

COMMISSION REGULATION (EC) No 1174/2009**of 30 November 2009****laying down rules for the implementation of Articles 34a and 37 of Council Regulation (EC) No 1798/2003 as regards refunds of value added tax under Council Directive 2008/9/EC**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

for the purposes of applying Article 9(2) of Directive 2008/9/EC.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 ⁽¹⁾ and in particular Articles 34a and 37 thereof,Having regard to 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 ⁽²⁾, and in particular Article 11 thereof,

Whereas:

- (1) Article 9(2) of Directive 2008/9/EC provides that the Member State of refund may require the applicant to provide additional electronic coded information supplementing the codes set out in Article 9(1) of Directive 2008/9/EC, to the extent that such information is necessary due to any restrictions on the right of deduction under Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽³⁾, or for the implementation of a derogation received by the Member State of refund under Articles 395 or 396 of that Directive.
- (2) Pursuant to Article 34a(2) of Regulation (EC) No 1798/2003, the competent authorities of the Member State of refund are to notify by electronic means the competent authorities of the other Member States of any information required by them under Article 9(2) of Directive 2008/9/EC.
- (3) For that purpose, the technical details for the transmission of the additional information required by Member States under Article 9(2) of Directive 2008/9/EC should be determined. In particular, the codes to be used for the transmission of this information should be specified. The codes set out in the Annex to this Regulation have been developed by the Standing Committee on Administrative Cooperation (SCAC) on the basis of the information required by Member States

- (4) Applicants may be required according to Article 11 of Directive 2008/9/EC to provide a description of their business activity using harmonised codes. For that purpose, the commonly used codes provided for in Article 2(1)(d) of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains ⁽⁴⁾ should be employed.

- (5) Article 14 of Regulation (EC) No 1798/2003 states that the requested authority shall, at the request of the requesting authority, notify the addressee of all instruments and decisions emanating from the administrative authorities and concerning the application of VAT legislation in the Member State in which the requesting authority is established.

- (6) Where a Member State of refund requests the Member State of establishment to notify the applicant of its decisions and instruments for the purposes of the application of Directive 2008/9/EC, for reasons of data protection, it should be possible that such notification be made via the common communication network/common system interface (CCN/CSI) as defined in Article 2(1)(19) of Regulation (EC) No 1798/2003.

- (7) This Regulation lays down rules implementing, inter alia, Article 34a inserted in Regulation (EC) No 1798/2003 by Article 1 of Council Regulation (EC) No 143/2008 of 12 February 2008 amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation and the exchange of information concerning the rules relating to the place of supply of services, the special schemes and the refund procedure for value added tax ⁽⁵⁾. Therefore, this Regulation should enter into force on the same date that Article 1 of Regulation (EC) No 143/2008 becomes applicable.

- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Administrative Cooperation,

⁽¹⁾ OJ L 264, 15.10.2003, p. 1.⁽²⁾ OJ L 44, 20.2.2008, p. 23.⁽³⁾ OJ L 347, 11.12.2006, p. 1.⁽⁴⁾ OJ L 393, 30.12.2006, p. 1.⁽⁵⁾ OJ L 44, 20.2.2008, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Where a Member State of refund notifies other Member States that it requires additional electronic coded information as provided for in Article 9(2) of Directive 2008/9/EC, the codes specified in the Annex to this Regulation shall be used for the purposes of transmitting this information.

Article 2

Where a Member State of refund requires a description of the applicants business activity as provided for in Article 11 of Directive 2008/9/EC, such information shall be given at the

fourth level of the NACE Rev. 2 codes, as provided for in Article 2(1)(d) of Regulation (EC) No 1893/2006.

Article 3

Where a Member State of refund requests a Member State of establishment of an addressee to notify the addressee of instruments and decisions relating to a refund under Directive 2008/9/EC, that notification request may be transmitted via the CCN/CSI network as defined in Article 2(1)(19) of Regulation (EC) No 1798/2003.

Article 4

This Regulation shall enter into force on 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 2009.

