**ORDINANCE NO H-9 OF DECEMBER 16, 2009 ON THE REFUND OF VALUE ADDED TAX TO TAX LIABLE PERSONS, NOT ESTABLISHED IN THE MEMBER STATE OF REFUND, BUT ESTABLISHED IN ANOTHER MEMBER STATE OF THE EUROPEAN UNION (TITLE AMEND. - SG 48 OF 2012, IN FORCE FROM 01.07.2012)**

*In force from 01.01.2010*

*Issued by the Ministry of Finance*

*Prom. SG. 101/18 Dec 2009, amend. SG. 96/7 Dec 2010,* ***amend. SG. 48/26 Jun 2012***

Art. 1 (1) This Ordinance shall regulate:

1. (amend. – SG 48/12, in force from 01.07.2012) the terms and the procedure for refund of value added tax charged on tax liable persons, established and registered for the purposes of value added tax in another Member State of the European Union, for goods purchased by them, services supplied and import performed in the territory of the country, and

2. (amend. – SG 48/12, in force from 01.07.2012) the terms and the procedure for submitting VAT refund application by tax liable persons, established in Bulgaria and registered under the Value Added Tax Act for goods purchased, services supplied or import performed in the territory of another Member State of the European Union.

(2) This Ordinance shall not apply to amounts of VAT that that have been improperly charged, including intra-Community supplies and export carried out.

Art. 2 Pursuant to the provisions of this Ordinance, value added tax shall be refunded to any tax liable person not established in Bulgaria, who meets the following requirements:

1. during the refund period, he/she has not had a seat, registered office or a permanent establishment or, where there are not such, permanent address or habitual residence in the territory of the country, and

2. during the refund period he/she has not carried out any supplies with place of performance in Bulgaria, with the exception of supplies charged with zero-rate, the provision of transport services and services ancillary thereto, and/or supplies, the recipient of which is a person – payer of the tax pursuant to Art. 82, Para 2 of the Value Added Tax Act, and

3. the person is registered for VAT purposes in the Member State he or she is established.

Art. 3 (1) The person referred to in Art. 2 shall be entitled to be refunded the VAT charged by a person registered under the VAT Act for goods purchased, services provided and import carried out by him or her within the territory of the country.

(2) The right to refund pursuant to Para 1 shall be applicable in those cases where the goods and services are used for supplies with place of performance outside the territory of the country, which would give the right of tax credit deduction in accordance with Chapter Seven – “Tax Credit” from the VAT Act, if the place of performance was within the territory of the country, as well as for the supplies with place of performance in the territory of the country pursuant to Art. 2, item 2.

(3) The right to refund shall be present in those cases where the tax liable person, in accordance with Art. 2, carries out taxable supplies with the right of tax credit deduction in the Member State of establishment.

(4) The person referred to in Art. 2 shall be entitled to partial VAT refund when in the Member State of establishment he or she performs both supplies with the right of tax credit deduction and supplies with no such right. The amount of the tax to be refunded shall be calculated on the basis of the applicable by the person coefficient for the right of partial tax credit, calculated as per the rules in the Member State of establishment.

(5) When a particular supply is intended for provision of supplies with right of tax credit only, Para 4 shall not apply.

Art. 4 (1) The right of VAT refund shall be exercised by the persons referred to in Art. 2 by means of submitting refund application to the competent revenue body of the National Revenue Agency, via an electronic portal set up by the person’s Member State of establishment.

(2) The receipt of an application by the National Revenue Agency shall be verified by sending an electronic confirmation to the Member State of establishment of the respective person.

(3) The information in the refund application, as well as any additional information eventually requested, shall be provided by the person referred to in Art. 2 in Bulgarian or in English language.

