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 996 FINAL

MINUTES

116TH MEETING
– 12 JUNE 2020 –

The Chair welcomed the delegations to the non-public 116th meeting of the VAT Committee that took place in the form of a videoconference.

Procedural, housekeeping and information points

Language regime: the meeting was held in EN only.

Next meeting: The 117th meeting is likely to take place in mid-November 2020.

Transparency: The Chair reminded delegations 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. The issue had already been mentioned during the last meeting on 2 December 2019.

Update on proposals by the Commission

The Chair informed delegations about the following:

- COVID-19: the Commission adopted on 3 April 2020 a Decision on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020 (C(2020) 2146 final). The measure will apply for a period of six months, with a possibility for further extension.

- VAT e-commerce: the Commission adopted on 2 May 2020 a Proposal for a Council Regulation amending Regulation (EU) 2017/2454 as regards the dates of application due to the outbreak of the COVID-19 crisis (COM(2020) 201 final). By this, the Commission proposed to postpone, by six months, the entry into force of the new VAT e-commerce rules so that these will apply as of 1 July 2021 instead of 1 January 2021, giving thus Member States and businesses enough time to prepare.

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- VAT rates: the file was last discussed in the meeting of the Working Party on Tax Questions of 30 January 2020.

- VAT e-commerce: the 7 February 2020 Commission Staff Working Document on the state-of-play of e-commerce (SWD(2020) 31 final) was discussed in the meeting of the Working Party on Tax Questions of 14 February 2020. The implementation of IT systems was discussed at the High Level Working Party meeting on 3 March 2020.

- E-invoicing: the 10 February 2020 Report by the Commission assessing the invoicing rules (COM(2020) 47 final) was discussed at the Working Party on Tax Questions on 14 February 2020.

- SME scheme: proposal was adopted by ECOFIN on 18 February 2020 after the European Parliament, being consulted a second time, on 15 January had voted in favour of the proposal. Council Directive (EU) 2020/285 was published in the Official Journal L 62 on 2 March 2020.

- VAT e-commerce postponement package: compromise text was discussed at the informal High Level Working Party on 4 June 2020, likely to have it scheduled for adoption by Coreper on 24 June 2020.

Other topical issues

- List of gold coins for the year 2021: delegations were reminded that the Commission services had sent a note kicking off the exercise to establish the list of VAT exempt gold coins valid for the year 2021 that will be published in the Official Journal of the European Union during the autumn. The deadline for contributions is set at 1 July 2020.

- Explanatory Notes on e-commerce: work still ongoing, but the Explanatory Notes should soon be made available on DG TAXUD's website.

- 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 again the three Member States concerned individually.

- VAT and excise duty exemption certificate: delegates were informed about the difficulty, in times of COVID-19, of abiding by the requirements put in place by Member States that the VAT and excise duty exemption certificate be signed in hand.

- Financial services: the study, launched in June 2019, to evaluate the functioning of the relevant VAT rules and to investigate tentative options for review is ongoing. The second interim report has been submitted and is under examination. The consultant responsible for the study presented the interim report in the VAT Expert Group (VEG) meeting on 11 May 2020 and in the Group on the Future of VAT (GFV) meeting on 25 May 2020.

- VAT Special scheme for travel agents: public consultation of stakeholders was launched on 15 May and will run until 14 September. National tax administrations are invited to take part.

- BREXIT related issues: delegates were reminded that *Notices to stakeholders* on the withdrawal of the United Kingdom and EU rules in the field of VAT for goods and services had been prepared. The Notice on goods was published on 16 April on the website "Getting ready for the end of the transition period". The Notice on services would be published in the coming days.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2020)1246216)

The agenda was adopted as proposed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

The Chair stated that the minutes of the 114th meeting of 2 December 2019 were agreed in written procedure, in which replies from two delegations had been received: one delegation stating its express agreement with the draft minutes and the other delegation whose comments had been taken on board.

Regarding guidelines from previous meetings, the Chair indicated that not all guidelines from the last meetings could be established due to the current workload of the unit and added that, since the last meeting on 2 December 2019, four sets of guidelines had been agreed in written procedure and these were all made available on CIRCABC and on the Directorate-General's public website.

A consultation request by Croatia pursuant to Article 167a of the VAT Directive on the cash accounting scheme had been successfully concluded in written procedure on 16 December 2019.

