

L.N. 357 of 2009

**VALUE ADDED TAX ACT
(CAP. 406)**

Value Added Tax (Refund of Value Added Tax to taxable persons not established in Malta), Regulations, 2009

IN virtue of the powers conferred by articles 26 and 75 of the Value Added Tax Act, hereinafter referred to as “the Act”, the Minister of Finance, the Economy and Investment has made the following regulations:

1. (1) The title of these regulations is the Value Added Tax (Refund of Value Added Tax to taxable persons not established in Malta but established in another Member State), Regulations, 2009.

Citation, commencement and applicability.

(2) These regulations shall come into force on the 1st January 2010.

(3) These regulations shall apply to refund applications submitted after 31st December 2009.

(4) These regulations shall bring into force the provisions of Council Directive 2008/9/EC of 12th February 2008.

2. For the purpose of these regulations, and unless the context otherwise requires:

Interpretation.

“applicant” means the taxable person not established in Malta making the refund application.

“refund application” means the application for refund of VAT charged in Malta to the taxable person not established in Malta in respect of goods or services supplied to him by other taxable persons in Malta or in respect of the importation of goods into Malta.

“refund period” means the period mentioned in regulation 16 of these regulations covered by the refund application.

“taxable person not established in Malta” means a taxable person within the meaning of article 5 of the Act who is not established in Malta but established in the territory of another Member State.

Applicability.

3. These regulations shall apply to any taxable person not established in Malta who meets the following conditions:

(a) during the refund period, he has not had in Malta, the seat of his economic activity, or a fixed establishment from which business transactions were effected, or, if no such seat or fixed establishment existed, his domicile or normal place of residence;

(b) during the refund period, he has not supplied any goods or services deemed to have been supplied in Malta, with the exception of the following transactions:

(i) the supply of transport services and services ancillary thereto, exempted pursuant to items 4(2), 4(3), 4(4), 4(5), 4(6), 5, 6 and 7 of Part One of the Fifth Schedule to the Act and article 70 of the Act;

(ii) the supply of goods and services to a person who is liable for payment of VAT in accordance with article 20 (2) of the Act.

Non-applicability.

4. These regulations shall not apply to:

(a) amounts of VAT which, according to the Act, have been incorrectly invoiced;

(b) amounts of VAT which have been invoiced in respect of supplies of goods the supply of which is, or may be, exempt under items 1(2) and 3 of Part One of the Fifth Schedule to the Act.

Refunds.

5. (1) The Commissioner shall refund to any taxable person not established in Malta any value added tax charged in respect of goods or services supplied to him by other taxable persons in Malta or in respect of the importation of goods into Malta, insofar as such goods and services are used for the purposes of the following transactions:

(a) transactions referred to in Article 169(a) and (b) of Directive 2006/112/EC;

(b) transactions to a person who is liable for payment of VAT in accordance with article 20(2) of the Act.

(2) Without prejudice to regulation 6, for the purposes of these regulations, entitlement to an input tax refund shall be determined pursuant to the conditions laid down in the Tenth Schedule to the Act.

6. (1) To be eligible for a refund, a taxable person not established in Malta has to carry out transactions giving rise to a right of deduction in the Member State of establishment.

Persons eligible for a refund.

(2) When a taxable person not established in Malta carries out in the Member State in which he is established both transactions giving rise to a right of deduction and transactions not giving rise to a right of deduction in that Member State, only such proportion of the VAT which is refundable in accordance with regulation 5 may be refunded by the Commissioner as is attributable to the former transactions in accordance with Article 173 of Directive 2006/112/EC as applied by the Member State of establishment.

7. To obtain a refund of VAT, the taxable person not established in Malta shall address an electronic refund application to the Commissioner and submit it to the Member State in which he is established via the electronic portal set up by that Member State.

Electronic refund application.

8. (1) The refund application shall contain the following information:

Contents of a refund application.

- (a) the applicant's name and full address;
- (b) an address for contact by electronic means;
- (c) a description of the applicant's business activity for which the goods and services are acquired;
- (d) the refund period covered by the application;
- (e) a declaration by the applicant that he has supplied no goods and services deemed to have been supplied in Malta during the refund period, with the exception of transactions referred to in sub-paragraph (i) and (ii) of regulation 3(b);
- (f) the applicant's VAT identification number or tax reference number;
- (g) bank account details including IBAN and BIC codes.

