

101.—(1) For the purposes of this section—

“applicant” means a taxable person who—

(a) not being established in the Member State of refund, but being established in another Member State, and

(b) having entered into transactions that give rise to a right of deduction in that other Member State, makes a refund application;

“deductible transactions” means transactions that give rise to a right of deduction in the Member State concerned;

“Member State of refund”, in relation to an applicant, means the Member State in which value-added tax (as referred to in the VAT Directive) was charged to the applicant in respect of—

(a) goods or services supplied to the applicant by other taxable persons in that Member State, or

(b) the importation of goods into that Member State;

“non-deductible transactions” means transactions that do not give rise to a right of deduction in the Member State concerned;

“refund application” means an electronic application submitted for a refund of tax charged in the Member State of refund to an applicant in respect of goods or services supplied to the applicant by taxable persons in that Member State or in respect of the importation of goods into that Member State.

(2) The Revenue Commissioners shall, in accordance with this section and regulations (if any), make a refund to an applicant of tax charged to the applicant by accountable persons in the State or tax charged to that applicant on the importation of goods into the State, in cases where a full and correct refund application has been received by them from the Member State in which the applicant is established.

(3)(a) Subject to paragraph (b), where the State is the Member State of refund, the amount of tax that is refundable in accordance with subsection (2) is the amount of tax charged to an applicant by an accountable person in respect of supplies of goods or services in the State, or on the importation of goods by the applicant into the State, if those goods or services are used by the applicant for the purpose of the applicant’s business, but only to the extent that the applicant would be able to deduct that amount under Chapter 1 of Part 8 if the applicant were an accountable person in the State.

(b) Where an applicant undertakes in the applicant’s Member State of establishment both deductible

transactions and non-deductible transactions, the amount to be refunded by the Member State of refund is the proportion of tax attributable to the deductible transactions as determined in accordance with the law of the applicant's Member State of establishment.

(4) An applicant who wishes to claim a refund of tax may apply for the refund only through the electronic portal set up for the purpose by the applicant's Member State of establishment.

(5)(a) Where an applicant who carries out transactions of the kind referred to in subsection (3)(b) makes a refund application and the proportion of tax referred to in that subsection is subsequently adjusted, the applicant shall make a correction to the original amount that was applied for or has already been refunded.

(b) The applicant shall make the correction in a refund application during the calendar year following the period for which the relevant refund application was made or, if the applicant makes no refund applications during that calendar year, by lodging a separate declaration via the electronic portal established by the Member State of establishment of the applicant.

(6)(a)(i) Where the State is the Member State of refund, the applicant shall ensure that the refund application covers tax charged in respect of supplies of goods or services invoiced to the applicant and importations by the applicant during a refund period, being a period of not more than one calendar year and, subject to subparagraph (ii), not less than 3 calendar months.

(ii) A refund period may be less than 3 calendar months if the application in respect of the period relates to the last quarter of a calendar year.

(b) A refund application may be lodged only on or before 30 September in the calendar year following the refund period.

(c) A refund application may cover tax charged in respect of transactions omitted from the applicant's previous refund applications, but only if those transactions were completed during the relevant calendar year.

(7)(a) An applicant is not entitled to make a refund application under this section for an amount less than €400 if the claim is for a period of less than one calendar year but at least 3 months.

(b) An applicant is not entitled to make a refund application under this section for an amount less than €50 if the claim is for a period that represents a full calendar year or the last quarter of a calendar year.

(8) As soon as is practicable after deciding not to forward to another Member State a refund application made by an applicant established in the State on the grounds that the applicant is not entitled to a refund, the Revenue Commissioners shall notify the decision to the applicant by electronic means.

(9)(a) This subsection applies to a refund application in respect of which the State is the Member State of refund.

(b) As soon as is practicable after receiving from an applicant a refund application to which this subsection applies, the Revenue Commissioners shall notify the applicant by electronic means of the date on which they received the application.

(c) Within 4 months after the date on which they received a refund application from an applicant, the Revenue Commissioners shall, except as otherwise provided by this subsection—

(i) decide whether or not to approve the application (whether wholly or partly), and

(ii) notify their decision to the applicant by electronic means.

