



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

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Brussels, 2 March 2020

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 987 FINAL**

**MINUTES  
114<sup>TH</sup> MEETING  
– 2 DECEMBER 2019 –**

The Chair welcomed the delegations to the non-public 114<sup>th</sup> 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.

The Chair pointed out that initially no interpretation services had been accorded and only after a second request the habitual language regime could be obtained.

Next meeting: The 115<sup>th</sup> meeting is likely to take place in mid-March 2020.

Transparency: The Chair explained that the rules regarding the transparency of the workings of Commission Expert Groups and other similar entities had been further tightened. Whilst the VAT Committee, established by Council with Article 398 of the VAT Directive, is not a Commission Expert Group in the strict sense, the transparency rules are expected to be applied for “other similar entities” as well.

### **Update on proposals by the Commission**

- The Chair informed delegations about the ongoing study on the VAT treatment of financial services, currently in the phase of data collection. The study is expected to be finalised in the second part of 2020.

### **Topical issues in the Council**

The Chair briefly mentioned the latest developments in Council:

- VAT e-commerce proposals: Agreement was reached in early 2019. On 21 November, the Council adopted both the Directive and the Implementing Regulation<sup>1</sup>.
- VAT and excise duty treatment of supplies linked to common EU defence efforts: The ECOFIN Council had agreed the proposal on 8 November 2019 and after the European Parliament had adopted its opinion on 26 November, the Council then adopted the proposal on 16 December 2019<sup>2</sup>.

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<sup>1</sup> Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods (OJ L 310, 02.12.2019, p. 1) and Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods (OJ L 313, 4.12.2019, p. 14).

<sup>2</sup> Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework (OJ L 336, 30.12.2019, p. 10).

- SME scheme: The ECOFIN Council agreed the proposal on 8 November 2019. The European Parliament has to be re-consulted and is aiming for adoption of their opinion in the January 2020 plenary meeting.
- Definitive VAT regime: The last meeting of the Working Party on Tax Questions took place on 11 November 2019.
- VAT rates: The file was last discussed in the meeting of the Working Party on Tax Questions of 26 November 2019.

### **Other topical issues**

- Special scheme for travel agents: The evaluation of the current scheme is ongoing. On 11 November 2019, the topic was discussed in the Group on the Future of VAT (GFV).
- List of gold coins valid for the year 2020: The list was published in the *Official Journal of the European Union* C 364 on 29 October 2019.
- Explanatory Notes on the “2020 Quick Fixes”: A draft of these Explanatory Notes was discussed at the recent meetings of the GFV on 25 November and of the VAT Expert Group (VEG) on 27 November 2019.

Explanatory Notes on “e-commerce”: The GFV meeting of 9 December 2019 will focus on the continuation of the discussions on the Explanatory Notes on e-commerce further to the input received from businesses and Member States during and after the Fiscalis 2020/Customs 2020 Workshop in Madrid at the end of September.

- MOSS Portal: Member States not registered so far for the MOSS Portal were again reminded to do so without further delay as registration is vital for updating the information on VAT rules in their country. In addition, it was announced that the Commission services were going to contact the Member States concerned individually.

### **1. ADOPTION OF THE AGENDA**

(Document taxud.c.1(2019)7865483)

The agenda was adopted as proposed.

### **2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES**

The Chair stated that the minutes of the two previous meetings (112<sup>th</sup> and 113<sup>th</sup> meetings) had been approved in written procedure without any changes and subsequently published on CIRCABC.

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.

Guideline document A on e-charging from the last 113<sup>th</sup> meeting on 3 June 2019 and the seven guidelines on the “Quick Fixes”, guideline documents B-H from the same meeting, had all been agreed.

### **3. INFORMATION POINTS**

The Chair explained that the regular point on reporting back from OECD meetings could not figure on the agenda due to the work-related absence of the responsible colleague. Feedback from the workings of the OECD in the field of VAT would be provided again at the next meeting.