3. INFORMATION POINTS

3.1 Origin: Commission
Reference: Article 218 of the Treaty on the Functioning of the European Union
Subject: OECD VAT/GST related files – report back from WP9 and TAG meetings
(*oral presentation*)

Introducing the information point, the Commission services indicated that it was quite some time since they had provided the last update on ongoing OECD work on VAT related files. The comprehensive overview that was made therefore covered the period from the 8-9 October 2019 Technical Advisory Group (TAG) meeting up until the latest meeting of the Working Party 9 (WP9) on 3 June 2020.

During the 8-9 October 2019 TAG meeting, discussions focused on *(i)* the cooperation with the work conducted in WP10 on the exchange of information, notably in relation to the needs for data capturing and exchange of information through big marketplaces involved in the sharing/gig economy, and *(ii)* VAT/GST aspects of this sharing/gig economy, for which the work just started, with discussions on the definitions and scope of the work.

Three main topics were discussed during the WP9 on 18-20 November 2019, namely: *(i)* country updates on legislative changes in the different jurisdictions, including at EU level; *(ii)* feedback from WP10; and *(iii)* sharing and gig economy, for which a *Platform*

Task Team of interested jurisdictions was set up, to which the Commission services volunteered to participate and contribute to their work.

The Commission services then reported on the above-mentioned *Platform Task Team*, called *Sharing/gig economy expert group (Task Team/TT)*. In particular, the *Platform Task Team* is composed of 18 countries, some business representatives and the Commission services, and has two subgroups, one on Transportation and another on Accommodation. The *Task Team* has a pure technical advisory role and its mandate is, as identified at the November WP9 meeting, to carry out research and analysis, and provide expert advice on the growth of the sharing/gig economy and its implications for VAT/GST policy and administration. The *Task Team* had had five meetings until June 2020 and its work is still ongoing, a progress report was presented at the June WP9 meeting and the expected outcome is the preparation of a final report.

During the TAG meeting on 12-13 February 2020, there was: *(i)* a presentation of the work plan for 2020/21 (focus on sharing economy and the development of the regional toolkits for the implementation of the VAT/GST guidelines) and for 2021/22 (focus on the use of technology to facilitate compliance, such as e-invoicing, real time reporting, and invoice matching; *(ii)* an update on VAT/GST implementation measures; *(iii)* presentations by various jurisdictions on measures taken and their implementation; *(iv)* presentation of business main concerns with various measures; and *(v)* a presentation by OECD on the VAT aspects of the sharing economy, its scope and focus, based on a preliminary report.

During the WP9 meeting on 3 June 2020, the following was discussed: *(i)* the outcome of the February 2020 TAG meeting; *(ii)* the report on the findings of the *Task Team* subgroup; *(iii)* roundtable on related policy developments at national level; *(iv)* WP10: Update on Model Reporting Rules for platform operators in the sharing/gig economy; and *(v)* presentations by Austria and France.

Finally, the Commission services indicated that there were also a Joint WP2 – WP9 meeting on 23 April and a WP9 meeting on 13 May in relation to the *COVID-19 crisis responses*.

After the oral presentation by the Commission services, no delegation asked for the floor and the Chair closed the agenda point.

4. CONSULTATIONS PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

4.1 Origin: Denmark
Reference: Article 27
Subject: Application of intangible property to be treated as a supply for consideration
(Document taxud.c.1(2020)885597 – Working paper No 988)

The Commission services briefly presented the Working paper and explained that Denmark intends to amend their national legislation to bring intangible property under the scope of Article 27 of the VAT Directive and to consider internal supplies of such property within an undertaking as a supply of services for consideration. They reminded that any measure under Article 27 has to be restricted to the purpose of preventing

distortion of competition. The Danish delegation was then given the floor to clarify the points raised by the Commission services in the Working paper.

The Danish delegation thanked the Commission services for having dealt with their request. On the scope of the measure and why Article 27 of the VAT Directive is used only in regard to "internal" supplies of intangible property, the Danish delegation explained that other services do not give rise to the same problems as intangible property and confirmed that the examples mentioned by the Commission services in their analysis are those targeted by their intended legislative amendment. They indicated that other goods and services are already covered, so that equal treatment and respect for the neutrality principle will be ensured.

