EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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Brussels, 23 September 2016

VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 909 FINAL

MINUTES

107TH MEETING
– 8 JULY 2016 –

The Chair welcomed the delegations to the 107th meeting of the VAT Committee.

Procedural and housekeeping points

Language regime: It was possible to speak in and listen to FR-DE-EN-ES-IT-PL.

New access and reimbursement procedure: After registration, the new AGM tool makes access for delegates to the meeting venue easier and also allows for a quicker reimbursement of travel expenses. Heads of Delegation who do not agree to be listed as "correspondents" (meaning "contact points") are invited to transmit to the functional mailbox of the VAT Committee the name and email address of the person replacing them.

Next meeting: The next meeting, originally foreseen for November, will have to be postponed to 2017 due to the accrued workload following recent political decisions.

Recording of meetings: Delegations were reminded of Article 15(1) of the VAT Committee's Rules of Procedure: "The Committee's deliberations shall be confidential".

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- Vouchers: The Directive was adopted on 27 June and was published in the *Official Journal of the European Union* on 1 July 2016 (OJ L 177, 1.7.2016, pp. 9-12). Discussions on the application of the Directive in future meetings of the VAT Committee are not excluded.

- VAT Action Plan: On 25 May, the ECOFIN Council adopted its conclusions. With regard to the generalised reverse charge, as acted in a statement to the minutes of the 17 June ECOFIN Council, the Commission will prepare a legislative proposal for a pilot project of individual Member States.

- On 30 June, a joint meeting of the Working Parties "Indirect taxation" and "Customs Union" was held to discuss about the setting up of two study groups on e-commerce and the Customs Procedure 42.

Other topical issues

- Commission Register of Expert Groups and transparency: The Chair reminded delegations of discussions held in a number of meetings during 2012/2013 on transparency of documents of the VAT Committee and the working arrangements agreed that except for confidential documents all other documents will be made available to the public after the meetings. These arrangements had been set up following requests by the European Parliament for more transparency of the workings of the groups figuring in the public "Register of Commission Expert Groups and Other Similar Entities" where also the VAT Committee is listed. The

Chair informed the Committee about the state of play, notably about Decision C(2016)3301 final adopted on 30 May 2016.

- The deadline for registrations for the Fiscalis 2020 Seminar on "Modernising VAT groups" in Dublin on 12-14 September 2016 was 15 June. The seminar will be an occasion to discuss the wider implications of VAT groups and also touch on cost-sharing arrangements and to see where to go from there.

- With a view to preparing a comprehensive simplification package for small and medium-sized enterprises (SMEs), a study was launched on which Member States were invited to provide feedback to the contractor by filling in a questionnaire sent out to them. The Chair thanks delegations for their good co-operation and announces that the study is due to be finalised by the end of October 2016.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2016)3511752)

The agenda was adopted as proposed. Changes in the order of treatment of a few agenda points were agreed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

The Chair stated that the minutes of the 106th meeting of 14 March 2016 had been agreed in written procedure with comments sent by one delegation.

As to the sets of guidelines already agreed in written procedure, these were all made available on CIRCABC and had also been made available on the Directorate General's public website. A limited number of written procedures on guidelines from previous meetings are still ongoing.

A consultation request by Latvia pursuant to Article 167a of the VAT Directive had been successfully concluded in written procedure on 31 March 2016.

3. INFORMATION POINTS

3.1 Subject: Place of supply of educational services
- exchange of views in follow-up to the 106th meeting

The Commission services gave a short presentation of the issue already discussed in the past and explained that they had intended to establish an analytical document to serve as basis for exchanges but in the end could not manage that due to a lack of time.

For the last meeting Working paper No 893 had been prepared in response to a cross-border ruling in a specific case involving training between two companies of a group of companies, registered for VAT in each their Member State, first discussed without conclusions in the EU VAT Forum. In the meeting mention was made by delegations that the supply of training services had already been the subject of previous discussions held and reference was made to Working paper No 744

FINAL, the guideline document B resulting from the 97th meeting. However, those guidelines only cover the non-controversial points that at that time could be agreed after two written procedures had been carried out.

After the last meeting delegations had been invited to send by the end of April any contributions that could help to distinguish between training services and events to feed into a new discussion in view of possibly establishing pertinent draft guidelines. Altogether six replies were transmitted to the Commission services of which one was a joint contribution of two Member States. It turned out that the opinions of the contributors were split between Articles 44 and 53 of the VAT Directive.

