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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 1019 FINAL

MINUTES

118TH MEETING
– 19 APRIL 2021 –

The Chair welcomed the delegations to the non-public 118th 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 119th meeting is likely to take place in mid-November 2021.

Update on proposals by the Commission

The Chair informed delegations about the following:

- VAT Committee Proposal: further to the 2020 Tax Action Plan, the Commission adopted, on 18 December 2020, a Proposal for a Council Directive amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive (COM(2020) 749 final).

- Evaluation of the special scheme for travel agents: on 17 February 2021, the Evaluation of the special VAT scheme for travel agents and tour operators was published (SWD(2021) 32 final). The Commission services presented the results of the evaluation to stakeholders during the 29th meeting of the VAT Expert Group that took place on 24 February 2021. A presentation by the Commission and an exchange of views took place during the informal videoconference of the Council Working Party on Tax Questions (Indirect Taxation / VAT) on 14 April 2021.

- "Buy and donate" Proposal: on 12 April 2021, the Commission adopted a Proposal for a Council Directive amending Directive 2006/112/EC as regards exemptions on importations and on certain supplies, in respect of Union measures in the public interest (COM(2021)181 final). The Commission presented the proposal to Member States during the informal videoconference of the Council Working Party on Tax Questions (Indirect Taxation / VAT) on 14 April 2021.

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- 2018 Proposal on VAT rates: the last informal videoconference of the Council Working Party on Tax Questions (Indirect Taxation / VAT) took place on 31 March 2021. The focus is on a revamped Annex III. The next meeting would be 22 April.

- Zero and reduced VAT rates on COVID-19 vaccines and COVID-19 testing kits: on 7 December 2020 the Council adopted the COVID-19 proposal on *the zero and reduced VAT rates on COVID-19 vaccines and COVID-19 testing kits* (COM(2020) 688 final). Council Directive (EU) 2020/2020 was published in OJ L 419 on 11.12.2020.

- Proposal for the specific prefix "XI" for VAT identification numbers in Northern Ireland: the proposal was formally adopted by the Council on 20 November 2020. Council Directive (EU) 2020/1756 was published in OJ L 396 on 25.11.2020.

- VAT Committee Proposal: the first meeting of the Council Working Party on Tax Questions (Indirect Taxation / VAT) on the proposal took place on 5 February 2021 during which the Commission presented the Proposal. A second meeting under the Portuguese Presidency took place on 14 April for an exchange of views on possible ways forward with this proposal in view of the concerns expressed by several Member States.

- Evaluation of the special scheme for travel agents: a presentation by the Commission and an exchange of views took place during the informal videoconference of the Council Working Party on Tax Questions (Indirect Taxation / VAT) on 14 April 2021.

Other topical issues

- VAT e-commerce package: the Explanatory Notes published on TAXUD's website are now available in all official EU languages, as well as in Chinese and Japanese. The Explanatory Notes are complemented by two guides, which were published in March 2021: (1) the *Customs Guidance on importation and exportation of low value consignments* and (2) the *One Stop Shop* Guide. A new OSS Portal containing updated information (OSS and IOSS) based on the current MOSS Portal will be designed as well. The communication campaign is ongoing and the new VAT e-commerce website is live.

- Study on "VAT in the Digital Age": the Inception Report was submitted by the contractor in December 2020 whereas the Interim Report is to be submitted by 23 April. A Fiscalis virtual event with representatives of Member States (GFV) and members of the VAT Expert Group (VEG) to discuss the issues of the Interim Report is planned for the end of May/ beginning of June 2021. The conclusions of the draft Final Report of the study will be discussed with representatives from the Member States (GFV) and members of the VAT Expert Group (VEG) during another Fiscalis event planned for October 2021.

- VAT treatment of financial services: work on the *Impact assessment* has started. A Fiscalis event in Berlin with representatives of Member States (GFV) and business (VEG) to discuss stakeholders' input for the Impact assessment is planned for October 2021[1]. The *public consultation* launched at the beginning of 2021 runs until 3 May. The outcome of that consultation and other consultations with stakeholders will feed into the Impact assessment.

- SME scheme: work is ongoing on preparing implementing measures needed as basis for the IT changes to be put in place for 2025. On 21 April, SCAC will examine the updated implementing measures which will subsequently be submitted for final approval in a written procedure.

[1] This event has since been postponed.

- Brexit: the VAT Protocol was briefly presented.