For the Commission

László KOVÁCS

Member of the Commission

ANNEX

Codes for use in the transmission of information under Article 34(a)(2) of Regulation (EC) No 1798/2003

Code 1. Fuel	
1.1 Fuel for means of transport with a mass greater than 3 500 kg, other than means of transport for paying passengers	1.1.1 Petrol 1.1.2 Diesel 1.1.3 LPG 1.1.4 Natural Gas 1.1.5 Bio fuel
1.2 Fuel for means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers	1.2.1 Petrol 1.2.2 Diesel 1.2.3 LPG 1.2.4 Natural Gas 1.2.5 Bio fuel 1.2.6 PKW 1.2.7 LKW
1.3 Fuel for means of transport for paying passengers	1.3.1 Petrol 1.3.2 Diesel 1.3.3 LPG 1.3.4 Natural Gas 1.3.5 Bio fuel
1.4 Fuel used specifically for test vehicles	
1.5 Petroleum products used for lubrication of means of transport or engines	
1.6 Fuel purchased for resale	
1.7 Fuel for means of goods transport	
1.8 Fuel for passenger and multipurpose cars	1.8.1 Used exclusively for business purposes 1.8.2 Used partly for commercial passenger transport, driving instruction or rental purposes 1.8.3 Used partly for other than 1.8.2 purposes
1.9 Fuel for motorcycles, caravans and vessels for recreational or sports purposes, and aircraft with a mass less than 1 550 kg	1.9.1 Used for commercial passenger transport, driving instruction or rental purposes 1.9.2 Used for business purposes
1.10 Fuel for machines and agriculture tractors	1.10.1 Petrol 1.10.2 Diesel 1.10.3 LPG 1.10.4 Natural Gas 1.10.5 Bio fuel

1.11	Fuel for means of passenger transport with less than 9 spaces or a rental car	1.11.1 Petrol 1.11.2 Diesel 1.11.3 LPG 1.11.4 Natural Gas 1.11.5 Bio fuel
1.12	Fuel for means of passenger transport other than 1.8 and 1.9	
1.13	Fuel for means of transport for which there exists no restriction on the right to deduct	
1.14	Fuel for means of transport for which there exists a restriction on the right to deduct.	

Code 2. Hiring of means of transport

2.1	Hiring of means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers	
2.2	Hiring of means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers	2.2.1 For a continuous period exceeding 6 months 2.2.2 For a continuous period equal to or not exceeding 6 months 2.2.3 PKW 2.2.4 LKW
2.3	Hiring of means of transport for paying passengers	2.3.1 For a continuous period exceeding 6 months 2.3.2 For a continuous period equal to or not exceeding 6 months
2.4	Hiring of means of goods transport	
2.5	Hiring of passenger and multipurpose cars	2.5.1 Used exclusively for business purposes 2.5.2 Used partly for commercial passenger transport or driving instruction 2.5.3 Used partly for other than 2.5.2 purposes
2.6	Hiring of motorcycles, caravans and vessels for recreational or sports purposes, and aircraft with a mass less than 1 550 kg	2.6.1 Used for commercial passenger transport or driving instruction 2.6.2 Used for other business purposes
2.7	Hiring of passenger cars of the M1 category	
2.8	Hiring of means of passenger transport with more than 9 spaces	
2.9	Hiring of means of passenger transport with less than 9 spaces	2.9.1 Used for commercial operations 2.9.2 Used for other than commercial operations

2.10	Hiring of means of transport for which there exists no restriction on the right to deduct	
2.11	Hiring of a means of transport for which there exists a restriction on the right to deduct.	
2.12	Hiring of means of transport other than 2.5 and 2.6	

Code 3. Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)

