

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 DIRECTIVE 2008/9/EC

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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 establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

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>,

Whereas:

- (1) Considerable problems are posed, both for the administrative authorities of Member States and for businesses, by the implementing rules laid down by Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country<sup>(3)</sup>.
- (2) The arrangements laid down in that Directive should be amended in respect of the period within which decisions concerning applications for refund are notified to businesses. At the same time, it should be laid down that businesses too must provide responses within specified periods. In addition, the procedure should be simplified and modernised by allowing for the use of modern technologies.
- (3) The new procedure should enhance the position of businesses since the Member States shall be liable to pay interest if the refund is made late and the right of appeal by businesses will be strengthened.
- (4) For clarity and better reading purposes, the provision concerning the application of Directive 79/1072/EEC, previously contained in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>(4)</sup>, should now be integrated in this Directive.
- (5) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the

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principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (6) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>(5)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (7) In the interest of clarity, Directive 79/1072/EEC should therefore be repealed, subject to the necessary transitional measures with respect to refund applications introduced before 1 January 2010,

HAS ADOPTED THIS DIRECTIVE:

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- (1) OJ C 285 E, 22.11.2006, p. 122.
- (2) OJ C 28, 3.2.2006, p. 86.
- (3) OJ L 331, 27.12.1979, p. 11. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).
- (4) OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2007/75/EC (OJ L 346, 29.12.2007, p. 13).
- (5) OJ C 321, 31.12.2003, p. 1.