- Case C-695/20 *Fenix International Limited*: The Commission services drew the attention of the delegations to this preliminary ruling, whereby the Court of Justice of the EU (CJEU) had been asked to rule on the validity of Article 9a of the VAT Implementing Regulation.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2021)2147784)

The agenda was adopted as proposed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

The Chair stated that the minutes from the 117th meeting held on 16 November 2020 were agreed in written procedure and had been published on CIRCABC.

Regarding guidelines from previous meetings, the Chair indicated that not all guidelines from the last meetings could yet be established and added that, since the last meeting on 16 November 2020, one set of guidelines had been agreed in written procedure and these were made available on CIRCABC and on the Directorate-General's public website and a second set was in the process of finalisation.

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*)

The Commission services made an overview of ongoing OECD work on VAT related files that covered the period from April 2020 onwards, reminding delegations that the last update on ongoing OECD work had been made during the 116th meeting of 12 June 2020.

In particular, two reports had been adopted: (i) *Consumption Tax Trends Paper* was adopted in December 2020 and (ii) Report on *"The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration"* was adopted in written procedure on 12 March 2021.

In the course of 2020, there were several COVID-19 related meetings. On 24 April 2020, there was a joint WP2/WP9 online roundtable discussion on *"Tax Policy and the Covid-19 pandemic"*. On 13 May 2020, there was a meeting of the OECD WP9 on the measures jurisdictions had taken in relation to the COVID-19 pandemic, the lessons learned and what was planned for the recovery process. Another meeting took place on 25 June 2020 regarding the VAT/GST policy responses to the COVID-19 crisis. Finally, on

25 November 2020, there was a *Tax Policy Roundtable: "Towards recovery and beyond"*, which was organised by WP2 in which WP9 delegates were also invited. The aim was to provide delegates with an opportunity to present tax reforms that were recently announced in their jurisdictions and to have a broader discussion about the future directions of tax policy in recovery and beyond the current COVID-19 crisis.

Regarding WP9 subgroup 'Task Team on the Sharing/gig economy' set up in December 2019 with representatives from fifteen countries as well as the European Commission, several meetings took place in 2020 and beginning of 2021; its final report was presented to WP9 and Taxation advisory group (TAG) and it resulted in the above mentioned report adopted on 20 March 2021.

During the WP9 meeting on 3 June 2020 on *"The Sharing/gig Economy: Impact on VAT/GST Policy and Administration"*, the following topics were discussed: *(i)* Overview of business models of the two key sectors of the sharing/gig economy (accommodation and transportation sectors); and *(ii)* The growth of the sharing/gig economy: Impact on VAT/GST policy and administration. Progress report on the status and content of the ongoing analysis.

On 22 April 2021, there was a workshop on *"The VAT/GST treatment of the sharing/gig economy"*, which focused on the: (i) release of the report on VAT/GST policy in response to the growth of the sharing/gig economy; (ii) main sharing/gig economy business models; (iii) the impact of sharing/gig economy growth on VAT/GST policy and administration; and (iv) possible policy responses, including the role of sharing/gig economy platforms in VAT/GST collection.

Finally, there was a Global Forum online event on 13-14-15 April 2021 on *"Implementing a comprehensive VAT/GST Digital Strategy"*. The event covered (i) the key components of the draft Regional VAT Digital Toolkit that is being developed by the OECD in collaboration with the World Bank Group, the Inter-American Development Bank and CIAT; and (ii) the core principles of policy design and legislative reform, the implementing and operating of a remote vendor-registration and compliance regime; and enforcement strategies for the collection of VAT/GST on digital trade.

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: Romania
Reference: Article 167a of the VAT Directive
Subject: Cash accounting
(Document taxud.c.1(2021)1868478 – Working paper No 1009)

The Commission services presented the Working paper, explaining that Romania had submitted a consultation request as it would like to increase the threshold set for its optional "cash accounting" scheme to 4 500 000 lei (approximately EUR 920 000). The optional "cash accounting" scheme currently applied by Romania is open to all taxable persons established in Romania whose annual turnover from the preceding calendar year does not exceed 2 250 000 lei (approximately EUR 460 000).

In their analysis, the Commission services asked Romania to *(i)* provide information on the economic impact of the measure and the estimated number of companies that would benefit from it; and (ii) clarify whether the annual turnover threshold of 4 500 000 lei also applies to taxable persons having established their business in Romania and registered for VAT purposes during the year and who opt to apply the cash accounting scheme starting upon the date of their registration for VAT purposes.