3.1	Expenditure relating to means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers	3.1.1	Purchase of means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers
		3.1.2	Maintenance of a means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers
		3.1.3	Purchase and installation of accessories for a means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers
		3.1.4	Garaging or parking of a means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers
		3.1.5	Other expenditure relating to a means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers
3.2	Expenditure relating to means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers	3.2.1	Purchase of means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers
		3.2.2	Maintenance of a means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers
		3.2.3	Purchase and installation of accessories for a means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers
		3.2.4	Garaging or parking of a means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers
		3.2.5	Other expenditure relating to a means of transport with a mass less than or equal to 3 500 kg other than means of transport for paying passengers
		3.2.6	PKW
		3.2.7	LKW
3.3	Expenditure relating to means of transport for paying passengers	3.3.1	Purchase of a means of transport for paying passengers
		3.3.2	Maintenance of a means of transport for paying passengers
		3.3.3	Purchase and installation of accessories for a means of transport for paying passengers
		3.3.4	Garaging or parking of a means of transport for paying passengers
		3.3.5	Other expenditure relating to a means of transport for paying passengers

3.4 Expenditure relating to means of goods transport	3.4.1 Purchase of a means of goods transport 3.4.2 Maintenance of a means of goods transport 3.4.3 Garaging or parking of a means of goods transport 3.4.4 Expenditure relating to means of goods transport other than 3.4.1, 3.4.2 and 3.4.3
3.5 Maintenance of passenger and multipurpose cars	3.5.1 Used exclusively for business purposes 3.5.2 Used partly for commercial passenger transport, driving instruction, or rental purposes 3.5.3 Used partly for business purposes other than 3.5.2
3.6 Maintenance, of motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1 550 kg	3.6.1 Used for commercial passenger transport, driving instruction, rental purposes 3.6.2 Used for other business purposes
3.7 Expenditure, other than maintenance, garaging and parking relating to passenger and multipurpose cars	3.7.1 Used exclusively for business purposes 3.7.2 Used partly for commercial passenger transport, driving instruction or rental purposes 3.7.3 Used partly for purposes other than 3.7.2
3.8 Expenditure, other than maintenance, garaging and parking relating to motorcycles, caravans and vessels for recreational and sports purposes, and aircrafts with a mass greater than 1 550 kg.	3.8.1 Used for commercial passenger transport, driving instruction, rental purposes or resale 3.8.2 Used for other business purposes
3.9 Purchase of passenger car of M1 category	
3.10 Purchase of accessories for passenger cars of M1 category, including their assembly and installation	
3.11 Expenditure relating to means of passenger transport with more than 9 places, or to means of goods transport	
3.12 Expenditure relating to means of passenger transport with less than 9 places used for commercial operations	
3.13 Expenditure relating to means of transport for which there exists no restriction on the right to deduct	
3.14 Expenditure relating to means of transport for which there exists a restriction on the right to deduct	
3.15 Maintenance of means of passenger transport other than passenger and multipurpose cars, motorcycles, caravans ad vessels for recreational and sports purposes, and aircraft with a mass greater than 1 550 kg.	

3.16	Garaging or parking of a means of passenger transport	
3.17	Expenditure, other than maintenance, garaging or parking relating to means of transport other than passenger and multipurpose cars, motorcycles, caravans and vessels for recreational and sports purposes, and aircraft with a mass greater than 1 550 kg	

Code 4. Road tolls and road user charge

4.1	Road tolls for means of transport with a mass greater than 3 500 kg other than means of transport for paying passengers	
4.2	Road tolls for vehicles with a mass less than or equal to 3 500 kg other than means of transport for paying passengers	4.2.1 PKW 4.2.2 LKW
4.3	Road tolls for means of transport for paying passengers	
4.4	Road tolls for any means of transport across the Great Belt Bridge	
4.5	Road tolls for any means of transport across the Öresund Bridge	
4.6	Road tolls for means of transport for paying passengers with more than 9 places	
4.7	Road tolls for means of transport for paying passengers with less than 9 places	
4.8	Road tolls for vehicles used in the context of a conference, fair, exhibition or congress	4.8.1 For the organiser of the event 4.8.2 For a participant in the event, where the expenditure is directly charged by the organiser

Code 5. Travel expenses, such as taxi fares, public transport fares

5.1	For the taxable person or an employee of the taxable person	
5.2	For someone other than the taxable person, or an employee of the taxable person	

5.3	For the taxable person or an employee of the taxable person in the context of a conference, fair, exhibition or congress	5.3.1	For the organiser of the event
		5.3.2	For a participant in the event, where the expenditure is directly charged by the organiser