### **4. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS**

- 4.1** Origin: Commission  
References: Articles 30a, 30b, 73a, 410a and 410b  
Subject: Questions raised following implementation of the Voucher Directive

(Document taxud.c.1(2019)7743273 – Working paper No 983)

The Chair introduced the agenda point by reminding delegations that a first oral exchange on vouchers had been held during the 108<sup>th</sup> meeting in March 2017 in order to facilitate transposition by Member States of Council Directive (EU) 2016/1065, the Voucher Directive, into their national law. At that meeting, delegations had discussed between them a number of issues raised as to the interpretation of that directive regarding the VAT treatment of vouchers whose provisions became applicable from 1 January 2019.

More recently, during the 112<sup>th</sup> meeting in April 2019, brief preliminary exchanges had been held on questions raised by a delegation and by stakeholders in another Commission Expert Group. The exchanges made clear that much more work on vouchers was needed in order to establish a common understanding of the concept of vouchers and a resulting common approach by Member States as to their VAT treatment. After the 112<sup>th</sup> meeting, delegations had therefore been encouraged to submit further comments on the issues discussed and raise any other pertinent questions. Feedback had been received from about a third of delegations.

The Chair explained that the Working paper prepared could only deal with a first batch of selected issues and announced that work on vouchers would be ongoing.

In order to illustrate which issues have not been expressly legislated on in the Voucher Directive, section 3 of the Working paper, entitled “Background”, gives information on the substance of the Commission’s legislative proposal of May 2012 and its evolution during Council negotiations resulting in the adoption of the Voucher Directive in June 2016.

Section 4 as the main part of the Working paper sets out the concept of “voucher” and explains the difference between single-purpose vouchers (SPVs) and multi-purpose vouchers (MPVs) (4.1), clarifies the scope of the new legislation by

illustrating the differences between vouchers and payment instruments (4.2.1) as well as between vouchers and tokens (4.2.2). It further illustrates the interaction of the rules on vouchers with other provisions of the VAT Directive, such as exempt supplies incorporated into a voucher (4.3.1 and 4.3.2), and with VAT special schemes (4.3.3 and 4.3.4). Finally, section 4.4 deals with the issue of city cards.

In the ensuing exchanges on the Working paper, more than half of the delegations asked for the floor, the majority of them more than once.

Several delegations participated in the discussions on sections 4.2.1 and 4.2.2 of the Working paper with some of them pointing out that they did not have any experience at all with the issues raised or still had to analyse them further. Delegations were overall in agreement with the Commission services' analysis that a case-by-case assessment should be undertaken. One delegation asked to look also into the distribution services of vouchers and the role of intermediaries to which the Chair reacted by inviting all delegations to send contributions for future work.

During the discussions on vouchers that incorporate exempt services, such as medical and dental care (4.3.2), several delegations took the floor. Views diverged on the qualification of these vouchers when they are distributed in a chain where a supplier at a later stage does not fulfil the subjective conditions for claiming the exemption. In other words, the discussion focused on whether an exempt transaction could be taxed if subjects taking part in the distribution of a voucher qualifying as an SPV are not eligible for exemption although the beneficiary receives a supply that would, if not supplied under an SPV, be considered as exempt. Some delegations advocated the determination whether the exemption applies or not at the first point of issuance only, no matter whether later suppliers provide medical or dental care and thus qualify for the exemption. A second group of delegations stated that at each stage of a distribution chain the subjective conditions to claim an exemption had to be assessed and met by the supplier in order to grant exemption. A few delegations held that in such a case an SPV becomes an MPV whereas others pointed out that the classification of a voucher as an SPV takes place at the first point of issuance only.

Only a few delegations participated in the exchanges on the interaction of vouchers with special schemes (4.3.3 and 4.3.4). One delegation explicitly agreed with the Commission services' analysis with regard to the SME scheme, also sharing their view that for the travel agent scheme a separate assessment was required. A second delegation repeated that as in the case of exemptions at each stage of the distribution chain an assessment had to be carried out whether the subjective conditions are met. Another delegation brought up the issue of the interaction of vouchers with the scheme for second-hand goods. The Chair thereupon invited delegations to submit input.

