



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 5 October 2010
(OR. en)**

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**Interinstitutional File:
2010/0205 (CNS)**

FISC 100

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

COUNCIL DIRECTIVE 2010/.../EU

of ...

**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**

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ Opinion of 22 September 2010 (not yet published in the Official Journal).

² Opinion of 15 September 2010 (not yet published in the Official Journal).

Whereas:

- (1) Directive 2008/9/EC¹, laying down detailed rules for the refund of value added tax (VAT), provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, applies to refund applications submitted after 31 December 2009.
- (2) In order to apply Directive 2008/9/EC, Member States are obliged to develop electronic portals via which taxable persons established in a Member State submit applications for the refund of VAT incurred in a State where they are not established. Those electronic portals should have been operational from 1 January 2010.
- (3) A number of serious delays and certain technical problems have affected the development and operation of the electronic portals in a limited number of Member States, thereby preventing the timely submission of certain refund applications. Pursuant to Directive 2008/9/EC, refund applications are to be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. Given that deadline, and the inoperability of some of the electronic portals, some taxable persons risk being unable to exercise their right to deduct VAT on expenses incurred in 2009. The deadline should therefore exceptionally be extended to 31 March 2011 for applications relating to refund periods in 2009.

¹ OJ L 44, 20.2.2008, p. 23.

- (4) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.
- (5) In order to ensure that taxable persons will not be required to meet the deadline of 30 September 2010 in respect of applications relating to refund periods in 2009, this Directive should apply from 1 October 2010.
- (6) Directive 2008/9/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

¹ OJ C 321, 31.12.2003, p. 1.

Article 1

In Article 15(1) of Directive 2008/9/EC the following subparagraph shall be 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."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 October 2010. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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*.

It shall apply from 1 October 2010.

Article 4

This Directive is addressed to the Member States.

Done at ...,

For the Council

The President
