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Value added tax

**VAT Expert Group
27th meeting – 5 October 2020**

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VAT EXPERT GROUP¹

VEG No 096

SUMMARY MINUTES

**27TH MEETING
– 5 OCTOBER 2020 –**

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¹ 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. APPROVAL OF THE AGENDA

The agenda (*document taxud.c.1(2020)5688381*) was not contested or discussed.

2. NATURE OF THE MEETING

The meeting took place in the form of videoconference and was not open to the public.

3. COMMISSION COMMUNICATION “AN ACTION PLAN FOR FAIR AND SIMPLE TAXATION SUPPORTING THE RECOVERY STRATEGY” – ORAL PRESENTATION BY THE COMMISSION

The Commission services made a short oral presentation on the Action Plan for fair and simple taxation supporting the recovery strategy adopted by the Commission on 15 July 2020.

The presentation focussed in particular on eight actions which would require a legislative proposal for amending the EU VAT Directive: moving towards a single EU registration in the EU, further extending the scope of the VAT One-Stop-Shop, modernising VAT reporting obligations and facilitating e-invoicing, adapting the VAT framework to the platform economy, transforming the status of the VAT Committee, updating the VAT rules on financial services, revising the VAT special scheme for travel agents and ensuring greener taxation of the passenger transport sector.

The first four actions quoted above will however be grouped in a single legislative proposal “VAT in the Digital Age”. All these legislative proposals, except for one for transforming the status of the VAT Committee, require an Impact Assessment, including notably a public consultation.

The VAT Expert Group has already been involved in the preparatory work on some of these actions and will continue to be consulted during the process of preparing the legislative proposals.

4. VEG No 093: CONFERRING IMPLEMENTING POWERS ON THE COMMISSION IN THE AREA OF VAT AND TRANSFORMING THE STATUS OF THE VAT COMMITTEE INTO A COMITOLGY COMMITTEE

The Commission services explained that the objective of the proposal, scheduled for adoption at the end of November 2020, is to ensure more uniform application across Member States of the provisions of the VAT Directive, which will benefit both businesses and tax administrations.

It was stressed that implementing acts by the Commission will be used to determine the meaning of the terms used in a limited set of provisions of the VAT Directive, for which a uniform interpretation is required.

Currently, the only existing tool for the Commission to promote uniform application of the EU VAT rules is the non-binding guidelines issued by the VAT Committee in its current capacity as an advisory committee. The consequence of the non-binding nature of these guidelines is that divergent application across Member States continues to bring legal uncertainty, may even result in double taxation and creates additional administrative burden for both businesses and tax administrations. To address these problems, it is envisaged to assign implementing powers to the Commission in the VAT area and thereby replace the non-binding VAT Committee guidelines with binding legal acts.

The implementing powers of the Commission will be limited and clearly defined and the Commission will only be able to adopt implementing acts if there is a positive opinion of the VAT Comitology Committee. Moreover, the Council will retain its implementing powers insofar as they do not fall within the strictly defined scope of the empowerment of the Commission and any changes to the VAT Directive will still require the unanimous agreement in Council.

The floor was then opened for comments and questions from the group's members.

The members who took the floor fully endorsed the initiative and the approach taken, and stressed that the adoption of binding implementing acts by the Commission, instead of non-binding guidelines of the VAT Committee, will be a huge step forward to ensure a much needed uniform application of the VAT Directive provisions.

Some enquired how realistic it is to get all Member States to agree unanimously to such a change and whether granting powers to the Commission to adopt delegated acts so as to change minor aspects of the VAT Directive was considered. In reply, the Commission services pointed out that the issue at stake here is the efficiency of the decision-making process and how to enhance it, to the benefit not only of businesses, but also of Member States. On the second point, it was stressed that powers to adopt delegated acts are out of question as the aim is not to adopt new legislation, but to ensure more uniform application of existing law, as unanimously agreed by the Council.

A member pointed out that, as regards the 2020 quick fixes and call-off stock arrangements, a uniform definition of 'small losses' and their treatment is absolutely necessary. Another member referred to recent discussions in the VAT Committee on the issue of immovable goods where Member States committed to a certain approach, but were not following it afterwards. It was agreed that members could send to the Commission services before the end of November concrete examples of cases in which lack of uniformity creates burdens for businesses, in particular for those operating cross border.

A question was raised on the parallel existence of Commission and Council implementing acts. It was clarified that in the proposal the scope of implementing powers of the Commission will be clearly defined to avoid overlap with those of Council so that Implementing Regulations of the Commission and of the Council can exist in parallel.

Another member enquired how the terms of the VAT Directive which need common interpretation would be identified and what the role and involvement of business stakeholders would be, taking account of the experience with the preparation of Explanatory Notes. The Commission services stressed the importance of the dialogue with

business representatives, which will be carried out separately and outside the framework of direct participation in the VAT Comitology Committee. In this regard, the Commission services referred to the next meeting of the group, in which members will debate on issues that the group would like the VAT Committee to discuss.

A question was also raised regarding the future role of the VAT Committee as regards the VAT dispute resolution. In reply, the Commission services clarified the role of the VAT Committee in relation to comitology and the difference with what the dispute resolution would be about, namely to resolve issues stemming from differences in application between two or more Member States in concrete case.