(2) In addition to the information specified in sub-regulation (1) hereof, the refund application shall set out, for each invoice or importation document, the following details:

(a) name and full address of the supplier;

(b) except in the case of importation, the VAT identification number of the supplier, as allocated by the Commissioner in accordance with the provisions of article 10 of the Act;

(c) date and number of the invoice or importation document;

(d) taxable amount and amount of VAT expressed in the currency euro;

(e) the amount of deductible VAT calculated in accordance with regulation 5 and the second paragraph of regulation 6 expressed in euro;

(f) where applicable, the deductible proportion calculated in accordance with regulation 6 of these regulations, expressed as a percentage;

(g) nature of the goods and services acquired, described according to the codes in regulation 9 of these regulations.

Goods and services
description codes.

9. (1) In the refund application, the nature of the goods and services acquired shall be described by the following codes:

1 for fuel;

2 for hiring of means of transport;

3 for expenditure relating to means of transport (other than the goods and services referred to under codes 1 and 2);

4 for road tolls and road user charge;

5 for travel expenses, such as taxi fares, public transport fares;

6 for accommodation;

7 for food, drink and restaurant services;

8 for admissions to fairs and exhibitions;

9 for expenditure on luxuries, amusements and entertainment;

10 for other.

(2) If code 10 is used, the nature of the goods and services supplied shall be indicated.

(3) The Commissioner may require the applicant to provide additional electronic coded information as regards each code set out in sub-regulation (1) to the extent that such information is necessary because of any restrictions on the right of deduction as applicable under the Tenth Schedule to the Act.

10. Without prejudice to requests for information under regulation 20 of these regulations, the Commissioner may require the applicant to submit by electronic means a copy of the invoice or importation document with the refund application where the taxable amount on an invoice or importation document is 1,000 euro or more. Where the invoice concerns fuel, the threshold is 250 euro.

Documents that may be required.

11. The Commissioner may require the applicant to provide a description of his business activity by using the harmonised codes determined in accordance with the second subparagraph of Article 34a(3) of Council Regulation (EC) No 1798/2003 (1).

Description of business activity.

12. The Commissioner may specify which language or languages shall be used by the applicant for the provision of information in the refund application or of possible additional information.

Language.

13. (1) If subsequent to the submission of the refund application the deductible proportion is adjusted pursuant to Article 175 of Directive 2006/112/EC, the applicant shall make a correction to the amount applied for or already refunded.

Corrections pursuant to deductible proportion adjustments.

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

Purchases eligible for refund

14. (1) The refund application shall relate to the following:

(a) the purchase of goods or services which was invoiced during the refund period, provided that the VAT became chargeable before or at the time of the invoicing, or in respect of which the VAT became chargeable during the refund period, provided that the purchase was invoiced before the tax became chargeable;

(b) the importation of goods during the refund period.

(2) In addition to the transactions referred to in sub-regulation (1), the refund application may relate to invoices or import documents not covered by previous refund applications and concerning transactions completed during the calendar year in question.

Valid application.

15. (1) The refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered submitted only if the applicant has filled in all the information required under regulations 8, 9 and 11.

(2) The Member State of establishment shall send the applicant an electronic confirmation of receipt without delay.

Refund period.

16. The refund period shall not be more than one calendar year or less than three calendar months. Refund applications may, however, relate to a period of less than three months where the period represents the remainder of a calendar year.

Minimum refund amounts.

17. (1) If the refund application relates to a refund period of less than one calendar year but not less than three months, the amount of VAT for which a refund is applied for may not be less than 400 euro.

(2) If the refund application relates to a refund period of a calendar year or the remainder of a calendar year, the amount of VAT may not be less than 50 euro.

Circumstances applicable in the Member State of establishment.

18. (1) The Member State of establishment shall not forward the application to the Commissioner where, during the refund period, any of the following circumstances apply to the applicant in that Member State of establishment:

(a) he is not a taxable person for VAT purposes;

(b) he carries out only supplies of goods or of services which are exempt without deductibility of the VAT paid at the preceding stage pursuant to Articles 132, 135, 136, 371, Articles 374 to 377, Article 378(2)(a), Article 379(2) or Articles 380 to 390 of Directive 2006/112/EC or provisions providing for identical exemptions;

(c) he is covered by the exemption for small enterprises provided for in Articles 284, 285, 286 and 287 of Directive 2006/112/EC;

(d) he is covered by the common flat-rate scheme for farmers provided for in Articles 296 to 305 of Directive 2006/112/EC.

(2) The Member State of establishment shall notify the applicant by electronic means of the decision it has taken pursuant to sub-regulation (1) hereof.

19. (1) The Commissioner shall notify the applicant without delay, by electronic means, of the date on which the application is received.

Receipt of application.

