



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 971 FINAL**

**MINUTES
113TH MEETING
– 3 JUNE 2019 –**

The Chair welcomed the delegations to the non-public 113th meeting of the VAT Committee.

Procedural and housekeeping points

Language regime: It was possible to speak in and listen to DE-EN-ES-FR-IT-PL.

Update on proposals by the Commission

- The Chair informed delegations about the imminent launch of the study on the review of the VAT rules for financial and insurance services.

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- Definitive VAT regime: A meeting of the Working Party on Tax Questions was held on 29 May.
- SME scheme: A meeting of Fiscal Attachés took place on 27 May. The file will also figure on the agenda of the High Level Working Party on 4 June as well as of the Coreper meeting of 5 June.
- VAT rates: A meeting of the Working Party on Tax Questions was held on 29 May.
- VAT and excise duty treatment of supplies linked to common EU defence efforts: After adoption by the Commission on 24 April, the proposal was presented to Member States in the meeting of the Working Party on Tax Questions of 16 May. Negotiations will start under the upcoming Finnish Presidency.

Other topical issues

- Vouchers: The exchanges under “Any other business” during the last meeting on issues related to vouchers were followed up by a note from the Commission services asking delegations for written input in order to prepare a more in-depth discussion in a future meeting.

The Chair thanked the delegations that had already replied and encouraged the other delegations to still send their contributions although the deadline set had passed. Obtaining as broad a picture as possible of issues with the new legislative provisions on vouchers was in everybody’s interest.

- MOSS Portal: Member States not registered so far for the MOSS Portal were reminded to do so without further delay as registration is vital for updating the information on VAT rules in their country.

- List of gold coins valid for the year 2020: Already five Member States had sent their input in reply to the note of 3 April that kicked off the works on the establishment of the list of gold coins for 2020. The deadline for replies to the dedicated functional mailbox is 1 July 2019.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2019)3529903)

The agenda was adopted as proposed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

The Chair stated that the written procedure for the adoption of the minutes of the 112th meeting of 12 April 2019 had been launched.

As to the sets of guidelines already agreed in written procedure, these were all made available on CIRCABC and on the Directorate General's public website. Since the last meeting, guidelines from the 111th meeting, document B, on the provision of Internet services against user data had been agreed unanimously.

3. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 3.1** Origin: Commission
References: Articles 17a, 36a, 138(1) and (1a), 243(3) and 262(2) of the VAT Directive
Articles 45a and 54a of the VAT Implementing Regulation
Subject: Implementation of the Quick Fixes Package:
Council Directive (EU) 2018/1910 and Council Implementing Regulation (EU) 2018/1912
(Document taxud.c.1(2019)3533969 – Working paper No 968)

The Chair introduced the agenda point by mentioning the recent meetings of the VAT Expert Group (VEG) with stakeholders and the Group on the Future of VAT (GFV) with Member States held at the beginning of April to discuss specific issues contained in the legislative package that had been adopted by Council on 4 December 2018. Exchanges in the GFV meeting of 5 April had made it clear that in view of ensuring a common interpretation and implementation of the adopted provisions guidelines agreed by the VAT Committee would be most helpful. To that effect, Working paper No 968 had been established as a basis for discussion on aspects regarding the following topics: call-off stock, chain transactions and exemption of an intra-Community supply of goods.

Before embarking on the presentation and subsequent discussion of each issue examined in the Working paper, the Commission services explained that they wish to obtain delegations' agreement on guidelines on specific points prior to the entry into force of the new rules on 1 January 2020. They also announced that they might for some issues rather prepare Explanatory Notes where deemed more appropriate.

The ensuing exchanges on the different sections covered by the Working paper saw altogether more than two thirds of delegations asking for the floor.

Discussions on the specific sections went as follows:

Section 3.1. Call-off stock

On the question of how to handle small losses (section 3.1.1.), half of the delegations contributed to the discussion. There was consensus that a strict application of the provision in the fourth subparagraph of Article 17a(7) of the VAT Directive, as adopted by Council in December 2018, would render the call-off stock regime useless in a number of cases because any loss of goods would automatically put an end to the regime and trigger the transfer-supply for consideration of the goods. Whilst the delegations agreed that for losses a level of tolerance needed to be defined, a number of practical issues remained unanswered. Existing rules for excise goods only covered a tiny part of goods that could be affected by losses and were not fully harmonised across Member States. What could be considered a small loss could also differ considerably between types of goods. Should, for example, the number of units missing or their monetary value be defining criteria? Could a list for all products be established? Which authority should decide what constitutes a tolerable loss? What if goods were destroyed on the way to their destination?