Code 6. Accommodation

6.1	Expenditure on lodging and accommodation for the taxable person, or an employee of the taxable person		
6.2	Expenditure on lodging and accommodation for someone other than the taxable person or an employee of the taxable person		
6.3	Expenditure on lodging and accommodation for the taxable person or an employee of the taxable person attending qualifying conferences		
6.4	Expenditure on lodging and accommodation for the taxable person or an employee of the taxable person in the context of a conference, fair, exhibition or congress	6.4.1	For the organiser of the event
		6.4.2	For a participant in the event, where the expenditure is directly charged by the organiser
6.5	Expenditure on lodging and accommodation for an employee of the taxable person effecting supplies of goods or services		
6.6	Expenditure on lodging and accommodation for onward supply		
6.7	Expenditure on lodging other than 6.5 or 6.6		

Code 7. Food, drink and restaurant services

7.1	Food and drink provided by hotels, bars, restaurants and boarding houses, including breakfast	7.1.1	For the taxable person or an employee of the taxable person
		7.1.2	For someone other than the taxable person or an employee of the taxable person
7.2	Food and drink provided in the context of a conference, fair, exhibition or congress	7.2.1	For the organiser of the event
		7.2.2	For a participant in the event, where the expenditure is directly charged by the organiser
7.3	Food and drink for an employee of the taxable person effecting supplies of goods or services		
7.4	Restaurant services purchased for onward supply		
7.5	Purchase of food, drink or restaurant services other than 7.2, 7.3 and 7.4		

Code 8. Admissions to fairs and exhibitions

8.1	For the taxable person or an employee of the taxable person	
8.2	For someone other than the taxable person or an employee of the taxable person	

Code 9. Expenditure on luxuries, amusements and entertainment

9.1	Purchase of alcohol	
9.2	Purchase of manufactured tobacco	
9.3	Expenditure on receptions and entertainment.	9.3.1 For publicity purposes 9.3.2 Not for publicity purposes
9.4	Expenditure on maintenance of pleasure craft	
9.5	Expenditure on works of art, collectors items and antiques	
9.6	Expenditure on luxuries, amusements and entertainment for advertising	
9.7	Expenditure on luxuries, amusements and entertainment other than 9.1, 9.2 and 9.3	

Code 10. Other

10.1	Tools	
10.2	Repairs within a warranty period	
10.3	Services connected with education	
10.4	Work on property	10.4.1 Work on immovable property 10.4.2 Work on immovable property used as a dwelling 10.4.3 Work on moveable property other than code 3
10.5	Purchase or hiring of property	10.5.1 Purchase or hiring of immovable property 10.5.2 Purchase or hiring of immovable property used as a dwelling, or for recreational or leisure use. 10.5.3 Purchase or hiring of moveable property connected with or used in immovable property used as a dwelling, or for recreational or leisure use. 10.5.4 Purchase or hiring of moveable property other than code 2

10.6	Provision of water, gas or electricity through a distribution network	
10.7	Gifts of a small value	
10.8	Office expenses	
10.9	Participation in fairs and seminars, education or training	10.9.1 Fairs 10.9.2 Seminars 10.9.3 Education 10.9.4 Training
10.10	Flat rate additions on livestock and agricultural produce	
10.11	Expenditure on postage of mail to countries outside the EU	
10.12	Expenditure on fax and phone in connection with accommodation	
10.13	Goods and services acquired by a travel organiser for the direct benefit of the traveller	
10.14	Goods purchased for resale other than 1.6	
10.15	services purchased for resale other than 6.6 and 7.4	
10.16	Work on property	10.16.1 Work on immovable property used as a residence, recreational or leisure facility 10.16.2 Work on immovable property other than 10.16.1 10.16.3 Work on moveable property connected with or use of an immovable property in 10.16.1 10.16.4 Work on moveable property other than 10.16.3
10.17	Expenditure on property	10.17.1 Expenditure on immovable property used as a dwelling, or for recreational or leisure use. 10.17.2 Expenditure on immovable property other than 10.17.1