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**Group on the Future of VAT
32nd meeting – 25 May 2020**

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GROUP ON THE FUTURE OF VAT

GFV No 099

MINUTES

**32ND MEETING
– 25 MAY 2020 –**

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1. APPROVAL OF THE AGENDA

The agenda (document taxud.c.1(2020)2175720) was not contested or discussed.

2. NATURE OF THE MEETING

The meeting was not open to the public.

3. GFV N° 098 : VAT TREATMENT OF FINANCIAL SERVICES – A REFLECTION ON POSSIBLE OPTIONS FOR REVIEWS

The Commission services provided an overview of the state of play of the ongoing Study on the VAT rules for financial and insurance services, in order to promote a debate and collect views, as well as data, on the modelling of the options for review. The Commission services stressed that the options selected for the purpose of the study were subject to review and not to be considered as definitive. The contributions of delegations were therefore most welcome.

The consultant (Economisti Associati) presented the Second Interim Report of their Study, focusing on the problems faced by the industry with regard to the VAT treatment of the financial and insurance services and on the tentative selected options for review (both stand alone and combined options) outlining their expected major impacts on VAT revenues and demand, legal certainty and complexity, as well as their expected macroeconomic, social and market impacts.

The delegations intervened to seek clarification on the study and its preliminary findings, and to give their views on the modelling of options. In particular:

3.1. Removal of the exemption

- A number of delegations, most of which not in principle contrary to it, raised concerns on the political and social implications of the removal of the exemption as an important issue to be addressed by the study. Examples given in this regard included mortgages and other loans for house investments, guarantees granted by governments on deposit funds and fees on fund management.
- Several delegations expressly supported the analysis of the removal of the exemption while some other pointed out that taxation of all financial services is not realistic. One delegation proposed an analysis on taxation limited to B2B transactions.
- Some delegations expressed concern and asked for harmonised rules on the calculation of the tax base, especially with reference to interest based transactions.
- Some delegations did not consider the option of taxation limited to investment services as feasible given that this could be a possible source of distortion, within the sector and vis-à-vis third countries. One delegation expressed reservation on the removal of the exemption as an internal study conducted on the possible impacts arising from such removal was still ongoing.

- The consultant explained that challenges such as legal certainty and regulatory complexity also covered issues such as calculation of the tax base which was addressed by the study. As for the method of the tax base calculation, best practices within and beyond Europe were taken into account. As to the extent of removal of the exemption, the consultant noted the risks of not taxing interest based transactions as financial institutions could lead to arbitrage by switching from fee based to interest based transactions to avoid being taxed. In terms of impacts, the consultant explained that the partial equilibrium model was used to account for issues such as sectoral turnover and deduction rates, while second order effects were assessed through the macroeconomic model.
- The Commission services invited delegations to consider the option to remove the exemption in the context of the proposal (currently discussed in the Council) granting Member States more flexibility in setting VAT rates.

3.2. Mandatory option to tax

One delegation expressed support for the introduction of a mandatory option to tax. Another delegation expressed concern about this option asking that the issue of legal uncertainty arising from it be addressed.

3.3. Definitions

Some delegations called for revision and increased harmonisation of the most problematic definitions of financial and insurance services, such as those on venture capital funds and fund management.

3.4. Cost-sharing arrangements

- Delegations asked the Commission services to focus on the most urgent and problematic issue of cost-sharing arrangements, considered a source of legal uncertainty following to the judgments of the CJEU.
- Some delegations favoured a two-step approach whereby a harmonised form of cost-sharing arrangements is first reintroduced (e.g. through a quick fix), followed by a wider and comprehensive reform of the VAT rules applying to the sector. Others expressed a preference for making cost-sharing arrangements available to the financial and insurance sector, together with a legislative revision of definitions.
- A few delegations, although not against it, pointed out that reintroduction of cost-sharing arrangements alone would not be enough. A few other delegations were expressly sceptical about such reintroduction, especially if applied cross border, with one underlining the need for the rules to be clarified (e.g. on in house services).

3.5. Fixed rate of deduction

One delegation favoured taxation combined with a fixed rate of deduction. Another delegation, however, expressed scrutiny reservation on the option for a fixed rate of deduction as the pro-rata calculation had shown to be useful. Another delegation pointed out that the fixed rate should be designed so as to ensure deduction of the whole of the deductible VAT.

