituting “section 5(5)(*l*)” for “section 5(6)(*eee*)”;

(*c*) in subsection (6)(*b*), by substituting “Article 58” for “Article 57(1)”;

(*d*) in subsection (9), by substituting “section 5(5)(*l*)” for “section 5(6)(*eee*)”;

(*e*) in subsection (10), by substituting “section 5(5)(*l*)” for “section 5(6)(*eee*)”;

(*f*) in subsection (11) by substituting “section 5(5)(*l*)” for “section 5(6)(*eee*)”;

(*g*) in paragraph (*b*) of subsection (12) by substituting “section 5(5)(*l*)” for “section 5(6)(*eee*)”.

Amendment of section 8 of Principal Act (Taxable persons)

9. Section 8 of the Principal Act is amended—

(*a*) in subsection (1A), by inserting the following paragraphs after paragraph (*a*)—

“(*aa*) If—

(i) a taxable person, or a person other than a taxable person to whom a registration number has been assigned in accordance with section 9(1A), receives a service from a supplier established outside the State, and

(ii) the place of supply of the service (as determined in accordance with section 5(5)(*a*)) is the State,

the person is accountable for, and liable to pay, the tax chargeable in the State as if the person had supplied that service for consideration in the course or furtherance of a business.

(*ab*) If—

(i) a taxable person who carries on a business in the State, or

(ii) a Department of State or local authority, or

(iii) a body established by an enactment,

receives a service (other than a service of a kind referred to in section 5(5A)(*b*) or (*c*)) from a supplier not established in the State, and the place of supply of the service (as determined in accordance with section 5(5)(*c*)) is the State, the receiver of the service is accountable for, and liable to pay, the tax chargeable in the State as if that receiver had supplied the service for consideration in the course or furtherance of a business.";

(*b*) in subsection (1A)(*f*), by substituting the following subparagraphs for subparagraphs (i)-(iii):

"(i) a taxable person who carries on a business in the State, or

(ii) a Department of State or local authority, or

(iii) a body established by an enactment,";

(*c*) in subsection (1A)(*g*), by substituting the following subparagraphs for subparagraphs (i)-(iii):

"(i) a taxable person who carries on a business in the State, or

(ii) a Department of State or local authority, or

(iii) a body established by an enactment,";

(*d*) by deleting paragraph (*a*) of subsection (2).

Amendment of section 10 of Principal Act (Amount on which tax is chargeable)

10. Section 10 of the Principal Act is amended as follows:

(*a*) in subsection (1), by substituting "section 2(*a*) or (*c*)" for "section 2(1)(*a*)";

(*b*) in subsection (1A), by substituting "section 2(*d*) or (*e*)" for "section 2(1A)";

(*c*) in subsection (9A), by substituting "section 2 (paragraph (*b*) excepted)" for "section 2(1)(*a*) or 2(1A)".

Amendment of section 10A of Principal Act (Margin scheme goods)

11. Section 10A of the Principal Act is amended by substituting the following subsection for subsection (3):

"(3) Whenever the margin scheme is applied to a supply of goods, the amount on which tax is chargeable on the supply in accordance

with section 2(*a*) or (*c*) is, despite section 10, the profit margin less the amount of tax included in the profit margin.”.

Amendment of section 10B of Principal Act (Special scheme for auctioneers)

12. Section 10B of the Principal Act is amended by substituting the following subsection for subsection (3):

“(3) The amount on which tax is chargeable in accordance with section 2(*a*) or (*c*) on a supply by an auctioneer of auction scheme goods is, despite section 10, the auctioneer’s margin less the amount of tax included in that margin.”.

Amendment of section 11 of Principal Act (Rates of tax)

13. Section 11 of the Principal Act is amended by substituting the following paragraph for paragraph (*a*) of subsection (1A):

“(*a*) The rate at which tax is chargeable under section 2 (paragraph (*b*) excepted) is the rate in force at the time when the tax becomes due as provided by section 19(1), (1A) or (2) (whichever is applicable).”.