The Chair thus invited the Romanian delegation to clarify the matters raised in the Working paper. The Romanian delegation thanked the Commission services and indicated that around 26 000 companies would benefit from the measure. Regarding its economic impact, the Romanian delegation mentioned that they would submit additional information after the meeting. They also confirmed that the annual turnover threshold of 4 500 000 lei would also apply to taxable persons that have established their business and registered for VAT purposes during the year.

As no other delegation asked for the floor, the Chair thanked the Romanian delegation and concluded that the VAT Committee took formal note of the Romanian consultation under Article 167a of the VAT Directive on the increase of the national threshold of the cash-accounting scheme they apply.

Finally, the Chair reminded delegations that with the adoption of Council Directive (EU) 2020/285 as regards the special scheme for small enterprises, consultation would no longer be required as of 2025.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.1 Origin: Italy
References: Articles 14, 15, 38, 39 and 193 of the VAT Directive
Subject: VAT rules applicable to transactions related to the recharging of electric vehicles – follow-up
(Document taxud.c.1(2021)2099876 – Working paper No 1012)

The Commission services presented the Working paper that was drafted following the request submitted by the Italian delegation to re-open the discussion on the VAT treatment of transactions occurring in the process of recharging of electric vehicles.

In their presentation, the Commission services reminded that the issue had been examined by the VAT Committee at its 113th meeting of 3 June 2019[2] and a unanimous guideline[3] was agreed afterwards. They explained in detail the role of the parties normally involved in the recharging of electric vehicles: the charging stations owners ('CSOs'), the infrastructure operator, also called the charge point operator ('CPO'), the e-mobility service provider ('eMP' or 'eMSP') and the customer (driver). The Commission services then reminded delegations of its position and the conclusions resulting from the 113th meeting, namely that the transaction carried out by the CPO constitutes a supply of electricity and should, in accordance with Articles 14(1) and 15(1) of the VAT Directive, be considered a supply of goods. This interpretation was subsequently agreed unanimously by the VAT Committee in the aforementioned guideline. The VAT treatment

[2] Working paper No 969 of 13 May 2019.
[3] Document A – taxud.c.1(2019)6589787 – 972 (p. 251).

of the transactions carried out by eMPs was however not included in the above guideline as it was not possible at that point in time to draw conclusions on the second transaction.

Italy requested to re-open the discussion as it does not agree anymore with the opinion as first presented nor with the guideline. In particular, Italy takes the view that only the transaction between the electricity supplier and the CPO is to be considered a supply of electricity. The CPO in turn provides a recharging service. The electricity is consumed by the CPO and spent to recharge the battery used by the electric vehicle. Italy is of the view that the transactions taking place in the framework of the charging of electric vehicles form a single, indivisible supply and that there are no main supply and ancillary supplies.

In the opinion of the Commission services, the set of different activities carried out by the CPO or the eMP constitute a single supply, with the main supply being the charging of the electric vehicle, with the other supplies being ancillary supplies. The main supply should be qualified as a supply of electricity, thus a supply of goods, as the electric vehicle driver acquires a set of transactions with the aim to recharge his/her vehicle. In the perception of the driver, it is the electricity that is purchased. The fact that the price paid for the supply is not necessarily based on the amount of electricity consumed is not sufficient to conclude that a supply of electricity does not take place. The price paid for the supply can take into account, next to the electricity consumption, other elements, especially since ancillary supplies are made. Moreover, as Italy mentions and as told by the sector, suppliers may decide on a particular method for the price they charge, but they may also charge per kWh.

In addition, in the opinion of the Commissions services, the CPO supplies electricity and ancillary supplies to the eMP who in turn supplies this electricity with ancillary supplies to the driver of the electric vehicle. Since the eMP purchases electricity with a view of reselling it to the driver, the eMP should be considered a taxable dealer. In accordance with Article 38(1) of the VAT Directive, the supply by the CPO to the eMP should therefore be subject to VAT where the taxable dealer (the eMP) has established his business. When VAT is due in a Member State in which the CPO is not established, the eMP will normally become liable for the payment of VAT on this supply (Article 195 of the VAT Directive). Following Article 39 of the VAT Directive, the supply of electricity carried out by the eMP to the driver should be deemed to take place where the customer effectively uses and consumes the goods, thus at the location of charging terminals. The person liable for payment of the VAT due will normally be the supplier. As usually the eMP allows the customers to recharge their vehicles in various Member States, the eMP will normally need to pay VAT and fulfil VAT obligations in these various Member States. Should the CPO at one and the same time be an eMP, the CPO will supply electricity directly to the driver. As in the case of the eMP, the supply will take place for VAT purposes where the customer effectively uses and consumes the goods. The same rules as for the supply by the eMP will apply.