3.6. *Other issues*

- One delegation asked whether the study assessed the post Covid-19 implications. The consultant explained that this was not possible as data had been collected and assessed prior to the pandemic outbreak. However, the Commission services assured that the effects of the current crisis would be factored in during the phase of the impact assessment.
- Another delegation raised the issue of existing taxes in these sectors, such as payroll taxes, and other sectoral taxes to be addressed. The Commission services underlined that those other taxes cannot be considered as alternative to VAT. The consultant added that different scenarios were being assessed testing possible reactions to the introduction of VAT.
- One delegation was keen to see a broader revision of the VAT treatment of other exempted sectors.
- Some delegations were interested in the criteria used for the calculation of hidden VAT. The consultant specified that all the assumptions made (such as on pass-on rates, impacts on stakeholders, etc.) were based on a significant variety of studies undertaken.
- As for the timeframe of the current initiative, the Commission services explained it will be outlined in the “Action plan to fight tax evasion and make taxation simple and easy” expected to be adopted by the Commission before the summer. Delegations were reassured that further consultation was foreseen once the study had been finalised.

4. GFV N° 93: UPGRADING THE EU VAT SYSTEM – A REFLECTION ON POSSIBLE WAYS FORWARD (DEFERRED FROM THE 29TH MEETING)

The Commission services explained that the purpose was, via an open debate, to explore possible future ways to improve the functioning of the VAT system. The discussion was centred around measures to simplify the system while keeping pace with new business models (platform economy excluded as this was subject to a separate document), the use of new technologies (and its current different application in the Member States), followed by topics that delegations would find useful to explore in the future.

The initiative was welcomed by several delegations, stressing the need to discuss possible future initiatives before proposals are presented to the Council. As regards the discussion:

- The first topic discussed was the possible further extension of the One-Stop-Shop to other B2C domains and/or the application of the reverse charge mechanism in very specific cases (in particular domestic chain transactions in which a non-established taxable person intervenes) up to a point that a single VAT identification in the EU would suffice. Most of the delegations were, however, hesitant or requested more detailed information on the proposed functioning, conditions and control possibilities of this single VAT number. This was mainly because of a misunderstanding, namely the idea that this number would constitute a kind of “pan-European single VAT number for every company”. On this point, the Commission services clarified that the

point made in the document is simply that where a company is liable for VAT in a Member State where it is not established, it should be allowed to discharge its liability through the One-Stop-Shop mechanism, without any further need for VAT registration in that Member State. Some delegations already referred to the need to have the registration procedures harmonised.

On the extension of the One-Stop-Shop itself, delegations were generally of the opinion that the extension of 2021 (in the framework of the e-commerce) should first be evaluated before new domains would be added to its scope. While a potential extension in the field of B2C transactions would seem acceptable to most delegations, a number of delegations already excluded a possible extension in the field of B2B transactions, in particular because of possible risks in relation to the right of deduction. Some delegations therefore advocated for a wider application of the reverse charge mechanism which was perceived as a safer solution than the One-Stop-Shop, in particular in situations of insolvency.

- On the topic related to the use of new technologies, several delegations stressed that e.g. blockchain and artificial intelligence were not a goal in themselves; it was essential first to determine what administrations hoped to achieve (in a harmonised way in the EU) via these technologies. Most delegations seemed to agree that VAT obligations should be examined but it was also emphasised that experiences in certain Member States regarding e.g. e-invoicing and transaction-based reporting should be shared and examined first before reviewing and harmonising VAT obligations.
- Other measures for further examination and possible action that were proposed by delegations included cost-sharing arrangements, travel agents, public authorities, import One-Stop-Shop and the role of platforms, fixed establishment, (obligatory) reverse charge application by non-established suppliers (Article 194 of the VAT Directive), bad debt relief, chain transactions (also with third countries), in particular the impact of the *Herst* ruling (C-401/18): here the Commission services announced that the Explanatory Notes on Quick Fixes would be updated (on which some delegations expressed a preference for an Implementing Regulation), medical care exemptions and the hiring of medical staff, status of special taxable persons (so-called ‘group of 4’), rates, derogations, cross-border rulings, VAT problems linked to solar panels (the fact that the owner of the panel is considered as a taxable person engaged in an economic activity), postal services, pre-financing issues as regards domestic supplies versus intra-Community acquisitions.