Amendment of section 12A of Principal Act (Special provisions for tax invoiced by flat-rate farmers)

14. Section 12A of the Principal Act is amended—

(*a*) in subsection (1), by deleting “(1)”, and

(*b*) by deleting subsection (2).

Amendment of section 12E of the Principal Act (Capital goods scheme)

15. Section 12E of the Principal Act is amended by substituting the following subsection for subsection (1):

“(1) This section applies to capital goods—

(*a*) on the supply or development of which tax was chargeable to a taxable person who carries on a business in the State, or

(*b*) on the supply of which tax would have been chargeable to a taxable person who carries on a business in the State but for the application of section 3(5)(*b*)(iii),”.

New section 12F inserted into Principal Act

16. The Principal Act is amended by inserting the following section after section 12E:

“Special scheme for intra-Community refunds of tax

12F. The special scheme for intra-Community refunds of tax as set out in the Ninth Schedule has effect.”

Amendment of section 13 of Principal Act (Remission of tax on goods exported, etc.)

17. Section 13 of the Principal Act is amended as follows:

(*a*) by substituting the following paragraph for subsection (3)(*b*):

"(*b*) This subsection applies to a person who satisfies the Revenue Commissioners that the person—

(i) carries on a business outside the Community, and

(ii) supplies no goods or services in the State (other than services for which, in accordance with section 8(1A)(*aa*), (*ab*), (*f*) or (*g*) or (1B)(*b*) or (2), the person to whom they are supplied is solely liable for the tax that is chargeable).";

(*b*) in subsection (3)(*c*), by deleting "or in respect of motor vehicles (as defined in section 12(3)(*b*) for hiring out for utilisation within the State".

Amendment of section 14 of Principal Act (Determination of tax due by reference to cash receipts)

18. Section 14 of the Principal Act is amended by substituting the following subsection for subsection (3):

"(3) This section does not apply to tax provided for by section 2(*b*), (*d*), or (*e*).".

Amendment of section 15 of Principal Act (Charge of tax on imported goods)

19. Section 15 of the Principal Act is amended in subsection (6A) by substituting "section 2(*b*)" for "section 2(1)(*b*)";

Amendment of section 15A of Principal Act (Goods in transit)

20. Section 15A of the Principal Act is amended as follows:

(*a*) in subsection (1)(*b*), by substituting "section 2(*b*)" for "section 2(1)(*b*)";

(*b*) in subsection (3), by substituting "section 2(*b*)" for "section 2(1)(*b*)".

Amendment of section 15B of Principal Act (Goods in transit (additional provisions))

21. Section 15B of the Principal Act is amended, in subsections (1)(*b*) and (5), by substituting "section 2(*b*)" for "section 2(1)(*b*)".

Amendment of section 19 of Principal Act (Tax due and payable)

22. Section 19 of the Principal Act is amended as follows:

(*a*) in subsection (1), by substituting "section 2(*a*) or (*c*)" for "section 2(1)(*a*)";

(*b*) in subsection (1A), by substituting "section 2(*d*) or (*e*)" for "section 2(1A);

(*c*) in subsection (2), by substituting “section 2(*a*) or (*c*)” for “section 2(1)(*a*)”;

(*d*) in subsection (2B), by substituting “section 2(*a*) or (*c*)” for “section 2(1)(*a*)”.

Substitution of section 19A of Principal Act by new sections 19A and 19AA

23. The Principal Act is amended by substituting the following sections for section 19A:

“*Accountable person to lodge statement of intra-Community supplies of goods*

19A. (1) In this section, ‘intra-Community supplies of goods’ means supplies of goods to a person registered for value-added tax in another Member State.

(2) An accountable person shall, not later than the deadline fixed by this section, lodge with the Revenue Commissioners a statement of the person’s intra-Community supplies of goods. The statement must be prepared in accordance with, and contain such particulars as may be specified in, the regulations (if any).