In conclusion, the Commission services stressed the importance of Member States applying the same VAT treatment to transactions that take place in the framework of charging of electric vehicles in order to ensure legal certainty and also a level playing field for the sector. The VAT Committee was thus invited to complete the existing guideline by including elements to address the VAT treatment of supplies carried out by eMPs. Delegations were also requested to give their opinion on the three questions included in the paper.

Before opening the floor to all delegations, the Chair underlined the importance of both the subject and of achieving consistent interpretation across all Member States. He stressed that the future single VAT registration would deal with the practical consequences of the VAT treatment of the second transaction. He then gave the floor to the Italian delegation and invited them to comment on the analysis in the Working paper.

The Italian delegation thanked the Commission services for the preparation of the paper and reiterated their position that only the transaction between the supplier of electricity and the CPO is a supply of electricity. CPOs are no power plants and there is no reselling of electricity neither by CPO to eMP nor by the eMP to the e-vehicle driver. eMP services must be placed on equal footing, they are not ancillary, but composite supplies, impossible to divide in several parts, and the service is recharging of e-vehicle. Articles 44 and 45 of the VAT Directive should apply.

In the ensuing discussions, more than two-thirds of the delegations took the floor. All the delegations who intervened thanked the Commission services for the comprehensive analysis and expressed their support for it. In particular:

- regarding question 1 in the paper, all delegations who intervened agreed with the Commission services that the charging of electric vehicles constitutes for VAT purposes a supply of electricity, thus a supply of goods.

- regarding question 2 in the paper, all delegations who intervened agreed that in a typical value chain of charging of electric vehicles (and provided this transpires from the contractual arrangements) the CPO supplies electricity to the eMP, while the eMP carries out the same supply to the driver.

- regarding question 3 in the paper, all delegations who intervened agreed that a guideline should be agreed by the VAT Committee to address the VAT treatment of supplies by eMPs and in order to ensure legal certainty for the e-vehicle charging sector.

In addition, one delegation noted that the VAT treatment of the transaction when the charging takes place in several Member States could give rise to practical difficulties, but recognised that for B2C supplies a solution in the future could be the extension of the One Stop Shop to cover these supplies, whereas for B2B supplies the use of the reverse charge could be a possible solution. This delegation also mentioned potential issues with input VAT deduction.

Another delegation stressed the importance of ensuring legal certainty also with regard to the delivery of fuel through fuel cards (whether fuel is supplied so that there is a supply of goods or rather this is a service) and referred to the judgments of the CJEU in cases C-235/18 and C- 48/20, on which it would like the VAT Committee to hold a discussion with a view to establishing a common interpretation across all Member States.

The Chair thanked delegations for their contributions, emphasised the importance of having a unanimous interpretation and concluded that his services would prepare draft guidelines on the VAT treatment of the supplies carried out by the eMPs.

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

6.1 Origin: Poland
References: Article 17a(4) and (5) of the VAT Directive
Article 54a of the VAT Implementing Regulation
Subject: Return of goods placed under call-off stock arrangements: moment when the goods are considered as returned and accounting methods to determine which goods are returned
(Document taxud.c.1(2021)1533472 – Working paper No 1007)

The Commission services presented the Working paper that was drafted following a question submitted by Poland regarding the determination of the period during which goods were under call-off stock arrangements. In particular, for goods returned to the supplier from the Member State to which they were first dispatched or transported under call-off stock arrangements, Poland seeks clarifications on *(i)* the moment when such goods are considered effectively returned; *(ii)* the accounting method that could be used to identify the goods returned, in relation to non-bulk goods; and *(iii)* the recapitulative statement in which the return of the goods should be reported, when the transport of goods begins in one month and ends in a different one. The reply to these questions is necessary in order to assess whether upon return of goods, a transfer within the meaning of Article 17 of the VAT Directive is deemed to have taken place.

In their presentation, the Commission services explained that to verify if the 12-month deadline has been exceeded and a transfer of goods is deemed to have taken place, it is necessary to determine the initial and final date of that 12-month period. The initial date will be that when the goods arrived in the Member State to which they have been dispatched or transported, and the final date will be that when the goods returned to the Member State from which they have been dispatched or transported.

Regarding the moment when such goods are considered effectively returned, the Commission services took the view that the date when the goods leave the warehouse in the Member State from which they had been returned cannot be considered as the date of return. The supplier could register the return of the goods when they arrive to his warehouse or even decide to do so already at the time they enter the territory of the Member State from which they had been initially dispatched or transported.