5. GFV N° 097: VAT TREATMENT OF THE PLATFORM ECONOMY

The Commission services presented the document.

The majority of delegations welcomed the discussion on the topic and the broader scope of the document, analysing the platform economy rather than the sharing economy.

Firstly, delegations made comments on the options presented in the document. In particular:

- In general, some delegations pointed out that the nature of the activities performed by platforms should be analysed (e.g. what is the actual intervention of the platform, can the platform be seen as the taxable person making the supply to the user).
- Two delegations were in favour of considering the service performed by the electronic interface (EI) as an intermediary service. Some delegations pointed out that to establish the difference between an electronic service and an intermediary service in the light of Article 28 of the VAT Directive, the possibility for the VAT Committee to adopt guidelines on that issue could be explored. The same clarification has been required regarding Article 12 of the VAT Directive which entails occasional transactions, with the aim to ensure equal treatment between traditional supplies and digital supplies.
- The majority of delegations were in favour of option 1 (section 4.1. of the Working Document) and considered that it was the simplest and easiest to implement, and the most appropriate; it would provide some harmonisation of the notion of taxable person, allow the analysis of activities of platforms and allow the exclusion of some activities and of some providers from the scope of taxation.
- Option 2 (section 4.2. of the Working Document) was considered by the majority of delegations as too complex and too difficult to control. It could increase compliance costs for platforms and administrative burden for tax authorities. Two delegations however pointed out that option 2 should not be discarded.
- A number of delegations did not consider option 3 (section 4.3. of the Working Document) advantageous, as it would not take into account the nature of the service and would not clarify the relationship between the provider and the user.
- A number of delegations referred to the weaknesses of option 4 (section 4.4. of the Working Document), namely that it would not solve the issue of the status of providers and thus took the view that this option would not be the best one to choose. One delegation was however in favour of this option. Two delegations raised their concerns about the compatibility of this option with Article 28 of the VAT Directive.
- Option 5 was considered not necessary or too complex by a number of delegations.
- Finally, a few delegations indicated that a combination of options could be the best solution, for instance the combination of options 1 and 4.

The Commission services clarified that the document is based on the assumption that platforms act as facilitators. The situation whereby the platform is actually considered being the person making the supply of goods/services to the user is not covered in the document. Regarding the nature of the services provided by the EI, it was pointed out that within the same sector platforms act differently which would lead to a need for a case-by-case analysis. The purpose of the document and the discussion is to explore a solution, which would be simple to apply.

Secondly, delegations made comments on the possible role of platforms in the platform economy. In particular:

- Three delegations underlined the importance to make available for VAT purposes information exchanged within DAC7 in order not to have two distinct systems.
- Two delegations expressed doubts about introducing the tax liability for tax for platforms or a withholding role. They considered that information sharing obligation for platforms was the best way forward or possibly the joint and several liability regime.
- One delegation pointed out that the joint and several liability of platforms should be explored.

The Commission services clarified that DAC7 tackles automatic exchange of information with the primary aim to detect undeclared revenue or income. In addition, DAC7 aims at ensuring that the Member State of residence of the provider or, in case of renting of immovable property, the Member State in which the immovable property is located obtains the information about the income generated through digital platforms. To a large extent this should correspond to the Member State where potentially VAT would be due on the transactions.

6. FOLLOW-UP OF THE CONFERENCE ON VAT IN THE DIGITAL AGE - ORAL PRESENTATION BY THE COMMISSION

The Commission services informed the delegations of its intention to launch a study “VAT in the Digital Age” that will cover 3 topics: digital reporting and e-invoicing, the VAT treatment of the platform economy and moving towards a single EU VAT identification. The common denominator of these three topics is that they are driven by technological developments.

7. AOB

The next meeting of the group could not be confirmed yet, but will most likely take place in November 2020.

8. LIST OF PARTICIPANTS

Commission officials from DG TAXUD Unit C1 and the members of the Group on the Future of VAT as published in the Register of Commission Expert Groups and other similar entities¹.

¹ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2609&NewSearch=1&NewSearch=1>