(3) In the case of intra-Community supplies of goods made during a calendar month, the deadline referred in to subsection (2) is the 23rd day of the month immediately following the end of that calendar month. This subsection does not apply to intra-Community supplies of goods in respect of which an authorisation has been given under subsection (4) or when an accountable person elects to lodge statements as permitted by subsection (5).

(4) The Revenue Commissioners may, on written request, authorise an accountable person who makes no supplies of the kind referred to in section 19AA but who makes intra-Community supplies of goods that do not exceed, or are not likely to exceed, in a calendar year, an amount or amounts specified in the regulations (if any), to lodge by 23 January following that calendar year a statement setting out details of those intra-Community supplies of goods. Such a statement must be prepared in accordance with, and contain such particulars as may be specified in, the regulations (if any).

(5) If, when subsection (4) does not apply, the total value of an accountable person’s intra-Community supplies of goods for a period of a calendar quarter, or of any of the previous 4 calendar quarters, does not exceed the prescribed threshold, that person may lodge a statement setting out details of those supplies not later than the 23rd day of the month immediately following the quarter during which the supplies were made. However, should the value of those supplies exceed the prescribed threshold in any month, the deadline for lodging a statement in respect of those supplies is as provided by subsection (3).

(6) For the purposes of this section, the prescribed threshold is €100,000 or, on and from 1 January 2012, €50,000.

(7) An accountable person who has made no intra-Community supplies of goods during a relevant period, but was required to lodge with the Revenue Commissioners a statement in respect of a previous period, shall, unless otherwise authorised by those Commissioners, lodge with them before the relevant deadline a statement to the effect that the person made no such supplies during that period.

Accountable person to lodge statement of intra-Community supplies of taxable services

19AA. (1) In this section, 'intra-Community supplies of services' means supplies of services to a person registered for value-added tax in another Member State.

(2) An accountable person shall, not later than the deadline fixed by this section, lodge with the Revenue Commissioners a statement of the person's supplies of taxable services to a customer registered for value-added tax in another Member State whenever that customer is liable to pay the tax as provided by Article 196 of Council Directive 2006/112/EC. The statement must be prepared in accordance with, and contain such particulars as may be specified in, the regulations (if any).

(3) In the case of intra-Community supplies of services made during a calendar quarter, the deadline referred to in subsection (2) is the 23rd day of the month immediately following the end of that quarter, except where the accountable person elects to lodge statements monthly as provided by subsection (4).

(4) An accountable person who makes intra-Community supplies of services may elect to lodge statements of details of those services monthly, in which case the deadline for lodging those statements is not later than the 23rd of each calendar month immediately following the month in which the supplies are made.

(5) For the purposes of statements to be lodged in accordance with subsection (2), services that are supplied continuously over a period of more than 1 year, in respect of which no statements of account or payments are made during that year, are to be regarded as being completed at the end of each calendar year until the date when the supply is finally completed.

(6) An accountable person who has made no intra-Community supplies of services to which this section applies during a relevant period, but who was required to lodge with the Revenue Commissioners a statement in respect of a previous period, shall, unless otherwise authorised by those Commissioners, lodge with them before the relevant deadline a statement to the effect that the person made no such supplies during that period.".

Amendment of section 25 of Principal Act (Appeals)

24. Section 25 of the Principal Act is amended as follows:

(*a*) in subsection (1), by inserting the following paragraph after paragraph (*af*):

"(*ag*) the refusal to approve (either wholly or partially) a refund application made under the Ninth Schedule,";

(*b*) by inserting the following subsection after subsection (1):

"(1AA) For the purpose of subsection (1)(*ag*), a failure by the Revenue Commissioners to make a decision in respect of a refund application within the time limits set out in paragraph 9 of the Ninth Schedule is to be treated as a decision to refuse the application.".