The Chair stated that this first exchange of views was meant to give the Commission services information on how to follow up and invited delegations to discuss.

Several delegations, of which a part had sent contributions, asked for the floor. The opinions expressed showed a persisting divergence of views. Delegations mentioned a number of different criteria that they each favoured in order to distinguish between training services and admission to events. One delegation preferred the duration of the service as a means of distinction but that was rejected by a few other delegations. Another delegation echoed what was pointed out by the Chair – who had reminded delegations of why Council had decided the particular rules on admission to events – and confirmed that Article 53 had been put in place for practical reasons to avoid having to distinguish between customers being taxable and non-taxable persons when people presented themselves to buy entry tickets in a cinema, theatre, stadium, etc. That had to be kept in mind and should be the decisive test when eventually agreeing on the criteria to distinguish between these services.

The Chair thanked delegations for their written and oral contributions and announced that a further analysis would be carried out in a Working paper for discussions at a future meeting.

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

4.1 Origin: Commission
References: Articles 44, 46 and 58 of the VAT Directive
Article 7(3)(t) and (u) of the VAT Implementing Regulation
Subject: VAT 2015: Interaction between electronically supplied services and intermediation services and initial discussion on the scope of the concept of intermediation services when taken in a broader context
(Document taxud.c.1(2016)3297911 – Working paper No 906)

The Commission services briefly introduced the Working paper. There had been a first attempt to draft guidelines after oral exchanges on the issue during the 102nd meeting in March 2015 but some delegations had in their replies requested further discussions based on an analytical Working paper before they would take a position.

The present Working paper focuses on intermediation services supplied directly to final consumers (B2C supplies) where there could arise problems of conflicting application of Articles 46 and 58 of the VAT Directive. In the Commission services' view an intermediation service supplied directly to a non-taxable person where the intermediary acts in the name and on behalf of another person should be taxable at the place of supply of the underlying service to which the intermediation service relates. As it is the very nature of intermediation that it relates to an underlying transaction the place of taxation of both transactions should be the same. Cases of double or non-taxation could thus be reduced because the application of the rules would be simplified and legal certainty for all actors – including tax administrations – would be strengthened.

In the Working paper delegations were additionally invited to present their views in a more general way on the scope of intermediation services. In particular, their suggestions were sought on which could be decisive indicators helping to identify intermediation services in order to draw a line between those services and others not qualifying as intermediation and with a view to avoid double or non-taxation.

More than half of the delegations took the floor. A few delegations did not share the Commission's analysis and would see certain intermediation services rather as electronically supplied services if the criteria for falling under Article 58 are fulfilled. One of these delegations explained that there was a problem if market places were regarded as not supplying electronically supplied services because that would prevent them from using the mini one-stop-shop (MOSS). Another of these delegations pointed to problems in following the Commission services' logic when very small businesses collaborated with booking platforms and Article 47 of the VAT Directive would come into play and was seconded by yet another one who asked the Commission services to look more in depth into repercussions for SMEs. One delegation stated that it in principle agreed with the Commission services' view but for practical reasons would prefer the use of MOSS. Apart from one delegation stating not to have reached a final opinion, all other delegations agreed with the Commission services' views as set out in the Working paper.

The Chair concluded that the drafting of guidelines would be attempted and that these would also make clear what constitutes intermediation and what not.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.1 Origin: Commission
References: Articles 2(1), 9 and 135(1)
Subject: VAT treatment of greenhouse gas emission allowances
(Document taxud.c.1(2016)2049491 – Working paper No 901)

The Commission services explained the reasons why they had decided to draft the Working paper when two sets of guidelines regarding the VAT treatment of greenhouse gas emission allowances had already been agreed after discussions held in the VAT Committee in 2004 and 2010. The guidelines already agreed concerned the VAT treatment of the transfer and of the auctioning of emission allowances respectively and, broadly, they state that such transactions are subject to VAT and that no exemption applies.

Working paper No 901 had now been established in view of the expected entry into force of the revised Markets in Financial Instruments Directive "MiFID II" in January 2018. That Directive will bring about a change to the nature of emission allowances for regulatory purposes as these emission allowances will henceforth be classified as financial instruments within the meaning of that Directive.