(4) In the refund application, the person referred to in Art. 2 shall provide a description of his or her business activity by using the harmonized codes determined pursuant to Art. 34a, para 3, second subparagraph of Council Regulation (EC) No 1798/2003 of October 7, 2003 on Administrative Cooperation in the Field of Value Added Tax on the basis of the NACE classification, approved in accordance with Council Regulation (EC) No 1893/2006, amending Council Regulation (EC) No 3037/90 (Council Regulation (EC) 1798/2003).

(5) In his/her refund application the person referred to in Art. 2 shall indicate the nature of the acquired goods and services described in compliance with the codes of Annex No. 2. Where the person uses code 10, he or she shall specify also the nature of the goods and services provided.

(6) The refund application shall not contain copies of the invoices and the import documents.

Art. 5 (1) The right of VAT refund as regard to goods purchased and services provided refers to invoiced deliveries, the tax on which has become chargeable, as well as to import carried out in the territory of the country during the refund period.

(2) This right shall be exercised personally or by an authorized person.

(3) The person referred to in Art. 2 may exercise the VAT refund right not later than September 30th of the calendar year, following the year during which the right of tax refund has arisen.

(4) The period of refund is a calendar quarter and/or a calendar year. Refund applications may, however, relate to a period of less than three months where the period is a remainder of a calendar year.

(5) If the refund application refers to a period of a calendar quarter, the amount of tax subject to refund shall not be less than BGN 800.

(6) If the refund application refers to a period of a calendar year or the remainder of a calendar year, the amount of the tax subject to refund shall not be less than BGN 100.

(7) Any omitted invoices for deliveries or import documents as regards to periods included in prior applications shall be added to applications, submitted for next periods, not later than the deadline referred to in Para 3.

Art. 6 (1) In case of change in the coefficient specified by the person pursuant to Art. 2 for the right of partial tax credit after submission of the refund application, the said person shall be entitled to correct the refund amount specified in the previous application or the amount already refunded.

(2) The correction shall be made in the calendar year, following the refund period by submitting a declaration via the electronic portal of the Member State of establishment of the person referred to in to Art. 2, not later than September 30th of the same year.

(3) If the person referred to in Art. 2 establishes any incorrectly entered invoices or import papers in the refund application submitted by him or her, a correction refund application may be filed. The corrective application shall be submitted by the end of the calendar year following the refund period.

Art. 7 (1) The competent revenue body shall refund the tax on the basis of the application received, after it has been established that pursuant to the provisions of the Tax and Social Security Procedure Code, the conditions of the VAT Act, the Regulations for the application of the VAT Act, and this Ordinance about the right of VAT refund, have been met.

(2) (amend. – SG 48/12, in force from 01.07.2012) The revenue body shall notify by electronic means the person referred to in Art. 2 at the latest within four months from receipt of the refund application of its decision in respect of the whole or partial approval or refusal of the refund application in order the applicant to be delivered the decision.

(3) Where the revenue body considers that it does not have all the relevant information in respect of the refund application, it may, by electronic means, request further information within the time limits specified in Para 2, from the person referred to in Art. 2, from a person authorized by the latter or from the Member State of establishment of the person.

(4) Where necessary, the revenue body may request further additional information pursuant to the provisions of Para. 3.

(5) The revenue body may also request to be provided with a copy or an original of the invoice or the import document within the time limit specified in Para. 2. After conclusion of proceedings the original documents shall be returned to the person.

(6) The time limit for providing the information pursuant to Para 3 – Para 5 is at the latest within a month after the receipt of the request for additional information.

(7) Where the revenue authority requests additional information, it shall notify the person referred to in Art. 2 following the provisions of Para. 2 of its decision on approving or rejecting the refund application within two months after receiving the requested information, or, if it has not received a reply - within two months after the expiration of the time limit specified in Para 6.

(8) The time limit of the revenue authority to decide on approving or rejecting the refund application, in the cases pursuant to Para 7, is at least within six months, but not later than the eighth month of the receipt of the refund application.

(9) (amend. – SG 48/12, in force from 01.07.2012) In the cases referred to in Para. 4 the time limit for sending the decision to the person under Art. 2 to be handed over to the applicant is up to eight months after the receipt of the refund application.