Amendment of section 32 of Principal Act (Regulations)

25. Section 32 of the Principal Act is amended as follows:

(*a*) in subsection (2A), by deleting "section 5(7)";

(*b*) in subsection (2B), by inserting the following paragraph after paragraph (*b*):

"(*ba*) Council Directive 2008/9/EC of 12 February 2008[9], and".

Repeal of Fourth Schedule

26. The Principal Act is amended by repealing the Fourth Schedule to that Act.

New Ninth Schedule inserted

27. The Principal Act is amended by inserting the following Schedule after the Eighth Schedule:

Section 12F

"NINTH SCHEDULE

SPECIAL SCHEME FOR INTRA-COMMUNITY REFUNDS OF TAX

Definition of terms used in this Schedule

1. For the purposes of this Schedule—

'applicant' means a taxable person who—

(*a*) not being established in the Member State of refund, but being established in another Member State, and

(*b*) having entered into transactions that give rise to a right of deduction in that other Member State,

makes a refund application;

[9]OJ No. L44 of 20.2.2008, p. 23

'deductible transactions' means transactions that give rise to a right of deduction in the Member State concerned;

'Member State of refund', in relation to an applicant, means the Member State in which value-added tax (as referred to in the Council Directive 2006/112/EC[10]) was charged to the applicant in respect of—

(*a*) goods or services supplied to the applicant by other taxable persons in that Member State, or

(*b*) the importation of goods into that Member State;

'non-deductible transactions' means transactions that do not give rise to a right of deduction in the Member State concerned;

'refund application' means an electronic application submitted after 31 December 2009 for a refund of tax charged in the Member State of refund to an applicant in respect of goods or services supplied to the applicant by taxable persons in that Member State or in respect of the importation of goods into that Member State.

Revenue Commissioners to make refund of VAT in certain cases

2. The Revenue Commissioners shall, in accordance with this Schedule and the regulations (if any), make a refund to an applicant of tax charged to the applicant by accountable persons in the State or tax charged to that applicant on the importation of goods into the State, in cases where a full and correct refund application has been received by them from the Member State in which the applicant is established.

How the amount of refund is to be calculated

3. (1) When the State is the Member State of refund, the amount of tax that is refundable in accordance with paragraph 2 is (subject to subparagraph (2) of this paragraph) the amount of tax charged to an applicant by an accountable person in respect of supplies of goods or services in the State, or on the importation of goods by the applicant into the State, where those goods or services are used by the applicant for the purpose of the applicant's business, but only to the extent that the applicant would be able to deduct that amount under section 12 if the applicant were an accountable person in the State.

(2) If an applicant undertakes in the applicant's Member State of establishment both deductible transactions and non-deductible transactions, the amount to be refunded by the Member State of refund is the proportion of tax attributable to the deductible transactions as determined in accordance with the law of the applicant's Member State of establishment.

How an application for refund can be made

4. An applicant who wishes to claim a refund of tax may apply for the refund only through the electronic portal set up for the purpose by the applicant's Member State of establishment.

[10]OJ L 347 of 11 December 2006, p. 1

Applicant to make correction to application when deductible proportion is later adjusted

5. (1) When an applicant who carries out transactions of the kind referred to in subparagraph (2) of paragraph 3 makes a refund application and the proportion of tax referred to in that subparagraph is subsequently adjusted, the applicant shall make a correction to the original amount that was applied for or has already been refunded.

(2) The applicant shall make the correction in a refund application during the calendar year following the period for which the relevant refund application was made or, if the applicant makes no refund applications during that calendar year, by lodging a separate declaration via the electronic portal established by the Member State of establishment of the applicant.

What a refund application must cover

6. (1) When the State is the Member State of refund, the applicant shall ensure that the refund application covers tax charged in respect of supplies of goods or services invoiced to the applicant and importations by the applicant during a refund period, being a period of not more than 1 calendar year and not less than 3 calendar months. However, a refund period may be less than 3 calendar months if the application in respect of the period relates to the last quarter of a calendar year.