The Working paper summarises previous discussions in the VAT Committee and analyses whether the change in MiFID II could have an impact upon the assessment of emission allowances for VAT purposes that would trigger a need for revisiting the previously agreed guidelines. The Commission services arrived at the conclusion that the classification of emission allowances as "financial instruments" under MiFID II would not change the already agreed for two main reasons: Firstly, transfers of emission allowances should continue to be subject to VAT, which does not depend on the instrument being classified as a financial service or not, but on the actual characteristics of the allowances and their transfers – which remain unchanged. Secondly, the exemptions pursuant to Article 135(1) of the VAT Directive should not become applicable because the legal classification as financial instruments made under MiFID II was made for regulatory purposes only and was not intended to affect areas of taxation. In this respect the Commission services referred to the case law of the Court of Justice of the European Union (CJEU) where it has been put into question that legislation outside the sphere of VAT could have a direct impact on the VAT Directive.

In the ensuing discussions two delegations asked for the floor. One delegation stated that the Working paper did not mention place of supply rules and pointed to Article 59(e) of the VAT Directive for the sake of completeness. The other delegation remarked on actors on the secondary market for greenhouse gas emission allowances that were not dealing for reasons of financial services.

The Chair concluded to take note of the two comments received and stated that the services would reflect about the usefulness of guidelines.

5.2 Origin: Commission
References: Articles 174, 175, 312 to 316, 319 and 322
Subject: Special arrangements for taxable dealers and their supply of works of art
(Document taxud.c.1(2016)2527596 – Working paper No 903)

The Commission services presented the Working paper and pointed out that it was to be regarded as a continuation of the discussions on special arrangements, the "margin scheme", for taxable dealers in relation to supplies of works of art which had last been on the agenda of the 102nd meeting of the VAT Committee. During that meeting an exchange was held on the statement entered into the Council minutes at the time when these special arrangements were introduced and almost unanimous guidelines were agreed with regard to the question under which circumstances the profit margin may be calculated as a set percentage of 30% or more of the selling price.

In that context the question had arisen whether it would be compatible with Article 315 of the VAT Directive to extend the use of the presumption that the profit margin amounts to a set percentage where promotion costs are incurred by the dealer in relation to sales of works of arts. These promotion costs would include the costs of exhibitions, management of artistic projects, maintenance, transport and insurance. It was argued that as such associated costs cannot be attributed exactly to each individual work of art of a taxable dealer their individual purchase prices cannot be determined. That could in turn justify the use of the said presumption.

In the Working paper it is explained that the wording of Article 312 of the VAT Directive would seem to indicate that only costs linked directly to the taxable supply can be part of the purchase price. Under normal circumstances, promotion costs are borne by a taxable dealer only after a work of art is already purchased which is why they cannot form part of the purchase price which was paid earlier. In the Commission services' view the cost of promotional activities or, more widely, the general cost of carrying out a business does not influence the determination of the purchase price, pursuant to Article 312, at which a taxable dealer acquired a given work of art.

In the Working paper it is therefore concluded that applying a presumption by which the profit margin amounts to a set percentage of 30% or more of the selling price, in situations where costs are borne by art dealers in carrying out promotional activities would not be compatible with Article 315 of the VAT Directive if the purchase price paid by the taxable dealer, to which such costs are not attributable, can be established through the relevant documentation kept by him or through any other means of proof admitted by the domestic law of the Member State concerned.

Further, with regard to the deduction of input VAT under the margin scheme the Working paper explains that, in principle, the input VAT included in the purchase price cannot be deducted from the output VAT paid on the profit margin. However, as regards the input VAT linked to the costs of promotional activities carried out by a taxable dealer it is illustrated in three scenarios under which circumstances this input VAT could be deducted.

Before inviting delegations to comment, and in particular to express their views on the two questions set out under point 4 of the Working paper, the Chair remarked that under point 3.4 of the document the three scenarios contained incorrect figures in the calculations which would be corrected after the meeting without delay in a revised version, Working paper No 903 REV. These incorrect figures, however, did in no way impact the conclusions drawn.

Only a few delegations asked for the floor. With the exception of one delegation holding that Article 312 of the VAT Directive was interpreted too restrictively they fully supported the Commission services' views as set out in the document.