Regarding the recapitulative statement in which the return of the goods should be reported when the transport of the goods begins in one month and ends in a different one, the Commission services were of the opinion that the transport should be reported in the recapitulative statement corresponding to the month in which the return of the goods is completed. The only date that can be checked in the supplier's register is that of the return of the goods. Therefore, the recapitulative statement in which the return of the goods should be reported is that corresponding to the date included in the supplier's register for that return.

Regarding the accounting method that could be used to identify the goods returned in relation to non-bulk goods, the Commission services took the view that it is appropriate to use the first in first out (FIFO) method also for non-bulk goods, as long as the goods are identical. This would avoid unnecessary complication in the management of the warehouse. Moreover, limiting the use of the FIFO method to warehouses where only

goods from the same supplier are being stored seems unjustified. Thus, the fact that goods from different suppliers are stored in the same warehouse does not impede the application of the FIFO method to the goods having been taken out of the warehouse, provided that the method is separately applied to the stock of each supplier, even when those goods are identical.

Before opening the floor to all delegations, the Chair thanked the Polish delegation and invited them to comment on the analysis in the Working paper. The Polish delegation thanked the Commission services for the preparation of the paper and the detailed analysis of their questions, and added that they agree with the Commission services' analysis on all the three questions.

The floor was then open to all delegations.

Regarding the moment when such goods are considered effectively returned, one third of all delegations took the floor and almost all of them agreed with the analysis of the Commission services. One delegation indicated that the moment of return is indeed, strictly speaking, the moment when the goods enter the territory of the Member State of return, but in practice it will be the moment the goods arrive in the warehouse. Another delegation stated that the arrival of the goods in the warehouse is easier to verify, both by the supplier and the tax administration, than the entry into the territory of the Member State from which they had been initially dispatched or transported.

Two delegations, however, could not agree with the analysis of the Commission services. The one delegation considered that it would be more practical to choose the date when the goods leave the warehouse as delays in transport could impact the place of taxation, requiring the supplier to register in the Member State from which the goods were returned. The other delegation considered that the moment of return could be either when the goods leave the warehouse in the Member State from which they had been returned or when they enter the territory of the Member State from which they had been initially dispatched or transported, but took the view that the first has an advantage in situations where the distance between the two Member States of move of the goods is substantial.

Regarding the recapitulative statement in which the return of the goods should be reported, one third of all delegations took the floor and all of them agreed with the analysis of the Commission services. One delegation was flexible and indicated that it would require taxable persons to report the return of the goods in the tax period when the return starts, but could also agree that it be the moment of arrival of the goods if a large majority takes this view.

Regarding the accounting method that could be used to identify the goods returned in relation to non-bulk goods, almost half of the delegations took the floor and all of them agreed with the analysis of the Commission services.

In addition, one delegation asked for clarification whether, for example, screens of different size should be considered identical goods, to which the Commission services replied that screens of different size are different goods and that the FIFO method must be applied for each size of screens separately. Another delegation referred to the situation where a single supplier holds in a single warehouse a stock of identical non-bulk goods (i.e. computers) under multiple call-off stock arrangements concluded with multiple acquirers, and took the view that the FIFO method could also be used in that case,

provided it is applied separately to the stock held for each individual acquirer. In that respect, the delegation in question made reference to the example concerning bulk goods referred to in point 2.5.1.7. of the Explanatory Notes on the Quick Fixes where "oil" could, in their view, be replaced by identical non-bulk goods and "tank" by a warehouse.

The Chair thanked the delegations for their contributions, stated the importance of having a unanimous interpretation of the subject and concluded that his services would prepare draft guidelines.

6.2 Origin: Belgium
References: New Article 59c of the VAT Directive
Subject: Calculation of the EU place-of-supply threshold
(Document taxud.c.1(2021)1872698 – Working paper No 1010)

The Commission services presented the Working paper that had been drafted following the request by Belgium to clarify the precise scope of paragraphs 1 and 3 of the new Article 59c of the VAT Directive as regards the calculation of the EU place-of-supply threshold in order to ensure uniform application of this new Article 59c. In particular, Belgium asked *(i)* how the threshold has to be calculated in a situation whereby the supplier is established in one Member State only but also makes intra-Community distance sales of goods from another Member State (possible stock/goods in that other Member State not being considered a fixed establishment); and *(ii)* whether all the intra-Community distance sales of goods to all other Member States than the Member State of establishment should be taken into account for the calculation of the threshold, regardless of the Member State of departure of the goods or should only the intra-Community distance sales of goods from the Member State of establishment be taken into account.