The Chair concluded the discussions on section 3.1.1. by noting the need for some level of tolerance as to losses.

Several delegations participated in the exchanges on section 3.1.2. on whether to consider a call-off stock warehouse to be a fixed establishment of the supplier and the four scenarios assessed by the Commission services. Most of them agreed with the assessments of scenarios 1) and 2). The views on scenarios 3) and 4) were more divergent. Delegations preferred a softer and more nuanced approach in those two scenarios.

The Chair thanked delegations for their feedback on section 3.1.2. The Commission services would try to draft guidelines taking into account the positions of delegations presented during the meeting.

Section 3.2. Chain transactions

Less than half of the delegations took the floor after the presentation of section 3.2.1. on chain transactions combined with applying the simplification in Article 141 (triangular transactions), when the goods are handed over not to the taxable person making the intra-Community acquisition of goods but to another person, following a subsequent supply. Most of them agreed with the simplification suggested for the scenario as outlined on page 9 of the Working paper. A few delegations remarked that their national legislation currently does not provide for the application of the simplification for triangular transactions in cases such as the one explained by the Commission services, but that they could agree for the sake of uniform application; one delegation stated that they could not give their agreement for the moment.

The Chair concluded that given that a majority supported the Commission services' interpretation her services would try to draft guidelines for agreement.

Section 3.3. Exemption of an intra-Community supply of goods

After section 3.3.1. on the interaction with the VAT Refund Directive had been presented, several delegations asked for the floor. Nearly all delegations that intervened expressed their concerns about granting a refund where the condition in Article 138(1)(b) is not met, with a few of them stating that they would rather prefer subsequent correction of the invoice.

Noting the reactions, the Chair announced the establishment of draft guidelines.

Section 3.3.2. deals with the application of the new paragraph 1a to Article 138. A few delegations participated in the exchanges and agreed to the Commission services' practical interpretation of the new provision. The Chair concluded that she noted support for this point and announced that in case the Commission services would prepare Explanatory Notes, they would try to shed some light on the wording "unless the supplier can duly justify his shortcoming" in paragraph 1a as it apparently raised questions from the part of businesses.

Section 3.3.3. looks into the exemption of an intra-Community supply of goods in combination with the optional reverse charge provided for in Article 194 in a situation where goods placed under a call-off stock arrangement are finally supplied to a taxable person different from the one for whom they were originally intended. The Commission services explained that they had been informed that some Member States refused, in certain cases, registration for businesses making an intra-Community acquisition and therefore wanted to show some situations where operators would need to ask for registration, and Member States should grant it. A few delegations intervened and agreed with the Commission services that the supplier should be registered in the second Member State in those situations.

The Chair concluded by noting agreement on this point.

Section 3.3.4. deals with the meaning of the term "independent" in regard to proof of transport. When presenting the matter, the Commission services explained that for the purpose of applying the exemption in Article 138 of the VAT Directive, Article 45a(1) of the VAT Implementing Regulation puts in place two rebuttable presumptions for when goods are seen to have been dispatched or transported from a Member State to a destination outside that Member State but within the Community. In particular, this will be the case when the conditions laid down in points (a) or (b) of Article 45a(1) are fulfilled. Especially, the provision's wording "two different parties that are independent of each other, of the vendor and of the acquirer" raised many questions and concerns from businesses. The requirement of "independence" had been introduced during the negotiations in the Council and the VAT Implementing Regulation includes no provision explaining it. The Commission services had found that instead Article 11 on VAT grouping and Article 80 on the open market value, both to be found in the VAT Directive, might shed some light on the meaning of the term "independence".

Less than half of the delegations participated in the exchanges. Overall, they found the criteria in Article 11 of the VAT Directive too complex and voiced their preference for easier, clearer ones to simplify the application of the new provision. A few delegations mentioned that in that regard they preferred the criteria in Article 80 instead. A few others understood the new provision as asking for “legal” independence.

The Commission services replied that they understood that delegations preferred not too prescriptive criteria but added that in their view “legal” independence was not at all a meaningful one.

The Chair concluded the exchanges on that last section by stating that she had noted a common preference for a simple approach and announced that her services would look for an operational solution, possibly drawing on Article 80 of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.1** Origin: France
References: Articles 14, 15, 38, 39, 44, 46, 58, 193 and 195
Subject: VAT rules applicable to transactions related to the recharging of electric vehicles
(Document taxud.c.1(2019)3532296 – Working paper No 969)

The Commission services presented the Working paper that had been drawn up on the basis of a submission by the French delegation.