Concluding, the Chair announced to publish promptly a revised version of the Working paper, as explained.

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

6.1 Origin: Commission
References: Articles 2(1), 135(1)(e) and (d)
Subject: CJEU Case C-264/14 *Hedqvist*: Bitcoin
(Document taxud.c.1(2016)689595 – Working paper No 892)
– continued from the 106th meeting

The Commission services briefly presented the Working paper that had already been the object of first short exchanges at the end of the previous meeting and reminded delegations of the content of the CJEU's judgment in *Hedqvist* delivered in October last year. Before embarking on discussions on the different sections of the Working paper that analysed the VAT treatment of a number of transactions involving Bitcoin they repeated that for each transaction to be discussed the following two questions had to be answered: 1) is the transaction subject to VAT, and if that question is answered in the affirmative, 2) is the transaction exempt?

Regarding supplies of goods or services subject to VAT remunerated by way of Bitcoin, the Commission services reminded that such transactions are to be treated in the same way as any other supply for VAT purposes and that no VAT should be levied on the value of the bitcoins themselves. As to the conversion of the consideration expressed in bitcoins into a legal tender currency in order to establish the taxable amount of such transactions, they highlighted the lack of a reference exchange rate for Bitcoin. Therefore, they asked delegations whether they preferred to use as a way to determine the taxable amount 1) the open market value (OMV) of Bitcoin as a "reference exchange rate"; or 2) the OMV of the goods or services being supplied. A few delegations took the floor and held the following views: One delegation favoured the OMV of the goods or services. The others favoured the OMV of Bitcoins used as an exchange rate, but stressed that this method constitutes an innovation not foreseen in Article 91 of the VAT Directive. In particular, one delegation cautioned that this could contribute to whitewashing illegal activities. Another delegation underlined that the OMV of Bitcoins would provide legal certainty to both parties involved in a transaction and would be traceable for the tax authorities; and in case that this could not be guaranteed the most representative exchange rate should be taken. Yet another delegation suggested looking at different bitcoin exchange platforms in order to calculate the exchange rate.

Concerning digital wallets, the Commission services opened discussions stating that they could not exclude that digital wallets received a fee although most operated free of charge. The few delegations that voiced their opinion on the matter were in broad agreement with the Commission services' analysis that these services were out of scope when provided without charging fees and could be exempt pursuant to Article 135(1)(e) of the VAT Directive if provided against remuneration.

When the Commission services introduced the section on mining activities they explained that, given the characteristics of such transactions, there could be arguments in favour and against treating them as within the scope of the VAT. Therefore, they presented the two scenarios. Among the reasons for treating mining activities as non-taxable, there is that in the anonymous environment of Bitcoin

transactions miners ignore to whom they are providing a verification service (who the Bitcoin user is whose transactions they verify). Moreover, even if in most cases users pay fees in order to accelerate the verification of their transaction, it is doubtful that there is a direct link between the consideration and the service supplied, since the payment of a fee is of a voluntary nature. In contrast, mining activities could be seen as taxable if new bitcoins received automatically by the miner from the Bitcoin system were considered to be consideration, and also taking into account that the payment of a fee is "de facto" a necessary condition for being able to have a transaction verified.

Several delegations intervened on the issue of mining. Some of them maintained that mining activities should be out of scope with one explaining that such a treatment should only be granted in case of no transaction fees or where the user only pays a transaction fee on a voluntary basis. Another one stated that if the services could not be regarded as out of scope and were taxable they should be exempted. A few delegations favoured taxation as digital services, especially where new bitcoins were created by the miner. One delegation remarked that mining was getting more and more difficult and that it was now only carried out by big companies.

Introducing the issue of services related to intermediation provided by Bitcoin exchange platforms, the Commission services briefly explained that those platforms allow for peer-to-peer exchanges and that it was their view that such services should not be exempt pursuant to Article 135(1)(e), given that the service which these platforms supply is not strictly related to a currency, but rather aims at offering access to a marketplace where users trade directly. The few delegations that asked for the floor, however, were all of the opinion that these services, at least in certain cases, could fall under the exemption of Article 135(1)(e).

The Chair stated that the preparation of draft guidelines after reflections on what to conclude from the discussions could not be excluded. It was also to be seen whether an expert could be invited for a presentation, as had been suggested, subject to Member States raising specific aspects which they would wish to cover, as the Commission services remarked. Further, the broader issue of block chain technology's future impact on taxation matters had to be kept in mind and followed closely.