(d)(i) At any time within 4 months after the date on which they received a refund application from an applicant established in another Member State, the Revenue Commissioners may request additional information in support of the details provided in the application.

(ii) A request referred to in subparagraph (i) may be made to the applicant, the competent authority of the Member State where the applicant is established or any other person whom the Revenue Commissioners reasonably believe to be capable of providing relevant information.

(e) Where the Revenue Commissioners request additional information in accordance with paragraph (d), they shall, except when paragraph (g) applies—

(i) decide whether or not to approve the application (whether wholly or partly), and

(ii) notify their decision to the applicant by electronic means,

within 2 months after the relevant date.

(f) For the purpose of this subsection, the relevant date is—

(i) where the Revenue Commissioners receive the requested information within one month after the date on which the request was notified to the recipient, the date on which the Commissioners received the additional information,

(ii) where the Revenue Commissioners do not receive the requested information within one month after the date on which the request was made to the recipient, the date on which that period ends,

(iii) where the Revenue Commissioners receive the requested information within one month referred to in subparagraph (i), or that period expires without the Commissioners having received that information, the date that is 6 months after the date on which the refund application was made.

(g) Where the Revenue Commissioners consider it necessary to do so, they may, at any time before they make a decision with respect to a refund application, request any of the persons referred to in paragraph (d) to provide further additional information concerning the application or the applicant.

(h) Where the Revenue Commissioners request further additional information with respect to a refund application or the applicant as provided by paragraph (g), they shall—

(i) decide whether or not to approve the application (whether wholly or partly), and

(ii) notify their decision to the applicant by electronic means,

within 8 months after the date on which they received the refund application.

(i) Where the Revenue Commissioners have reasonable doubts about the validity or accuracy of a refund application, they may request the original or a copy of the relevant invoice or importation document to be produced for inspection.

(j) Without limiting the grounds on which the Revenue Commissioners may refuse a refund application, they may refuse to approve such an application on the ground that a request made by them under this subsection has been refused or has not been complied with within a reasonable time.

(k) Where the Revenue Commissioners notify an applicant of their decision to approve a refund application either wholly or partly, they shall refund the amount due not later than 10 working days after the notification of the decision to the applicant.

(l) Where the Revenue Commissioners decide to refuse to approve a refund application either wholly or partly, they shall include in their decision the grounds for the refusal.

(10) Where the State is the Member State of refund, and the applicant requests payment of the refund to be made in another Member State, the Revenue Commissioners shall deduct from the refund amount any bank charges in respect of the payment.

(11)(a) An applicant who has obtained a refund from the Revenue Commissioners based on an incorrect refund application containing an erroneous claim or declaration (whether or not the error was made intentionally, recklessly or carelessly) shall—

(i) repay to the Commissioners the amount incorrectly obtained as a refund, and

(ii) pay an amount of interest to the Commissioners.

(b) Any such interest is to be calculated at the rate provided for in section 114 (2) from the date on which the refund was made to the day on which the applicant repays to the Revenue Commissioners the amount incorrectly obtained as a refund.

(c) The liability imposed on an applicant by this subsection is in addition to the liability imposed by section 116.

(12) While an applicant to whom subsection (11) applies continues to fail to pay the Revenue Commissioners an amount payable under that subsection, the Commissioners shall withhold any further refund to

that applicant up to the amount that is due from the applicant under that subsection.

(13)(a) Subject to paragraph (b), where the Revenue Commissioners refund an amount due to an applicant but not within the time limits prescribed by subsection (9), they shall pay an amount of interest to the applicant calculated at the rate provided for in section 105 (4) from the day following the last day of the period within which payment of the amount due is required to be made to the day on which the amount due is paid to the applicant.

(b) Paragraph (a) does not apply if the applicant—

(i) provides additional information in accordance with a request made by the Revenue Commissioners but not within one month after the date on which the request was notified to the applicant, or

(ii) fails to provide all of the additional information requested within that period.

(14) This section does not apply to—

(a) an applicant who supplies goods or services in respect of which the place of supply is the Member State of refund other than those for which the person who receives them is liable, or

(b) a transport service, or a service ancillary to such a service, that is exempted in the Member State of supply in accordance with Article 144, 146, 148, 149, 151, 153, 159 or 160 of the VAT Directive.