Despite triggering the participation of several delegations, no conclusions could be reached during the discussion on city cards (4.4). There was consensus that more detail was needed on the schemes used in order to draw any firm conclusions.

The Chair concluded the agenda point on vouchers by first thanking all delegations that contributed. She then announced that her services might attempt the preparation of first guidelines on payment services and tokens and, possibly, on exemptions.

**5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

- 5.1** Origin: The Netherlands  
Reference: Article 132(1)(b) and(c)  
Subject: VAT treatment of ‘combined lifestyle intervention’  
(Document taxud.c.1(2019)7741025 – Working paper No 981)

The Commission services briefly presented the Working paper that had been drafted following the Dutch request to clarify the VAT treatment of so-called ‘combined lifestyle interventions’ (“CLI”) and whether these interventions could be considered as qualifying for the exemption for medical services as provided for by Article 132(1)(b) and (c) of the VAT Directive.

They gave a succinct overview of the pertinent case-law handed down by the Court of Justice of the European Union (CJEU) regarding the exemption for medical care and then explained why, in agreement with the opinion of the Dutch authorities, they maintain that “CLI” cannot be considered as medical care for the purposes of the VAT exemption.

Before opening the floor to all delegations, the Chair thanked the Dutch delegation for having brought that interesting issue to the VAT Committee and invited them to comment.

The Dutch delegation in turn thanked the Commission services for the preparation of the clear and comprehensive Working paper. They further explained that the Dutch Ministry of Health encourages more and more prevention programmes, which, however, in their view do not qualify for the exemptions of Article 132(1)(b) and(c).

No other delegations asked to take part in the exchanges.

The Chair concluded the agenda point by stating that there seemed to be unanimity on the issue and that her services would attempt to draft guidelines for agreement in written procedure.

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

- 6.1** Origin: Sweden  
References: Article 53 of the VAT Directive  
Article 32 of the VAT Implementing Regulation  
Subject: Case C-647/17 *Srf konsulterna*  
(Document taxud.c.1(2019)7743552 – Working paper No 982)

The Commission services presented the Working paper, requested by and established with the input from the Swedish delegation, containing an analysis of the ruling by the CJEU of 13 March 2019 in case C-647/17 *Srf konsulterna*. That case is of specific interest because it is the first ruling by the CJEU examining and defining the material scope of Article 53 of the VAT Directive on the place of supply of services in respect to admission to cultural, artistic, sporting, scientific, educational,

entertainment or similar events, introduced by Council Directive 2008/8/EC and applicable from 1 January 2011.

The Commission services reminded delegations that during the 91<sup>st</sup> meeting in May 2010 Articles 53 and 54 of the VAT Directive (new at the time) had been discussed based on Working paper No 660 and thereafter guidelines had been agreed. They went on to explain that the new Working paper summarises the main elements of the CJEU's ruling and then examines against that background the five questions identified by the Swedish delegation as still needing clarification in order to arrive at a common interpretation of the legal provision by all Member States.

After short explanations on those five questions, the Chair thanked the Swedish delegation for having submitted the request and invited them to comment before opening the floor to the other delegations for discussion.

The Swedish delegation thanked the Commission services for their comprehensive analysis to which they mostly agreed.

Nearly all delegations participated in the ensuing exchanges on the five questions under discussion.

With regard to the first question on the duration of an event, there was consensus among the delegations pronouncing themselves that a set length should not be seen as prescriptive nor as the only indicator without also looking at other criteria.

On the second question, the majority of delegations taking the floor were of the opinion that it is not relevant whether an event targets the general public or is adapted to a customer's wishes. One delegation, however, maintained that public access should be the main criterion and that a customised event could not qualify as an event under Article 53. Another delegation declared not to have arrived at a clear view so far.