6.2 Origin: Commission
References: Articles 14(1) and (2)(c), 24(1) and 148(a)
Subject: CJEU Case C-526/13 *Fast Bunkering Klaipėda*
(Document taxud.c.1(2016)3438314 – Working paper No 907)

The Commission services presented the Working paper on the CJEU's judgment of 3 September 2015 in case C-526/13 and explained that this had confirmed what had already been agreed in guidelines of the VAT Committee, namely that the exemption pursuant to Article 148(a) of the VAT Directive can only be applied at the last stage of a chain of transactions where fuel is supplied directly to a vessel that fulfils the conditions set out in the Directive.

However, looking into the concrete circumstances of the specific case at hand the ruling evokes two further questions: 1) If there is a supply of fuel directly to the

vessel how do the other supplies (i.e. the supply between *Fast Bunkering Klaipėda* and the intermediary on the one hand and the supply between the intermediary and the vessel owner on the other hand) then have to be qualified? 2) Should the judgment have wider implications?

In the ensuing discussions, more than half of the delegations took the floor. Nearly all of them favoured a narrow interpretation of the judgment without extending it to other scenarios and without drawing further conclusions from it as regards chain transactions. One delegation took the view that the judgment could have wider implications and saw similarities with case C-185/01, *Auto Lease Holland*. Another delegation stated that the case was indeed very specific and maintained to interpret Article 14 not as rigorously as others. A few delegations asked for the establishment of guidelines. One delegation announced that they had a similar national case that, however, concerned services, very recently lodged with the Court (case C-333/16 lodged on 14 June 2016).

Concluding discussions, the Chair took note of converging views and the wish for guidelines.

6.3 Origin: Commission
Subject: Recent judgments of the Court of Justice of the European Union
(Document taxud.c.1(2016)3496669 – Information paper)

Delegations took note of the Information paper. No delegation took the floor to request the assessment of a listed judgment.

7. ANY OTHER BUSINESS

7.1 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(2016)3474581 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding a recently notified option and informed that another notification had been transmitted the previous day and immediately brought to the delegations' attention.

Conclusion

The Chair closed the last meeting in 2016 by thanking all delegations for their participation, the interpreters for their much appreciated contribution to the meeting and the colleagues for the preparation of the documents.

ANNEX

LIST OF PARTICIPANTS - LISTE DES PARTICIPANTS - TEILNEHMERLISTE

BELGIQUE/BELGIË/BELGIUM	Ministry of Finance
БЪЛГАРИЯ/BULGARIA	Ministry of Finance NRA
ČESKÁ REPUBLIKA/CZECH REPUBLIC	Ministry of Finance
DANMARK/DENMARK	Ministry of Taxation Customs and Tax Administration
DEUTSCHLAND/GERMANY	BMF Länderbeobachter (Bundesrat)
EESTI/ESTONIA	Ministry of Finance Permanent Representation
ÉIRE/IRELAND	Revenue Commissioners
ΕΛΛΆΔΑ/GREECE	
ESPAÑA/SPAIN	Ministry of Finance Permanent Representation
FRANCE	Ministry of Finance
HRVATSKA/CROATIA	Ministry of Finance Permanent Representation
ITALIA/ITALY	Agenzia delle Entrate Dipartimento delle Finanze
ΚΥΠΡΟΣ/CYPRUS	Tax Department
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance State Tax Inspectorate
LUXEMBOURG	Ministry of Finance
MAGYARORSZÁG/HUNGARY	Ministry for National Economy
MALTA	VAT Department
NEDERLAND/NETHERLANDS	Ministry of Finance

ÖSTERREICH/AUSTRIA	Ministry of Finance
POLSKA/POLAND	Ministry of Finance Permanent Representation
PORTUGAL	Ministry of Finance
ROMÂNIA/ROMANIA	Ministry of Finance
SLOVENIJA/SLOVENIA	Permanent Representation
SLOVENSKO/SLOVAKIA	Ministry of Finance
SUOMI/FINLAND	Ministry of Finance Tax Administration
SVERIGE/SWEDEN	Ministry of Finance Tax Agency
UNITED KINGDOM	HMRC

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