None of the other delegations asked for the floor.

The Chair thanked the Danish delegation and stated that the VAT Committee had formally taken note of the Danish consultation under Article 27 of the VAT Directive on the application of intangible property to be treated as a supply for consideration.

Concluding the exchanges, the Chair reminded delegations of the need to submit consultation requests in a timely manner well in advance of the entry into force of the national legislative changes envisaged to allow for a proper treatment of the issues.

4.2 Origin: Portugal
Reference: Article 102
Subject: Application of a reduced VAT rate on certain supplies of electricity
(Document taxud.c.1(2020)1245470 – Working paper No 992)

The Commission services introduced the Working paper prepared following a consultation by Portugal pursuant to Article 102 of the VAT Directive. They reminded delegations that, in 2019, the VAT Committee formally took note of a first consultation by Portugal on two intended measures regarding the application of a reduced VAT rate of 6% (i) to the fixed component of the supply of electricity whose subscribed power did not exceed 3.45 kVA, and (ii) to the fixed component of supplies of natural gas for low pressure consumption that did not exceed 10 000 m³ per year. Portugal now plans to broaden the scope of the reduced rate in relation to supplies of electricity, by creating consumption bands based on contracted power in the Portuguese electricity market and then applying a reduced rate of VAT to the consumption bands with lower amounts of contracted power, including standard low-voltage contracted power. Portugal plans to implement the measure as soon as the consultation procedure with the VAT Committee is completed.

In their consultation, the Portuguese authorities stated that the measure is based on the same rationale as the application of the reduced VAT rate to the fixed component for supplies of electricity and referred to Case C-384/01, *Commission v France*, in which the Court of Justice of the European Union (CJEU) found, in their view, that a selective application of a reduced VAT rate to supplies of electricity could not be excluded insofar as there was no risk of distortion of competition, and the restriction of its application to concrete and specific aspects of supply was consistent with the principle that exemptions or derogations must be interpreted narrowly. In the Portuguese authorities' opinion, there can be no distortion of competition between Member States, since supplies of electricity are taxed at the place where the customer effectively uses and consumes it. Nor can

distortion of competition arise among taxpayers, since any taxable person can access such supplies.

The Commission services noted in their analysis that essential information is yet to be provided, in particular on the specific consumption bands to which a reduced rate will be applied, the percentage of the electricity contracts – as well as the percentage of domestic users and businesses – that would benefit from the measure, the impact of the measure on the VAT revenues and the level of the reduced rate to be applied. In this regard, they stressed that the intended measure must respect the principle of fiscal neutrality, and should not result in distortion of competition in the Single Market or in erosion of national VAT revenues. Finally, the Commission services recalled that the VAT Committee is solely an advisory committee without the power to approve or reject the measures on which it is consulted, and that the consultation procedure is only a procedural requirement, pursuant to Article 102 of the VAT Directive, which can in no way be seen as approval of the Portuguese legislative measure.

The Chair then invited the Portuguese delegation to clarify the matters raised in the Working paper.

The Portuguese delegation thanked the Commission services for having dealt with their consultation and explained that with the measure at issue Portugal aims at reducing the costs of energy consumption and its negative impact on the environment. In their opinion, the application of a reduced VAT rate to lower electricity consumption is a socially fair measure that would also act as an incentive for customers to make more efficient use of energy resources and avoid excessive consumption. Finally, it declared that, given that at this stage the details of the measure had not yet been finalised, it was not in a position to respond to the questions raised by the Commission services. It further indicated that no estimates are available, at this stage, on the number of contracts to be affected by the intended measure and its impact on the national revenues from VAT.

None of the other delegations asked for the floor.

The Chair thanked the Portuguese delegation and stated that the VAT Committee took formal note of the intention of Portugal to apply a reduced VAT rate on certain supplies, notably to consumption bands with lower amounts of contracted power including standard low-voltage contracted power.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.1 Origin: Greece
References: Articles 1, 2 and 73
Subject: Treatment of payments under the Rural Development Programme
(Document taxud.c.1(2020)1225121 – Working paper No 991)

The Commission services presented the Working paper that had been drafted following the request by Greece to clarify the VAT treatment of payments received under the European Agricultural Fund for Rural Development (EAFRD). In particular, Local Action Groups (LAGs), which are in charge of the coordination and implementation of local development programs, receive certain amounts of money for the financing of projects

performed by private businesses and withhold a certain percentage of these amounts to cover their operational expenses. The Greek delegation wonders whether the sums retained by the LAGs are to be qualified as consideration for the supply of services subject to VAT or as a subsidy out of scope of VAT.

