



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

**VAT Expert Group  
27<sup>th</sup> meeting – 5 October 2020**

**taxud.c.1(2020)5815334**

Brussels, 29 September 2020

**VAT EXPERT GROUP<sup>1</sup>**

**VEG No 093**

**Conferring implementing powers on the Commission in the area of VAT  
and transforming the status of the VAT Committee  
into a comitology committee**

**DISCLAIMER:** This working document has been prepared by the Commission services and cannot be understood as representing the European Commission's position and does not bind the Commission in any way. Neither the European Commission nor any person acting on its behalf may be held responsible for the use, which may be made of the information contained therein.

---

<sup>1</sup> Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

## **1. INTRODUCTION**

In its 15 July 2020 Communication “*An Action Plan for fair and simple taxation supporting the recovery strategy*”<sup>2</sup>, the Commission announced that it will propose a change to the VAT Directive in order to turn the VAT Committee into a ‘comitology committee’ that would oversee the adoption of implementing acts by the Commission.

Two aspects are to be underlined in this regard:

- First, the use of comitology procedures would only be applied in connection with a limited set of rules implementing the provisions of the VAT Directive, for which a common interpretation is required. Any change to the VAT Directive shall require, as is the case today, unanimous agreement in Council.
- Second, it is in the interest of both tax administrations and businesses to facilitate the adoption of common interpretations of the provisions of the VAT Directive, since discrepancies in this area are likely to result in double taxation, distortions of competition and additional costs for businesses. Comitology is the long standing standard approach used in EU Law for facilitating the emergence of a common view and practice.

## **2. SUBJECT MATTER**

With the entry into force of the Treaty on the Functioning of the European Union (TFEU), the conferment of implementing powers on the Commission (Article 291 of the TFEU) is the standard for adoption of implementing measures in all areas of EU law, where uniform conditions for implementing legally binding Union acts are needed.

The VAT Directive is currently an exception as the relevant rule in Article 397 of the VAT Directive, which empowers the Council, acting unanimously on a proposal from the Commission, to adopt the measures necessary to implement the provisions in the VAT Directive, had been adopted prior to the TFEU.

As a result, the Commission has no implementing powers in respect of the VAT Directive. The only existing tool for the Commission to promote the uniform application of EU VAT rules is an *advisory Committee* set up under Article 398 of the VAT Directive, the ‘VAT Committee’.

The VAT Committee consists of representatives of the Member States and of the Commission, and examines questions concerning the application of EU VAT provisions raised by the Commission or a Member State. Because it is an advisory committee, the VAT Committee can currently only agree on non-binding guidelines on the application of the VAT Directive, whereas binding implementing measures may only be adopted by the Council acting unanimously and based on a Commission proposal.

---

<sup>2</sup> [COM\(2020\) 312 final](#), 15.07.2020

Experience shows that these guidelines do not always ensure uniform application of the EU VAT legislation. The VAT Committee has furthermore recently failed to reach unanimous guidelines on a number of issues related to the practical application of the provisions of Council Directive (EU) 2018/1910 (the “Quick Fixes” Directive)<sup>3</sup>. As a consequence, Member States follow different approaches on issues such as:

- whether a warehouse is a fixed establishment of a taxable person or otherwise (where the warehouse to which the goods are transported is owned or rented by the taxable person transferring the goods),
- what qualifies as “small losses”, or the treatment to be given to such small losses for the purposes of call-off stock arrangements,
- the meaning of the terms “supplier who dispatches or transports the goods either himself or through a third party acting on his behalf” (Article 36a(3) of the VAT Directive).

The VAT Committee has also recently failed to reach a unanimous guideline:

- on how the location of a service consisting of an event which takes place in several Member States should be identified for VAT purposes,
- on whether a supply of goods or services between a head office of a company established in a Member State and a VAT group in another Member State which includes a branch of that same company constitutes a taxable transaction for VAT purposes.

As a result, discrepancies in the application are likely to result in instances of double taxation, non-taxation and distortions of competition, and will entail legal uncertainty and additional costs for businesses, which usually only come to an end, after a considerable time, with a ruling of the Court of Justice of the European Union (CJEU). It might even happen that the ruling of the CJEU, given that it refers to a concrete factual situation, does not resolve all uncertainties. That is what has happened regarding the VAT treatment of supplies between a head office and its branch (combined with VAT groups): although the ruling of the CJEU in *Skandia America*<sup>4</sup> solved a number of problems, doubts remain about the VAT treatment of situations which do not exactly correspond to the facts of the case which was submitted to the CJEU.

It is thus envisaged to change the VAT Directive in order to empower the Commission to adopt implementing acts according to the rules of the Comitology Regulation 182/2011<sup>5</sup> and in particular according to the “examination procedure” laid down therein. This would be done by turning the VAT Committee into a ‘comitology committee’<sup>6</sup> that would, acting by qualified majority, oversee the adoption of implementing acts by the Commission.

---

<sup>3</sup> Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States (OJ L 311 of 7.12.2018, p. 3-7).

<sup>4</sup> Judgment of the CJEU of 17 September 2014 in case C-7/13, *Skandia America*, EU:C:2014:2225.

<sup>5</sup> Regulation (EU) No 12/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18).

<sup>6</sup> [https://ec.europa.eu/info/implementing-and-delegated-acts/comitology\\_en](https://ec.europa.eu/info/implementing-and-delegated-acts/comitology_en)

Conferring implementing powers on the Commission, subject to the thorough control of the VAT Committee, should facilitate the adoption of common interpretations of the unanimously agreed VAT Directive provisions. This should contribute to a more uniform application of the EU VAT legislation to the benefit of both tax administrations and taxable persons having economic activities in several Member States.

**3. QUESTIONS TO THE MEMBERS**

The members are invited to express their views on the following questions:

- Do you agree that there is a need to facilitate the adoption of common interpretations of the unanimously agreed VAT Directive provisions?
- Could you offer concrete examples of cases in which lack of uniformity creates burdens for businesses, in particular for those operating cross border?
- Do you share the view that, notwithstanding the fact that unanimity will be required in connection with the adoption of the VAT Directive provisions, granting implementing powers to the Commission, assisted by a VAT Committee, for agreeing on common interpretations, would help ensuring a smooth common application?

\*

\*      \*