(2) The Commissioner shall notify the applicant of the decision to approve or refuse the refund application within four months from the date of its receipt.

20. (1) Where the Commissioner considers that he does not have all the relevant information on which to make a decision in respect of the whole or part of the refund application, he may request, by electronic means, additional information, in particular from the applicant or from the competent authorities of the Member State of establishment, within the four-month period referred to in regulation 19(2). Where the additional information is requested from someone other than the applicant or a competent authority of a Member State, the request shall be made by electronic means only if such means are available to the recipient of the request.

Additional information and further additional information.

(2) If necessary, the Commissioner may request further additional information. The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the Commissioner has reasonable doubts regarding the validity or accuracy of a particular claim. In that case, the thresholds mentioned in regulation 10 shall not apply.

(3) The Commissioner shall be provided with the information requested under sub-regulation (1) within one month of the date on which the request reaches the person to whom it is addressed.

Notifications following additional information requests.

21. Where the Commissioner requests additional information, he shall notify the applicant of his decision to approve or refuse the refund application within two months of receiving the requested information or, if he has not received a reply to his request, within two months of expiry of the time limit laid down in regulation 20(2). However, the period available for the decision in respect of the whole or part of the refund application shall always be at least six months from the date of receipt of the application by the Commissioner:

Provided that, where the Commissioner requests further additional information, he shall notify the applicant of his decision in respect of the whole or part of the refund application within eight months of receipt of the application.

Method of payment.

22. (1) Where the refund application is approved, refunds of the approved amount shall be paid by the Commissioner at the latest within 10 working days of the expiry of the deadline referred to in regulation 19(2) or, where additional or further additional information has been requested, the deadlines referred to in regulation 21.

(2) The refund shall be paid in Malta or, at the applicant's request, in any other Member State. In the latter case, any bank charges for the transfer shall be deducted by the Commissioner from the amount to be paid to the applicant.

Refusal and appeal.

23. (1) Where the refund application is refused in whole or in part, the Commissioner shall notify the applicant with the decision including the grounds for refusal.

(2) Appeals against decisions to refuse a refund application may be made by the applicant to the Value Added Tax Appeals Board in terms of article 44 and the Ninth Schedule to the Act.

(3) Where the Commissioner fails to take a decision on a refund application within the time limits mentioned in regulations 19(2) and 21, it shall mean that the application is deemed to have been rejected.

Recovery, administrative penalty and interest.

24. (1) Where a refund has been obtained in a fraudulent way or otherwise incorrectly, the Commissioner shall proceed directly to recover the amounts wrongly paid and any penalties and interest imposed

in accordance with sub-regulation (2) hereof, without prejudice to the provisions on mutual assistance for the recovery of VAT.

(2) Where a refund has been obtained in the circumstances mentioned in sub-regulation (1) hereof, an administrative penalty equivalent to twenty per cent of the amount unduly received shall become due, together with interest at the rate of zero point seven five per cent (0.75 %) per month or part thereof which interest shall start to run from the date of payment of the amount unduly received to the date when such amount together with the administrative penalty and interest is paid back to the Commissioner:

Provided that, the amount of such administrative penalty and interest taken together shall not exceed the amount obtained in a fraudulent or any other irregular manner.

(3) Where an administrative penalty or interest has been imposed but has not been paid, the Commissioner may suspend any further refund to the taxable person concerned up to the unpaid amount.

25. The Commissioner shall take into account as a decrease or increase of the amount of the refund any correction made concerning a previous refund application in accordance with regulation 13 or, where a separate declaration is submitted, in the form of separate payment or recovery.

Account of adjustment of refund.

26. (1) Interest shall be due to the applicant by the Commissioner on the amount of the refund to be paid if the refund is paid after the last date of payment pursuant to regulation 22(1).

Interest due to applicant.

(2) If the applicant does not submit the requested additional or further additional information to the Commissioner within the specified time limit, the first paragraph shall not apply. It shall also not apply until the documents to be submitted electronically pursuant to regulation 10 have been received by the Commissioner.

27. (1) Interest shall be calculated from the day following the last day for payment of the refund pursuant to regulation 22(1) until the day the refund is actually paid.

Interest calculation.

(2) Interest shall apply in accordance with Article 24(3) of the Act.

28. (1) The Refund of Value Added Tax to taxable persons not established in Malta, Regulations, 2004 shall be revoked. However, its provisions shall continue to apply to refund applications submitted before 1st January 2010.

Revokes L.N. 219 of 2004.

(2) References to the revoked regulations shall be construed as references to these regulations except for refund applications submitted before 1st January 2010.