Only one delegation responded to the third and fourth questions. In their view a seminar that is provided to a single customer, a taxable person, or a seminar provided to a taxable person who in turn provides the services to another taxable person, does not fall under Article 53, as the criterion of public access is not satisfied.

Finally, exchanges on the fifth question on how to determine the place of supply when an event takes place in several Member States, saw the participation of a large majority of delegations. Most of them preferred the split of the place of supply among the concerned Member States. Given the choice whether to split according to the time allocated for the event in the different Member States or rather according to the expenses incurred, a majority opted for duration. One of the delegations preferring the taxation in only one Member State pointed to the administrative burden that the splitting of the place of supply would entail.

The Chair closed the exchanges by announcing the drafting of guidelines on the different questions discussed.

- 6.2** Origin: Commission  
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union  
(Document taxud.c.1(2019)7670433 – 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 (20 rulings issued between 12 June and 24 October 2019).

During the meeting, no delegation came forward with a request for discussion of a case figuring on the list.

Before concluding on the agenda point, the Chair remarked that as recently as on 20 November, the CJEU had handed down its ruling in case C-400/18 *Infohos v Belgian State* (EU:C:2019:992). That case concerns the cost-sharing exemption in Article 132(1)(f) of the VAT Directive. In light of that ruling, the Commission services were, in view of the discussions already had on Working papers Nos 856 and 883 during the 104<sup>th</sup> and 105<sup>th</sup> meetings in 2015, contemplating guidelines.

## **7. ANY OTHER BUSINESS**

- 7.1** Origin: Commission  
Subject: Informing the VAT Committee of options exercised under Articles 80, 167a, 199 and 199a of Directive 2006/112/EC  
(Document taxud.c.1(2019)7672483 – Information paper)

The Chair explained that the notifications received some months earlier from two Member States on measures introduced in accordance with Article 199a of the VAT Directive were listed in the Information paper.

A message received from another Member State containing updated information on options also taken up had been received a few days before the meeting. The updated information will be reflected in the table to be uploaded on the Commission website at the beginning of 2020.

The Chair thanked all delegations concerned and reminded delegations to notify in due time whenever necessary.

- 7.2** Origin: Commission  
Reference: Article 211  
Subject: VAT aspects of centralised clearance for customs upon importation – update  
(Document taxud.c.1(2019)4807176 – Working paper No 924 REV4)

- 7.3** Origin: Commission  
Reference: Article 211  
Subject: VAT aspects of centralised clearance for customs upon importation – update  
(Document taxud.c.1(2019)7865114 – Working paper No 924 REV5)

The Commission services drew delegations' attention to the fourth and fifth updates of the Working paper and briefly explained the changes made in the two documents:



Working paper No 924 REV4 updates information in Annex 2 communicated by Member States during the 112<sup>th</sup> meeting in April 2019 and afterwards confirmed in writing while Working paper No 924 REV5 gives an update of the work undertaken by the customs project groups.

Delegations were invited to verify the correctness of the information for their Member State listed in Annex 2 to the latest revision of the Working paper and to come forward immediately in case anything had to be changed.

One delegation thereupon signalled changes to make in that Annex. The Chair thanked the delegation concerned and asked for written confirmation of the information.

### **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**

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

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<b>POLSKA/POLAND</b>	Ministry of Finance Permanent Representation
<b>PORTUGAL</b>	Tax and Customs Administration VAT Department
<b>ROMÂNIA/ROMANIA</b>	Ministry of Public Finance
<b>SLOVENIJA/SLOVENIA</b>	Ministry of Finance
<b>SLOVENSKO/SLOVAKIA</b>	Ministry of Finance
<b>SUOMI/FINLAND</b>	Ministry of Finance Tax Administration
<b>SVERIGE/SWEDEN</b>	Ministry of Finance Tax Agency
<b>UNITED KINGDOM</b>	–
<b>EUROPEAN COMMISSION</b>	