(2) A refund application may be lodged only on or before 30 September in the calendar year following the refund period.

(3) A refund application may cover tax charged in respect of transactions omitted from the applicant's previous refund applications, but only if those transactions were completed during the relevant calendar year.

Restriction on amounts that can be claimed in a refund application

7. (1) An applicant is not entitled to make a refund application under this Schedule for an amount less than €400 if the claim is for a period of less than 1 calendar year and not less than 3 months.

(2) An applicant is not entitled to make a refund application under this Schedule for an amount less than €50 if the claim is for a period that represents a full calendar year or the last quarter of a calendar year.

Revenue Commissioners to notify applicant of decision not to forward application to other Member State

8. As soon as practicable after deciding not to forward to another Member State a refund application made by an applicant established in the State on the grounds that the applicant is not entitled to a refund, the Revenue Commissioners shall notify the decision to the applicant by electronic means.

Action to be taken by Revenue Commissioners on receipt of refund application

9. (1) This paragraph applies to a refund application in respect of which the State is the Member State of refund.

(2) As soon as practicable after receiving from an applicant a refund application to which this paragraph applies, the Revenue Commissioners shall, by electronic means, notify the applicant of the date on which they received the application.

(3) Within 4 months after the date on which they received a refund application from an applicant, the Revenue Commissioners shall, except as otherwise provided by this paragraph—

(*a*) decide whether or not to approve the application (whether wholly or partially), and

(*b*) notify their decision to the applicant by electronic means.

(4) At any time within 4 months after the date on which they received a refund application from an applicant established in another Member State, the Revenue Commissioners may request additional information in support of the details provided in the application. Such a request may be made to the applicant, the competent authority of the Member State where the applicant is established or from any other person whom the Revenue Commissioners reasonably believe to be capable of providing relevant information.

(5) If the Revenue Commissioners request additional information in accordance with subparagraph (4), they shall, except when subparagraph (7) applies—

(*a*) decide whether or not to approve the application (whether wholly or partially), and

(*b*) notify their decision to the applicant by electronic means,

within 2 months after the relevant date.

(6) For the purpose of this paragraph, the relevant date is—

(*a*) if the Revenue Commissioners receive the requested information within 1 month after the date on which the request was notified to the recipient — the date on which the Revenue Commissioners received the additional information, or

(*b*) if the Revenue Commissioners do not receive the requested information within 1 month after the date on which the request was made to the recipient — the date on which that period ends, or

(*c*) if the Revenue Commissioners receive the requested information within 1 month referred to in subparagraph (*a*), or that period expires without the Revenue Commissioners having received that information — the date that is 6 months after the date on which the refund application was made.

(7) Whenever the Revenue Commissioners consider it necessary to do so, they may, at any time before they make a decision with respect to a refund

application, request any of the persons mentioned in subparagraph (4) to provide further additional information concerning the application or the applicant.

(8) If the Revenue Commissioners request further additional information with respect to a refund application or the applicant as provided by subparagraph (7), they shall—

(*a*) decide whether or not to approve the application (whether wholly or partially), and

(*b*) notify their decision to the applicant by electronic means,

within 8 months after the date on which they received the refund application.

(9) If the Revenue Commissioners have reasonable doubts about the validity or accuracy of a refund application, they may request the original or a copy of the relevant invoice or importation document to be produced for inspection.

(10) Without limiting the grounds on which the Revenue Commissioners may refuse a refund application, they may refuse to approve such an application on the ground that a request made by them under this paragraph has been refused or has not been complied with within a reasonable time.

(11) If the Revenue Commissioners notify an applicant of their decision to approve a refund application either wholly or partially, they shall refund the amount due not later than 10 working days after the notification of the decision to the applicant.