In their presentation, the Commission services briefly outlined the work previously carried out in the VAT Committee dealing with payments made under EU Framework Programmes. It was in that context made clear that the VAT Committee is not the appropriate forum to decide on individual cases and that it can only give some general guidance on how to carry out the assessment in the light of the applicable VAT rules and the pertinent case-law of the CJEU on the subject-matter.

In the opinion of the Commission services, the existence of a direct link between the sums retained by the LAGs and the services provided has to be assessed on a case-by-case basis, as deriving from the specific rules setting the rights and obligations of the parties involved in the programme. Since Member States are in principle free, within the limits of the Fund specific Regulations, to design their own internal agreements with and between the different actors, the assessment of the conditions under which a payment is qualified as consideration for a supply of service will derive from the specific features of the agreements between the parties involved.

Before opening the floor to all delegations, the Chair thanked the Greek delegation and invited them to comment on the analysis in the Working paper.

The Greek delegation thanked the Commission services for the preparation of the Working paper and the detailed analysis provided therein. They explained the situation of LAGs in Greece and recalled the essence of their question. The Greek delegation agreed with the view of the Commission services that the assessment as to the existence of a direct link between the sums retained by the LAGs and the services provided has to be performed on a case-by-case basis.

As no other delegations asked for the floor, the Chair thanked the Greek delegation and concluded the discussion.

5.2 Origin: Spain
References: Article 58 of the VAT Directive
Article 7 of the VAT Implementing Regulation
Subject: Services supplied by digital platforms intervening in short-term leasing or renting of immovable property
(Document taxud.c.1(2020)1181920 – Working paper No 990)

The Commission services presented the Working paper drawn up following the request from the Spanish authorities to discuss the nature of the services provided by digital platforms intervening between hosts and guests for the short-term leasing and renting of immovable property. The core issue at stake is whether the services supplied to the hosts and to the guests by platforms involved in such activities constitute electronically supplied services covered by Article 58 of the VAT Directive or would rather qualify as intermediary services.

In their analysis, the Spanish delegation indicated that the services supplied by the platforms, as described, include a number of functionalities that would require a level of

active involvement of the platforms. Since the services are not essentially automated and require more than minimal human intervention, such services cannot be qualified, in the opinion of the Spanish delegation, as electronically supplied services, but must rather be seen as intermediary services.

In their presentation of the Working paper, the Commission services referred to previous discussions, in the Group on the Future of VAT and in the VAT Committee, and the resulting VAT Committee guidelines, which indicate that the key element for distinguishing between these services is whether supplying the service requires only "minimal human intervention" or more than "minimal human intervention". Therefore, essential is whether the services supplied include an element of active involvement of the platform that is specifically adapted to the needs of the customer (hosts and guests).

As regards "functionalities", the Commission services made a comparison with the services provided by platforms intervening in online markets listed under Article 7(2)(d) of the VAT Implementing Regulation, which qualify as electronically supplied despite the fact that functionalities, similar to those described by the Spanish delegation, might also be part of such services. Because of the large variety of ways in which platforms may intervene in the short-term leasing and renting of immovable property, as detailed in the Working paper, the Commission services concluded that it is not feasible to draw a general conclusion on the nature of these services and whether providing them de facto require more than minimal human intervention or not. The assessment of the level of human intervention, and in particular the extent to which this human intervention is adapted to the specific needs of the customer, in the supply made by the platform to the host as well as in the supply made to the guest, will ultimately depend on the business model of the platform.

The Spanish delegation thanked the Commission services for the Working paper. They emphasised again the importance of the concept of "minimal human intervention" and that the presence of the described functionalities require, in their view, active involvement of the platforms concerned. They referred to the analysis, in particular which intermediary services cannot qualify as electronically supplied services because of the "minimal human intervention", contained in Working paper No 814 on the interaction between Article 46 and Article 58 of the VAT Directive. Finally, the Spanish delegation stressed that a harmonised treatment of these services is critical given the economic importance of the sector.