In their analysis, the Commission services took the view that the supplies to be taken into consideration for calculation of the EUR 10 000 threshold must be the supplies of telecommunications, broadcasting and electronically supplied (TBE) services and intra-Community distance sales of goods made only from the Member State of establishment. Distance sales of goods made by the taxable person, not having a fixed establishment in another Member State, from a Member State other than the Member State of establishment would have to be taxed in each of the Member States of arrival of the goods with an obligation to register under the normal rules in each of these Member States. The Commission services in that regard pointed out that the EUR 10 000 turnover threshold has been introduced to support micro-businesses.

Before opening the floor to all delegations, the Chair thanked the Belgian delegation and invited them to comment on the analysis in the Working paper. The Belgian delegation thanked the Commission services for the preparation of the paper and the clear explanation, stating their agreement with the analysis. In the opinion of the Belgian delegation, the approach favoured by the Commission services is the most pragmatic as it would otherwise be very difficult for the Member State of establishment to know whether the calculated turnover is correct should turnover from supplies from other Member States have to be taken into account. The Belgian delegation stressed that the wording of the new Article 59c of the VAT Directive is not entirely clear and suggested that the legal text should better be adapted to clarify that the threshold is to take into account only the supplies from the Member State of establishment. The Belgian delegation also referred to

the need to review the Explanatory Notes and adapt the example under section 3.3 therein, to align them with the analysis in the present Working paper.

In the ensuing discussions, more than two-thirds of the delegations took the floor and almost all of them expressed their agreement with the Commission services' analysis and called for either amending Article 59c of the VAT Directive or clarifying the subject in a guideline and in the Explanatory Notes as matter of priority. One delegation asked for clarification in relation to the registration for the new One-Stop Shop (OSS). In the view of this delegation, supported by one other delegation, it should be possible to use the OSS for the distance sales from stocks in Member States other than the Member State of establishment rather than having to register in each of the Member States of arrival of the goods, while still benefiting from the exemption threshold. One delegation indicated that two different versions of the Explanatory Notes could be found on the European Commission's website, one version with reference to the threshold in a footnote and another without such a reference.

One delegation, however, could not support the analysis of the Commission services. This delegation took the view that distance sales of goods made by a taxable person from Member States other than the Member State of its establishment should be taken into account in the calculation of the threshold since it could not agree that a taxable person should still be considered a micro business if, for example, it would make distance sales of goods for EUR 9 000 from each of those Member States.

In their intervention, and replying to the question in relation to the registration for the OSS, the Commission services explained that if a taxable person opts for using the OSS under Article 369b of the VAT Directive, it should then use OSS for all distance sales of goods irrespective from where the transport starts, which makes it impossible for the taxable person to benefit at the same time also from the exemption threshold. In other words, as soon as the taxable person makes distance sales from Member States other than the Member State of establishment and registers for the OSS, that taxable person is no longer eligible for the exemption threshold. The Commission services referred to the rationale behind the exemption threshold, namely a relief for micro enterprises which carry out intra-Community distance sales of goods only from their Member State of establishment. They nevertheless acknowledged that perhaps the wording of the VAT Directive is not very clear.

The delegation who asked the question could not agree with the explanation provided by the Commission services and reiterated their interpretation of Article 369b of the VAT Directive. One other delegation suggested that the issue of whether a taxable person can register for the OSS and at the same time benefit from the exemption threshold be clarified as well, either in a guideline or by amending the legal text of the VAT Directive.

The Chair thanked the delegations for their contributions and concluded that this is an important and urgent issue, and stated that his services would prepare guidelines as a matter of priority.

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

7.1 Origin: Romania
References: Articles 53, 54 and 58 of the VAT Directive
Subject: Case C-568/17, *Geelen*, live streaming of digital content (video-chat)
(Document taxud.c.1(2021)2147591 – Working paper No 1013)

The Commission services presented the Working paper that had been drafted following a request by the Romanian delegation to discuss the place of supply of services performed by video-chat studios when supplied to website operators, in particular as a follow-up to the judgment of the CJEU in case C-568/17, *Geelen*.

In their presentation, the Commission services recalled the facts in *Geelen* and also briefly outlined the issues and the differences between *Geelen* and the present case brought up by Romania. They explained that the paper examined three possible approaches as regards the VAT treatment of the services at issue consisting in *"live streaming of digital content",* in particular: *(1)* consider such services to be *electronically supplied services*; *(2)* consider such services to be cultural, artistic, sporting, scientific, educational, *entertainment or similar events/activities*; or *(3)* consider whether the various parties in the supply chain act as an *intermediary* to the main supply.