Art. 8 (1) (amend. – SG 48/12, in force from 01.07.2012) Regardless of the date of service of the decision, the tax subject to refund shall be reimbursed to the person referred to in Art. 2 in BGN at the latest within ten working days from expiration of the deadline under Art. 7, Para 2, respectively Para 8 or Para 9, to a bank account stated by the person.

(2) When the tax referred to in Para. 1 is being refunded to a bank account other than a bank account in a Bulgarian bank or a foreign bank branch in the Republic of Bulgaria, all bank fees related to the tax refund, as well as currency exchange, shall be deducted from the established tax to be refunded.

Art. 9 (1) Where the refund has been paid after the expiration of the deadline under Art. 8, Para 1, statutory interest shall be paid together with the refund payment.

(2) Para 1 shall not apply in the cases where the person does not provide the requested additional or further additional information pursuant to Art. 7 within the time limit fixed in Art. 7, Para 6.

(3) Interest shall be due for the period from the expiration of the deadline of refund until the date the amount has been ordered to be transferred to the person’s bank account.

Art. 10 (1) The decision for whole or partial rejection of the refund application is subject to appeal by the person referred to in Art. 2, following the procedure of appealing offsetting and refund statements in accordance with Art. 152 and the following of the Tax-Insurance Procedure Code.

(2) If the revenue body fails to inform the person referred to in Art. 2 of the decision taken on the refund application within the time limits fixed by the Ordinance, Art. 131 of the Tax-Insurance Procedure Code shall be applied.

Art.11 (1) (amend. – SG 48/12, in force from 01.07.2012) The delivery of the decision of the revenue body pursuant to Art. 7 and the decision of the decisive authority pursuant to Art. 10 shall made by electronic means or by e-mail containing a hyperlink to a scanned copy of the decision. As regards to verification of the date of service of the notice to the person under Art. 2 or his/her representative, Art. 30, para. 6 of the Tax-Insurance Procedure Code shall apply.

(2) When the revenue authority requests additional information or documents pursuant to Art. 7, Para 3 and Art. 4 or Art. 7, Para 5, in order to verify the exact date of service of the notification to the person under Art. 2 or to a person authorized by him/her, Art. 30, Para 6 of Tax-Insurance Procedure Code shall apply.

(3) Where the person under Art. 2 has an authorized representative, established in the territory of the country, the service of the documents shall be carried out and verified pursuant to Art 28 – Art 30 of the Tax-Insurance Procedure Code.

Art.12 (1) Unlawfully refunded tax shall be returned by the person referred to in Art. 2, including any interest paid.

(2) When being notified by the revenue body, the person under Art. 2 shall return the unlawfully refunded tax at the latest within three days, considered as of the date of receiving the notification thereof.

(3) In those cases where the person under Art. 2 does not pay back the unlawfully refunded tax together with the interest accrued, the revenue body shall offset the above-mentioned from the amounts, subject to refund as per any further refund application submitted by the person referred to in Art. 2 up to the amount subject to refund.

Art. 13 (1) (amend. – SG 48/12, in force from 01.07.2012) A taxable person, established in the territory of the state who wishes to be refunded VAT from another Member State of the European Union for VAT charged on goods purchased, services provided or importation carried out by him or her, shall meet the requirements, envisaged in The Member State of refund.

(2) The rights and the obligations of the person referred to in Para. 1 as well as the periods of exercising the right of refund shall be regulated in compliance with the legislation of the Member State of refund.

Art. 14 (1) (amend. – SG 48/12, in force from 01.07.2012) The right of VAT refund shall be exercised by the persons under Art.13 by means of electronic submission of refund application, signed with a qualified electronic signature and addressed to the competent authority of refund in the Member State of refund via the especially designed for such purposes WEB–based application on the web site of the National Revenue Agency by entering the data though the application or submitting a pregenerated file whose format and structure comply with Annex No.1.