In the ensuing discussions, slightly less than half of the delegations took the floor. A large majority of these delegations were of the opinion that the services of digital platforms are not electronically supplied services, but should be qualified as intermediary services, because, in view also of the presence of particular functionalities, the condition of "minimal human intervention" is not fulfilled. One delegation mentioned that accommodation services booked online are not electronically provided services under Article 7(3)(u) of the VAT Implementing Regulation. Another delegation pointed out that services should be taxed in the Member State where they are consumed.

Several delegations stressed that the analysis should be carried out on a case-by-case basis, and that the active involvement and the "human intervention" should not be automated. One delegation remarked that the presence of various functionalities is not decisive in this respect. Another delegation suggested looking at the CJEU's case-law

related to platforms which, although not related to VAT, deals with the qualification of the services provided. A few delegations stated that the scope of these two categories of services overlaps. One delegation indicated that most of the problems arise from the way the services are defined, considering the way the service is supplied rather than the intrinsic nature of the service provided. These delegations all recognised the need to work on the issue in the future with a view to modify the VAT Implementing Regulation so as to clarify the interaction between these services. The need for agreeing a guideline was also mentioned.

In reply, the Commission services stressed that an overlap in scope between electronically supplied services and intermediary services could occur and stressed the importance of a harmonised approach. A modification of the VAT Implementing Regulation might be necessary in the future, but work should continue to address the problem through interpretation of the current rules. They also stressed that the analysis should focus on the nature of the services provided by platforms, rather than on individual platforms and their business models as platforms have different business models and a single platform can even operate different business models providing different services. The impact of rapidly advancing technologies should be examined carefully, as what is considered active involvement today may not be so tomorrow.

The Chair thanked delegations for their contributions, emphasised that the subject is very important and concluded that the Commission services would reflect on whether guidelines could be prepared, considering the importance of the subject, but also in view of the risk of double taxation and non-taxation.

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

6.1 Origin: Commission
Reference: Article 138 of the VAT Directive
Subject: Implementation of the Quick Fixes Package: Council Directive (EU) 2018/1910 VAT identification number obtained after the moment of chargeability of the tax on the supply
(Document taxud.c.1(2020)971538 – Working paper No 989)

The Commission services presented the Working paper, the purpose of which was to continue the discussion on the application of Article 138 of the VAT Directive in cases where the acquirer has not indicated a VAT identification number to the supplier at the moment of the chargeability of VAT on the supply, but indicates such number afterwards. This was one of the key issues raised in the discussions held in the VAT Committee on 3 June 2019 regarding the interaction between Article 138 of the VAT Directive and Article 4 of the VAT Refund Directive 2008/9/EC, but was not covered by the unanimously agreed guidelines which followed. The discussion should thus continue on the basis of three practical situations outlined in the Working paper in *section 4.1* Negligence or ignorance of the acquirer; *section 4.2* VAT identification number requested but not attributed; and *section 4.3* Supplier stopped his activity.

The Commission services are of the opinion that correction of the initial invoice should be the way of proceeding whenever still possible. This applies to the situations described in *sections 4.1* and *4.2*. Nevertheless, in exceptional situations in which the acquirer cannot

obtain a corrected invoice from the supplier, as in the situation in *section 4.3*, Member States must provide a mechanism that ensures direct refund to the acquirer of unduly paid VAT, where reimbursement from the supplier becomes "impossible or excessively difficult". Such a mechanism would be in line with the CJEU's judgment in Case C-35/05 *Reemtsma Cigarettenfabriken*.

Before opening the floor, the Chair stressed that the subject is very important from the perspective of the VAT neutrality principle.

In the ensuing discussions, slightly less than half of the delegations asked for the floor.

Almost all of them agreed that correction of the initial invoice should be the way of proceeding as regards the situations described in *sections 4.1* and *4.2*. On *section 4.2*, two delegations shared their concern as granting of a retroactively valid VAT identification number is not allowed in their national legislation. One delegation, whilst supportive of correcting the initial invoice under *section 4.2*, could however not agree with the reasoning in relation to call-off stocks in the Working paper, in particular because of the one-party scenario at issue. Finally, one delegation could not accept correction of the initial invoice to be the way to proceed, indicating that taxable persons should apply for a VAT identification number in good time.