In their analysis, the Commission services took the view that the services consisting in "live streaming of digital content" cannot be seen as electronically supplied services as they appear to exceed the "minimal human intervention". Moreover, neither the transaction between the video-chat studio and the website operator, nor the transaction between the web-site operator and the final clients, can qualify as intermediation.

The Commission services concluded that the services consisting in "live streaming of digital content" could be seen as entertainment services to be taxed as follows:

- for the B2B supply: since this should not be considered an admission to entertainment events, the general rule for place of supply under Article 44 of the VAT Directive is applicable, i.e. the place where the taxable person receiving the service has established his business.

- for the B2C supply: this is an entertainment event/activity under Article 54 of the VAT Directive. Given the technological advancements such activities/events, when carried out virtually, should be considered to take place where the customer is located (e.g. enjoys the entertainment). This interpretation ensures both the taxation at the place of consumption and a rational result/solution for tax purposes.

Before opening the floor to all delegations, the Chair referred to the change in the place of supply for virtual events discussed in Council in the context of the 2018 Commission proposal on VAT rates. He then thanked the Romanian delegation and invited it to comment on the analysis in the Working paper. The Romanian delegation thanked the Commission services for the preparation of the Working paper and stressed the need to clarify the VAT treatment of the services supplied by video-chat studios to website operators as described in their paper.

In the ensuing discussions, less than a third of all delegations took the floor. Almost all of these delegations agreed with the analysis of the Commission services. One delegation inquired whether the guidelines on the provision of education and training resulting from the 97th meeting of the VAT Committee would have to be revisited. Another delegation stated that the same treatment must also apply to the live streaming of all cultural and educational services. Another delegation inquired about the treatment of the services at issue in the present case if they were not interactive. That delegation stressed the need to change the place-of-supply rule for live streaming of events, possibly in the context of the VAT rates proposal discussed in Council, as it can otherwise lead to tax evasion and tax optimisation schemes. One delegation took the view that the issue be settled in a Council Regulation rather than in a guideline of the VAT Committee.

Two delegations, however, could not agree with the Commission services' opinion. These delegations took the view that the application of Article 54 of the VAT Directive to "live streaming of digital content" is not appropriate as the place where the customer is located is not necessarily where the online event takes place and also because it would be difficult in a B2C context to ascertain the location of the customer. Moreover, the EUR 10 000 threshold for TBE services does not apply to education and entertainment services covered by Article 54. Finally, these delegations were of the opinion that it is necessary to have a new place-of-supply rule in connection with this type of services supplied via the internet, including also for scientific and educational services.

The Commission services indicated that they would reflect on whether the guidelines on the provision of education and training resulting from the 97th meeting of the VAT Committee would have to be reopened, as inquired by one delegation. Regarding the question on the treatment of "live streaming of digital content" when such services are not interactive, the Commission services replied that it could be that such services, without human interaction, can qualify as electronic services. Finally, they stated that agreement in Council on the VAT rates proposal could provide a solution to the issue discussed here, namely a change to the place-of-supply rule so that all services that can be supplied to a customer by electronic means are taxed at the place of the customer.

The Chair concluded that there is broad agreement with the analysis in the paper and that the Commission services would reflect on drafting guidelines on the subject.

7.2 Origin: Commission
References: Title X, in particular Articles 167 to 169 and 178 of the VAT Directive
Subject: Selected CJEU cases with impacts on businesses operating in the EU Single Market – issues evoked by the VAT Expert Group
(Document taxud.c.1(2021)1759933 – Working paper No 1008)

The VAT Expert Group ('VEG') had prepared a paper in relation to selected CJEU cases with impacts on businesses operating in the EU Single Market. The issues evoked relate to: *(i)* input VAT deduction, in particular the right to deduct in triangular cases with spill-over effects and the execution of the right to deduct – formality vs neutrality; and *(ii)* the legal uncertainty caused by certain CJEU cases (C-185/01 *Auto Lease Holland* and C-235/18 *Vega International*) dealing with supply chains which, in the opinion of the

VEG, if applied in a legalistic rather than in a commercial/economic way, would lead to unintended consequences regarding business models and commercial activities.

The Chair explained that two members of the VEG were invited to present the paper and answer any possible questions from delegations. He thanked the two VEG members for having accepted to present the paper and gave them the floor to make the presentation.

The two VEG members outlined in detail the main issues described in the paper and presented the identified solutions to resolve the problems, including in particular the adoption of VAT Committee guidelines to bring clarity and establish uniform criteria to ensure both consistency across the EU and legal certainty for businesses and tax administrations.