5. VEG No 094: VAT E-COMMERCE – STATE OF PLAY AND FEED-BACK ON COMMENTS RECEIVED FROM BUSINESS STAKEHOLDERS ON EXPLANATORY NOTES

The Commission services informed the participants that the [Explanatory Notes on VAT e-commerce rules](#) were published on 30 September on the Commission website. The chair thanked the experts for their thorough review and their useful and constructive comments. He also informed the group that the communication campaign is about to start and that the appointed contractor “Together Consortium” may contact them for the preparation of targeted communication materials. The Commission services added that the Explanatory Notes will be translated into all EU languages and Chinese and Japanese most likely available towards the end of the year. They will also be complemented by two guides, the Customs Guidance on importation and exportation of low value consignments and the One Stop Shop Guide. The additional guidance is planned to be finalised and published towards the end of the year.

The Commission services explained the main comments received and the extent to which they were reflected or dealt with in the final version of the Explanatory Notes.

Several members expressed their appreciation for the work done and welcomed this final version.

The following issues raised by members of the group were clarified by the Chair:

- The place-of-supply threshold (EUR 10 000) will be applicable to all intra-Community distance sales of goods to customers in the EU, whose transport starts in the Member State of establishment of the supplier. If goods are supplied and transported from a Member State other than the Member State of establishment, the threshold will not be applicable to these supplies. An explicit example on such a scenario has been included in the Explanatory Notes. A possible further clarification in the Explanatory Notes may be required in table 5 where a reference is made to the Member State of dispatch/transport.
- Customs cannot waive all the customs checks, however it is in the interest of each stakeholder (also customs) that the huge number of low value goods pass the borders as smoothly as possible. Safety and security will remain the priority.
- The information in the [TEDB](#) database, as most of the databases of the Commission, is subject to a disclaimer. It is the responsibility of the Member States to include the correct information and maintain it up to date.

- Article 201 of the VAT Directive is not a new provision. Member States indeed may apply it in order to secure the collection of import VAT. Currently, one Member State has made use of this provision, mainly to pre-empt the entry into application of the VAT e-commerce package and in order to ensure VAT collection upon importation from marketplaces. Once the rules for VAT e-commerce enter into application, such use should be aligned with these new rules.
- The conditions on how to become intermediary are not harmonised in the EU. Indeed, this fact may give incentives to choose certain Member State(s), however that Member State will then need to control the obligations of those (numerous) intermediaries as well.

6. VEG N° 095: VAT TREATMENT OF THE PLATFORM ECONOMY: CONTRIBUTION OF THE VEG

The members of the group made a presentation of their contribution to Working paper VEG No 090 “VAT treatment of the platform economy”. The latter document was presented at the 26th meeting of the group.

The presentation started with some key messages:

- There is a need for a gap analysis in order to identify those scenarios already covered by existing legislation (e-commerce in particular) and which are not covered and therefore to be in the scope of the present reflection,
- There is a need for a definition of platform economy or gig economy to ensure that what is actually at stake,
- A ‘one size fits all’ solution is difficult to achieve,
- Technology plays a key role but is not the sole solution,
- International coordination is critical at OECD and EU levels,
- Double reporting (for instance for direct and indirect taxes) should be avoided.

The importance of ensuring a level playing field between businesses using traditional channels and businesses using platform channels was also highlighted. The Commission services confirmed that this is indeed of key importance.

The members of the group then commented on the different options for the future VAT treatment of the platform economy that were elaborated in Working document VEG No 090.

As regards the options that relate to the status of the underlying supplier, which are elaborated under sections 4.1 and 4.2 in Working document VEG No 090, the members of the group concurred with the advantages and disadvantages listed by the Commission services therein.

The members presented two additional options. The first one was to treat all underlying suppliers on sharing economy platforms as taxable persons. It is however questionable whether this option ensures neutrality between suppliers using traditional channels and

suppliers making use of platforms. The Commission services confirmed this looks indeed like a major downside of this option.

The second one was to follow the 2021 e-commerce rules regarding the presumption on the status of the seller: everybody who sells via a platform is considered a taxable person unless the platform has information to the contrary (i.e. using a rebuttable presumption as proxy). The Commission services pointed out that also this option raises concerns as regards neutrality and proportionality.

As regards the options that relate to the nature of the service provided by the digital platform, which are elaborated under sections 4.3 to 4.5 in Working document VEG No 090, the members of the group equally concurred with the advantages and disadvantages listed by the Commission services therein.

Also for this part, the members presented two additional options. The first option consists of a redefinition of electronic services. This should include a provision stating that the place-of-supply rules for electronically supplied services take precedence over the place-of-supply rules for intermediation or other services.

The second option consisted in a new place-of-supply rule for B2C services in general, similar to the existing general rule for the place of supply of B2B services. The Commission services indicated that, whilst the idea itself looks interesting, the impact of such change needs to be carefully assessed. In any event, the impact would certainly go beyond the scope of the platform economy.

The Commission services thanked the members of the group for the efforts they have put into their contribution and indicated that the discussion demonstrated that this issue requires further substantial analysis.

The Commission services therefore intend to set up a group involving a number of the members of the VAT expert group as well as a number of delegates from the Group on the Future of VAT for taking this work forward.

7. AOB

The next meeting of the group would most likely take place on 30 November 2020.

8. LIST OF PARTICIPANTS

Commission services and the members of the VAT Expert Group as published in the Register of Commission Expert Groups² as well as the following invited experts only for the Agenda item VEG N° 094: *VAT E-commerce – state of play and feed-back on comments received from business stakeholders on Explanatory Notes*: ALLEGRO, WISH, ALIBABA, TAXAMO, Google, AVALARA, Ecommerce Europe, European Express Association (EEA), RAKUTEN, eBay, Etsy, CLECAT and PostEurop.

² <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>