As regards the situation under *section 4.3*, half of the delegations who took the floor were of the view that the application of the Refund Directive 2008/9 is not appropriate here. One delegation had doubts that the mechanism referred to in *Reemtsma Cigarettenfabriken* could apply in the case at issue. Another delegation considered that there is no need for a harmonised mechanism for reimbursement as the area is not in any case harmonised and a guideline thus would not be appropriate.

Another half of the delegations which intervened on that point expressed a preference for a harmonised approach on how the unduly paid VAT is to be reimbursed, but were not sure about the concrete mechanism or procedure.

The Commission services clarified that, as regards *section 4.3*, it is up to Member States to decide whether to use the modalities of the Refund Directive or other modalities, and opined that a harmonised approach was not necessary, as there is no harmonised approach for the correction of the initial invoice either. What is essential is that the VAT neutrality principle is respected and that there is a possibility for the acquirer to get this unduly paid VAT back. Regarding *sections 4.1* and *4.2*, they emphasised that the assumption is that there is no fraud and as such, fraud should not be used as an argument for not allowing for the initial invoice to be corrected. On the concerns expressed by two delegations related to the granting of retroactively valid VAT identification numbers, the Commissions services stressed that it is exactly because of administrative practice of Member States not to grant VAT identification number retroactively that the issue is brought up to avoid this being an obstacle.

The Chair thanked delegations for their comments, stressed that the issue in *section 4.3* is very important as the VAT neutrality principle has to be guaranteed, and concluded that the Commission services would prepare guidelines for agreement. If guidelines on the subject could be agreed, the Commission services would amend the Explanatory Notes on the 2020 Quick Fixes in order to include there these guidelines.

6.2 Origin: Commission
References: Articles 30a, 30b, 73a, 410a and 410b
Subject: Questions raised following implementation of the Voucher Directive - further analysis
(Document taxud.c.1(2020)1245810 – Working paper No 993)

The Commission services presented the Working paper, reminding delegations that a number of issues regarding the application of the new rules on vouchers and their interaction with other rules of the VAT Directive had already been discussed at the 2 December 2019 meeting. They explained that to continue the discussions on the issues which required further analysis and to cover also questions raised during that meeting, the new Working paper provides further analysis on: the criteria to distinguish vouchers from payment services (section 3.1.1) and utility tokens (section 3.1.2), the interaction between the rules on vouchers and intermediaries (section 3.2.1), between vouchers and exemptions (section 3.2.2), and between vouchers and VAT special schemes, notably the travel agent scheme and the second-hand goods scheme (section 3.2.3).

Regarding sections 3.1.1 and 3.1.2, only three delegations asked for the floor. One delegation disagreed with part of the conclusion as regards section 3.1.1 stating that a voucher is determined as an instrument where there is an obligation to accept it as consideration or part consideration for a supply. The redemption of a voucher against goods or services is therefore, in their view, a payment as the holder of the voucher is availing themselves of the right to use it as consideration. This delegation agreed that the specific commercial purpose of vouchers helps in distinguishing vouchers from pure means of payments, but stated that in addition the provisions on means of payment and payment services in the Payment Service Directive and the Electronic Money Directive and as well as point (k) of Article 3 (but not point (l) of Article 3) of the Payment Service Directive concerning the scope of that Directive should be taken into account when interpreting the concept of a voucher and of an exempt payment service for VAT purposes. Another delegation, on the other hand, fully endorsed the analysis and the conclusions as set out in sections 3.1.1 and 3.1.2 and pointed out that the redemption of a voucher is not a payment, but exercise of title. Regarding tokens, one delegation suggested to focus the analysis on specific utility tokens and the transformation of such tokens into another instrument. As no other delegations asked for the floor, the Chair concluded that there is overall consensus regarding the analysis and the conclusions under these sections of the Working paper.

Regarding sections 3.2.1 and 3.2.2, almost half of the delegations asked for the floor. The views diverged, especially on the VAT treatment (exempt or not) of SPVs when they are distributed in a chain where an entity at a later stage in the distribution chain does not fulfil the subjective conditions for claiming the exemption, although the beneficiary receives a supply that would, if not supplied under an SPV, be considered as exempt. One group of delegations took the view that exemption should not be granted where an entity in the distribution chain does not meet the condition to claim the exemption. Another group of delegations was of the opinion that the VAT treatment of vouchers should follow the VAT treatment of the main supply, therefore if the principal supply is exempt, the subsequent supply should be exempt as well. Several delegations pointed out that if SPVs for medical care would be taxed because it is provided through a voucher, this would undermine the application of the exemption. One delegation was of the opinion that there is contradiction in part of the analysis. Some delegations stated that in the case of

disclosed agents, the service should be exempt. Delegations generally stressed the need for more clarity and further analysis should be made on the example related to hospitals.