The French authorities asked for the assessment of the VAT treatment of the transactions occurring in the following situation: An infrastructure operator provides a range of goods and services related to and including the recharging of electric vehicles. A mobility operator, acting in his own name and on his own behalf, offers these goods and services to his customers by way of his own subscription arrangements.

When assessing the supplies carried out by the infrastructure operator and by the mobility operator it has to be examined what exactly is supplied to whom and whether what is supplied is a single supply with a main element and additional transactions that serve to deliver the main element in the best way possible or whether instead a number of distinct supplies are made.

In line with the reasoning of the Court of Justice of the European Union in its ruling in case C-185/01 “*Auto Lease Holland*” it could be argued that the infrastructure operator provides the electricity directly to the electric vehicle owners. In such a scenario it then has to be assessed as well, what kind of services the mobility operator is supplying to the infrastructure operator and/or the users of the electric vehicles that subscribed to his services.

However, considering that the mobility operator acting in his own name and on his own behalf offers services to his customers that go beyond the mere supply of electricity for their vehicles, the infrastructure operator could also be seen as

supplying the electricity to the mobility operator. The mobility operator would then qualify as a taxable dealer of electricity in accordance with Article 38(2) of the VAT Directive. The onward supply by the mobility operator would also qualify as a single supply of electricity; the additional services supplied would only facilitate the access to the vehicle recharging point.

These two possible scenarios lead to different outcomes in terms of the place of supply and may require the distinction between supplies to business customers and to non-taxable persons.

Before opening the floor to delegations, the Chair thanked the French delegation for having brought that interesting issue to the VAT Committee. She pointed out that the Commission services' analysis should be regarded as preliminary as it was solely based on the information received from the French delegation. There had been no time for further research, nor could her services draw on own experiences with the transactions described.

In the ensuing discussions, less than half of the delegations took the floor. There was consensus that in the scenario as described the supply of electricity was the main transaction to assess. Most of the delegations opined that the infrastructure operator provides the electricity to the mobility operator who in turn supplies the electricity together with additional services to his customers. A few delegations remarked that the issue was new to them and that they therefore did not have a firm view due to their lack of experience. One delegation stated that in their own Member State they encounter a comparable scenario with the supply to yachts where marina operators buy goods, which they then supply on to yacht owners.

The Chair thanked delegations for their contributions and concluded that her services would reflect on guidelines to be drafted.

5. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

- 5.1** Origin: Commission
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union
(Document taxud.c.1(2019)3530053 – Information paper)

The Chair drew delegations' attention to the Information paper with the overview of judgments handed down since the cut-off date for the previous meeting's overview paper (13 rulings issued between 27 March and 15 May 2019).

Requests for discussion of a case in a future meeting need to be accompanied by the interested delegation's own analysis of the matter on the basis of which the Commission services will establish a Working paper.

6. ANY OTHER BUSINESS

No issue was raised under this agenda point.

Conclusion

The Chair closed the meeting by thanking the delegations for their participation in the discussions and the interpreters for their much appreciated contribution to the meeting.

LIST OF PARTICIPANTS

BELGIQUE/BELGIË/BELGIUM	Ministry of Finance
БЪЛГАРИЯ/BULGARIA	Ministry of Finance National Revenue Agency
ČESKO/CZECHIA	Ministry of Finance
DANMARK/DENMARK	Ministry of Taxation Tax Agency
DEUTSCHLAND/GERMANY	Federal Ministry of Finance Representative of the Länder
EESTI/ESTONIA	Ministry of Finance
ÉIRE/IRELAND	Revenue Commissioners
ΕΛΛΑΔΑ/GREECE	Independent Authority for Public Revenue
ESPAÑA/SPAIN	Permanent Representation
FRANCE	Ministry of Finance
HRVATSKA/CROATIA	Permanent Representation
ITALIA/ITALY	Ministry of Economy and Finance Agenzia delle Entrate
ΚΥΠΡΟΣ/CYPRUS	Ministry of Finance
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance Tax Administration
LUXEMBOURG	Ministry of Finance
MAGYARORSZÁG/HUNGARY	Ministry of Finance
MALTA	Ministry for Finance
NEDERLAND/NETHERLANDS	Ministry of Finance
ÖSTERREICH/AUSTRIA	Federal Ministry of Finance

POLSKA/POLAND	Ministry of Finance
PORTUGAL	Tax and Customs Administration
ROMÂNIA/ROMANIA	-
SLOVENIJA/SLOVENIA	Financial Administration
SLOVENSKO/SLOVAKIA	Ministry of Finance
SUOMI/FINLAND	Ministry of Finance Tax Administration
SVERIGE/SWEDEN	Ministry of Finance Tax Agency
UNITED KINGDOM	HMRC
EUROPEAN COMMISSION	