(12) If the Revenue Commissioners decide to refuse to approve a refund application either wholly or partially, they shall include in their decision the grounds for the refusal.

Revenue Commissioners to deduct bank charges from refund amount

10. If the State is the Member State of refund, and the applicant requests payment of the refund to be made in another Member State, the Revenue Commissioners shall deduct from the refund amount any bank charges in respect of the payment.

Applicant to repay refunded amount if based on incorrect refund application

11. (1) An applicant who has obtained a refund from the Revenue Commissioners based on an incorrect refund application containing an erroneous claim or declaration (whether or not the error was made intentionally, recklessly or carelessly) shall—

(*a*) repay to the Revenue Commissioners the amount incorrectly obtained as a refund, and

(*b*) pay an amount of interest to the Revenue Commissioners.

(2) Any such interest is to be calculated at the rate provided for in section 21(1)(*b*) from the date on which the refund was made to the day on which the applicant repays to the Revenue Commissioners the amount incorrectly obtained as a refund.

(3) The liability imposed on an applicant by this paragraph is in addition to the liability imposed by section 27A (Penalty for deliberately or carelessly making incorrect returns, etc).

Revenue Commissioners to withhold payment of refund while repayment of incorrectly paid refund remains outstanding

12. While an applicant to whom paragraph 11 applies continues to fail to pay the Revenue Commissioners an amount payable under that paragraph, the Revenue Commissioners shall withhold any further refund to that applicant up to the amount that is due from the applicant under that paragraph.

Revenue to pay interest in respect of amounts not refunded on time

13. (1) If the Revenue Commissioners refund an amount due to an applicant but not within the time limits prescribed by paragraph 9, they shall pay an amount of interest to the applicant calculated at the rate provided for in section 21A (4) from the day following the last day of the period within which payment of the amount due is required to be made to the day on which the amount due is paid to the applicant.

(2) Subparagraph (1) does not apply if the applicant—

(*a*) provides additional information in accordance with a request made by the Revenue Commissioners but not within 1 month after the date on which the request was notified to the applicant, or

(*b*) fails to provide all of the additional information requested within that period.

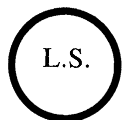
Non application of this Schedule in certain circumstances

14. This Schedule does not apply to—

(*a*) an applicant who supplies goods or services in respect of which the place of supply is the Member State of refund other than those for which the person who receives them is liable, or

(*b*) a transport service, or a service ancillary to such a service, that is exempted in the Member State of supply in accordance with Article 144, 146, 148, 149, 151, 153, 159 or 160 of Council Directive 2006/112/EC[11]".

[11]OJ No. L 347 of 11 December 2006, p. 1



GIVEN under my Official Seal,
7 December 2009.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of these Regulations and does not purport to be a legal interpretation.)

These Regulations give effect to certain provisions of the following Council Directives:

(*a*) Directive 2008/8/EC of 12 February 2008 (OJ No. L 44 of 20 February 2008), which deals with the place of supply (taxation) of services;

(*b*) Directive 2008/9/EC of 12 February 2008 (OJ No. L 44 of 20 February 2008), which replaces Council Directive 79/1072/EEC (the Eighth Directive[12]) and deals with refunds to foreign traders;

(*c*) Directive 2008/117/EC of 16 December 2008 (OJ No L 14 of 20 January 2009), which deals with anti-fraud measures.

In relation to Directive 2008/8/EC, these Regulations introduce two general rules, the application of which depends on whether the customer is a business or a consumer. They also provide that suppliers of B2B reverse charge services across Community borders must file a VIES return for those services supplied on or after 1 January 2010.

In relation to Directive 2008/9/EC, these Regulations replace the current procedure with a new electronic procedure.

In relation to Directive 2008/117/EC, these Regulations provide that with effect from 1 January 2010 VIES returns must, as a general rule, be made by traders on a monthly basis.

[12]OJ L331 of 27 December 1979, p. 11

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CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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