Regarding section 3.2.3, only a few delegations took the floor. One delegation expressed overall agreement with the views of the Commission services in relation to the travel agent scheme, whereas another delegation stated their disagreement. One delegation enquired whether analysis had been made to take account of COVID-19 circumstances. As regards the second-hand goods scheme, one delegation mentioned that some difficulties could emerge in determining whether the goods fall within or outside the scope of the scheme.

The Chair thanked all delegations that contributed and concluded that: (i) on sections 3.1.1 and 3.1.2 there is a large consensus and an attempt to prepare draft guidelines on this issue might be made; (ii) on sections 3.2.1 and 3.2.2 there are diverging views, little scope for consensus, and a need to continue the discussion; (iii) on section 3.2.3, there is a scope for consensus and further analysis could be carried out in future.

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

7.1 Origin: Commission
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union
(Document taxud.c.1(2020)1245951 – 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 (14 rulings issued between 20 November 2019 and 18 May 2020). He also reminded that 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.

The Czech delegation referred to the judgment in Case C-401/18, *Herst*, and asked whether the Commission services would consider its impact on the content of the Explanatory Notes on the 2020 Quick fixes published on the Commission's website.

The Chair informed the delegations that the Commission services were aware of the judgment of the CJEU in *Herst* and would as a result modify the text of the Explanatory Notes.

Since no other delegation asked for the floor, the Chair concluded the discussion.

8. ANY OTHER BUSINESS

8.1 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(2020)1246066 – Information paper)

The Chair briefly drew delegations' attention to the Information paper, which contained updates regarding options exercised under Article 199a received from three Member States, two of which had transmitted information about newly adopted legislation, whilst one sent additional information regarding its application of the reverse charge mechanism already notified earlier.

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

8.2 Origin: Commission
Reference: Article 211
Subject: VAT aspects of centralised clearance for customs upon importation – update
(Document taxud.c.1(2020)1226436 – Working paper No 924 REV6)

The Commission services explained that they regularly update the Working paper and drew delegations' attention to the sixth revision, which included the information in Annex 2 communicated by Malta during the 114th meeting in December 2019 and afterwards confirmed in writing. It was noted that during the transition period, they will keep listing the information for the United Kingdom in that Annex accompanied by an explanatory footnote. They also informed the delegates that a seventh update would be made to factor in the work of the customs project group.

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

The Chair thanked the delegation concerned for its update and concluded the discussion on this item.

Conclusion

The Chair closed the meeting by thanking the delegations for their participation in the discussions.

ANNEX

LIST OF PARTICIPANTS

BELGIQUE/BELGIË/BELGIUM	Ministry of Finance
БЪЛГАРИЯ/BULGARIA	National Revenue Agency
ČESKO/CZECHIA	Ministry of Finance
DANMARK/DENMARK	Tax Agency
DEUTSCHLAND/GERMANY	Federal Ministry of Finance
EESTI/ESTONIA	Ministry of Finance
ÉIRE/IRELAND	Revenue Commissioners
ΕΛΛΆΔΑ/GREECE	Independent Authority for Public Revenues
ESPAÑA/SPAIN	Ministry of Finance
FRANCE	Ministry of Finance
HRVATSKA/CROATIA	Permanent Representation
ITALIA/ITALY	Ministry of Economy and Finance Department of Finance
ΚΥΠΡΟΣ/CYPRUS	Ministry of Finance
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance
LUXEMBOURG	Administration de l'enregistrement, des domaines et de la TVA
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	Ministry of Finance
ROMÂNIA/ROMANIA	Ministry of Finance
SLOVENIJA/SLOVENIA	Ministry of Finance
SLOVENSKO/SLOVAKIA	Ministry of Finance
SUOMI/FINLAND	Ministry of Finance
SVERIGE/SWEDEN	Ministry of Finance

EUROPEAN COMMISSION