(2) The application shall be submitted by the person or by an authorized representative.

(3) The application shall be considered submitted only if it contains the complete information as per Art. 15.

(4) The application shall not be forwarded to the Member State of refund, if during the period for which refund is requested the person has not been registered under the Value Added Tax Act or if he or she has only carried out activities and/or provided goods or services which with regards to which there is no right of tax credit deduction.

(5) The information in the refund application, as well as the additional information eventually requested by the Member State of refund through the National Revenue Agency, shall be provided by the person under Art.13 in Bulgarian language and in one of the languages specified by the Member State of refund.

(6) In the refund application the persons referred to in Art.13 shall provide description of their business activity using the unified codes set out in the second subparagraph of Art. 34а, Para. 3, of Council Regulation (EC) 1798/2003.

(7) The person under Art.13 shall be informed by electronic means if the refund application has or has not been forwarded to the Member State of refund. If the Member State of refund shall inform the National Revenue Agency about the date of application receipt, and the National Revenue Agency shall notify the person thereof by e-mail.

Art. 15. (1) The refund application shall contain the following information:

1. name and complete address of the person under Art. 13;

2. contact address for electronic communication;

3. description of the business activity with regards to which the goods and services provided are intended by means of unified codes specified in the second subparagraph of Art. 34а, Para.3, of Council Regulation (EC) 1798/2003.

4. refund period covered by the application;

5. declaration from the applicant stating that during the refund period he or she has not carried out provision of goods and services with place of performance in the territory of the Member State of refund, except for transport services and services ancillary thereto, that are exempt supplies with right of tax credit or supplies charged with zero rate and/or supplies whose recipient is the person paying the tax according to the legislation of the Member State of refund.

6. identification number as per Art. 94, Para.2 of the Value Added Tax Act as well as BG prefix;

7. bank account information, including IBAN and BIC codes.

(2) In addition to the information stated in Para.1, the refund application shall also contain the following data from the invoices or import documents:

1. name and complete address of the provider;

2. identification number for VAT purposes or tax reference number of the supplier specified by the Member State of refund under Art. 239 and 240 of Council Directive 2006/112/EC dated 28 November, 2006 on the Common System of Value Added Tax (Directive 2006/112/EC) – except in the cases of import;

3. prefix specified by the Member State of refund in compliance with Art. 215 of Directive 2006/112/EC - – except in the cases of import;

4. date and number of the invoice or the import document;

5. tax basis and amount of the tax given in the respective currency;

6. amount of the value added tax to be refunded given in the respective currency and calculated according to the coefficient for establishing the right of the person for partial tax credit as per Art. 73 of the Value Added Tax Act, applicable for the period of submitting the application, if the person is entitled to partial tax credit for the respective delivery;

7. the partial tax credit expressed as percentage - if the person under Art. 13 is entitled to partial tax credit;

8. the nature of the goods and services acquired, described according to the codes as per Annex No. 2. When code 10 is used, the nature of the goods and services provided shall also be specified.

(3) If the Member State of refund requests to complement the refund application with a copy of the invoice or the import document based on which tax refund is requested for the respective period, the person under Art.13 shall submit electronic copies of the invoices or the import documents, based on which he or she requests tax refund for the respective period.

Art.16. (1) If the National Revenue Agency shall receive additional information enquiries filed by the Member State of refund and addressed to the person under Art.13 as regards to refund applications submitted by such persons and decisions regarding these requests, these enquiries shall be delivered to the persons pursuant to the procedure envisaged in the Tax- Insurance Procedure Code. The Member State of refund shall be informed about the date of delivery via electronic means.

(2) The information provided by the person under Art.13 to the revenue bodies, which was additionally requested by the Member State of refund pursuant to Para.1, shall be forwarded to the Member State of refund by the National Revenue Agency in compliance with Council Regulation EC No. 1798/2003.

