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DIRECTION GENERALE DES FINANCES PUBLIQUES

PARIS, LE 29 AVR. 2020

DIRECTION DE LA LEGISLATION FISCALE

Sous-direction D - Bureau D1

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Ref : 0181 CAUSERSICBRESON02\DESKTOPI

Mr. President,

In a letter dated 7 April 2020, your association drew the attention of the Minister of Action and Public Accounts to the difficulties encountered of refunding value added tax (VAT) to taxable persons not established in France in the context of the Covid19 pandemic health crisis.

You propose that the deadlines for these taxable persons to submit their applications for the refund of the tax for which the tax point fell in 2019 be extended by six months or, failing that, you suggest that the deadline for submitting these applications for those established outside the European Union (EU) be extended from 30 June to 30 September 2020.

We have the following comments as regards your request.

As far as taxable persons not established in France but established in another EU Member State are concerned, the conditions and the practical means to obtain VAT refunds are set down in articles 242-0 M to 242-0 Z of Annex II to the General Tax Code (CGI) and are directly derived from the provisions of Council Directive 2008/9/EC of 12 February 2008, which modernised and rationalised the refund procedure established by Directive No. 79/1072/EEC, the so-called "Eighth Directive".

In this respect, Article 15(1) of Directive 2008/9/EC stipulates that the application for a refund shall be submitted to the Member State of establishment no later than 30 September of the calendar year following the refund period¹.

The Community courts have already ruled that this deadline constitutes a statutory time limit and that the aim of the Directive was to harmonise divergent practices between States which could lead to abuse of process².

Monsieur Stephen DALE Président de l'IVA
Kleine Moerstraat SB
8000 BRUGGE

¹ Provisions transposed in article 242-0 R of appendix II to General Tax Code (CGI).

² CJEU. 21 June 2012, Case C-294/11, Ministero dell'Economia e delle Finanze, Agenzia delle Entrate contre Elsacom NJ'.

Consequently, any extension of the time limit provided for in the above Directive requires the unanimous agreement of all European tax administrations (IVA comment - *Member states' governments*). This is in any event the only possible practical solution since Community established taxable persons wishing to obtain a refund of VAT incurred in those Member States in which they are not established are required to submit their applications centrally and electronically by means of the portal made available to them in their Member State of establishment³.

I therefore invite you to contact the relevant department in the European Commission, bearing in mind that the deadline of 30 September is still a long way off.

However, for taxable persons established outside the EU, the arrangements for the refund of VAT are laid down in Council Directive 86/560/EEC of 17 November 1986, the provisions of which have been transposed into Articles 242-0 Z quarter to 242-0 Z of Appendix II of the General Tax Code (CGI).

This directive leaves it up to the Member States to determine the deadlines by which the refund claim must be submitted. Thus, for VAT that has become due (ie the tax point) for the year 2019, the refund must be applied for to the tax authorities by 30 June 2020 at the latest.

However, in order to take into account the exceptional context of the current health emergency and in view of the very close deadline of 30 June 2020, taxable persons not established in the EU will not, I confirm, have their refund claims rejected as being submitted out of time if their application for a VAT refund is submitted to the Non-Resident Tax Directorate (DINR) by 30 September 2020 at the latest.

Please accept, Mr. President, the assurance of my highest consideration.

LE CHEF DE SERVICE
ADJOINT DU DIRECTEUR DE
LA LÉGISLATION FISCALE


Bruno MAUCHAUFFÉE

³ Ref article 7 of directive 2008/9/CE transposed in article 242-0 R appendix III to General Tax Code