After the presentation, the Chair asked delegations if they had any questions on the presentation that they would like to address to the VEG members before the latter leave the discussion and the meeting.

Only one delegation took the floor. This delegation thanked the VEG members for the presentation, stressed that it is important to be made aware of the position of the business community regarding the different aspects of the VAT law, in particular in respect of the right of deduction and legal certainty, and indicated that they take note of the concerns expressed.

In their intervention, the Commission services noted that the issue of economic approach *vs.* legal reality is a delicate issue.

The two VEG members thanked the delegation that took the floor for their support. In reply to the Commission services' remark, they indicated that undesirable outcomes might appear when particular CJEU case law is applied broadly, whilst undesirable outcomes are less problematic when such case law is applied strictly. They also stressed that some CJEU cases are outliers, referring in that regard to cases C-526/13 *Fast Bunkering Klaipeda* and C-235/18 *Vega International,* and requested that the VAT Committee clarify whether a case is a landmark case or an outlier, to avoid that the case law destroys a certain business model.

The Chair thanked the two VEG members and asked them to leave the meeting. Afterwards, he invited the delegations to express their views on the matters as outlined in the paper and whether they are interested to have a discussion in the future on any of these issues, inviting those of them which are interested to submit their questions, accompanied by their own analysis of the subject, on which to base the discussion.

One delegation, supported by four other delegations, indicated that it is interesting to hear the views of the VEG. However, the issues raised were, in their view, mostly factual problems, and setting general criteria for what should be considered 'enough evidence' for the exercise of the right to deduct is difficult as facts are often decisive. Concerns were expressed on allowing other proof than documentary evidence, further to what is already allowed following from the case law of the CJEU. It was emphasised that having general criteria may be more practical from a business perspective, but very difficult from a tax administration's perspective. In this sense, this delegation admitted that it would be very difficult to come up with general rules in the form of a guideline and took the view that

discussions should be based on documents with analysis prepared by the Commission services rather than views expressed by the business only.

In their intervention, the Commission services reminded delegations that if the work of the VAT Committee is to be improved, as advocated in the context of discussions in the Council, further to the Commission services preparing working papers, delegations should also take the initiative and volunteer for this task. The Commission services also recalled that to progress on the work, apart from knowing the views of the business community, there is also a need to have the point of view of Member States, which have to submit papers with their analysis. In this sense, they insisted that delegations reflect on the paper at hand and volunteer by submitting what is their own analysis on the issues raised.

Concluding the discussion, the Chair indicated that the Commission services would reflect on whether there may be scope for discussing any of the issues raised in the VEG paper further. He also invited delegations to reflect and inform the Commission services within a month in case they would like to have a discussion on any of these issues and submit a paper with their analysis.

7.3 Origin: Commission
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union
(Document taxud.c.1(2021)2135771– Information paper)

The Commission services 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 (24 rulings covering the period from 19 October 2020 up until 18 March 2021). They 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.

No delegation asked for the floor and 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(2021)2136113 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding recently notified options exercised under Article 199a of the VAT Directive, thanked the two delegations concerned and invited all 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(2021)1875783 – Working paper No 924 REV8)

The Commission services presented the Working paper by drawing delegations' attention to the eighth version, which updated (i) *section 1* of the paper in relation to the work of the customs project groups; and (ii) *Annex 2* to the paper in relation to the information for Germany and Ireland, both of which had sent written requests for updating their information prior to the meeting, and the deletion of the information for the United Kingdom following the expiration of the transition period during which it had to be maintained therein.

Delegations were then invited to verify the correctness of the information for their Member State in Annex 2 to the latest eighth version of the Working paper and to come forward immediately, including in written after the meeting, in case anything had to be changed.

As no delegation asked for the floor, the Chair thanked delegations 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	Ministry of Finance National Revenue Agency
ČESKO/CZECHIA	Ministry of Finance
DANMARK/DENMARK	Ministry of Taxation 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 Permanent Representation
FRANCE	Ministry of Finance
HRVATSKA/CROATIA	Tax Administration Permanent Representation
ITALIA/ITALY	Ministry of Economy and Finance
ΚΥΠΡΟΣ/CYPRUS	Ministry of Finance
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance Tax Administration
LUXEMBOURG	Administration de l'enregistrement, des domaines et de la TVA
MAGYARORSZÁG/HUNGARY	Ministry of Finance
MALTA	Ministry of Finance and Employment
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 Tax Administration
SVERIGE/SWEDEN	Ministry of Finance Tax Authority

EUROPEAN COMMISSION