**Additional provisions**

§ 1. For the purposes of the present Ordinance:

1. "Competent revenue body" within the meaning of of this Ordinance is the Director of the Territorial Directorate of the National Revenue Agency in Sofia or a revenue authority authorized by him/her.

2. "Member State of refund" means the Member State in which value added tax is charged to the taxable person, who is not established in this state, as regards goods or services provided to him/her from other tax liable persons in this Member State, or for import carried out by him/her in this Member State.

3. „Refund period” is the period specified in Art. 5 and covered by the refund application.

4. „Refund application” means the application for refund of VAT charged in the Member State of refund to the taxable person, who is not established in the Member State of refund, for goods or services provided to him/her by other tax liable persons in this Member State, or for import of goods to this Member State;

5. The taxable person under Art. 2 and Art. 13, who is not established in the Member State of refund, is the applicant who submits the refund application.

§ 1а. This Ordinance introduces the provisions of Council Directive 2008/9/EC dated 12 February, 2008 laying down detailed rules for value added tax refund, specified in Directive 2006/112/EC, to tax liable persons not established in the Member State of refund, but established in another member state (OB, L 44 /11 of 20 February, 2008).

**Transitional and concluding provisions**

§ 2. This Ordinance revokes Ordinance Н-11 of 24.08.2006 for refunding paid value added tax to foreign persons established and VAT registered in the territory of the Community (promulgated in State Gazette, Issue 75 of 2006, amended, Issue 106 of 2006).

§ 3. This Ordinance is issued in compliance with 81, Para.1, Item.1 and Para.2 of the Value Added Tax Act.

§ 4. (1) As regards to refund applications submitted by tax liable persons after 01.01.2010 inclusive shall apply the provisions of the present Ordinance.

(2) For refund applications submitted by 31.12.2009 inclusively shall apply the provisions of the revoked Ordinance Н-11 of 24.08.2006.

§ 4а. (New - SG 96/10, in force from 01.10.2010 г.) A refund applications which refers to refund periods commencing as of the year 2009 shall be submitted no later than March 31, 2011.

§ 5. The Ordinance shall enter into force on January 1, 2010.

**Additional provisions
TO ORDINANCE NO H-9 OF DECEMBER 16, 2009 ON THE REFUND OF VALUE ADDED TAX TO TAX LIABLE PERSONS, NOT ESTABLISHED IN THE MEMBER STATE OF REFUND, BUT ESTABLISHED IN ANOTHER MEMBER STATE OF THE COMMUNITY**

(PROM. - SG 96/10, IN FORCE FROM 07.12.2010)

§ 3. This ordinance shall introduce the provisions of Council Directive 2010/66/EU of 14 October 2010 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 (OВ, L 275 of October 20, 2010).

**Concluding provisions
TO ORDINANCE TO AMEND AND SUPPLEMENT ORDINANCE NO H-9 OF DECEMBER 16, 2009 ON THE REFUND OF VALUE ADDED TAX TO TAX LIABLE PERSONS, NOT ESTABLISHED IN THE MEMBER STATE OF REFUND, BUT ESTABLISHED IN ANOTHER MEMBER STATE OF THE COMMUNITY**

(PROM. - SG 96/10, IN FORCE FROM 07.12.2010)

§ 4. The Ordinance shall enter into force from the date of its promulgation in the State Gazette, except for § 2, which shall enter into force from October 1, 2010.

**Concluding provisions
TO ORDINANCE TO AMEND ORDINANCE NO H-9 OF DECEMBER 16, 2009 ON THE REFUND OF VALUE ADDED TAX TO TAX LIABLE PERSONS, NOT ESTABLISHED IN THE MEMBER STATE OF REFUND, BUT ESTABLISHED IN ANOTHER MEMBER STATE OF THE COMMUNITY**

(PROM. - SG 48/12, IN FORCE FROM.07.2012)

§ 8. The Ordinance shall enter into force as of July 1, 2012.