



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

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Brussels, 4 March 2019

**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 961 FINAL**

**MINUTES
111TH MEETING
– 30 NOVEMBER 2018 –**

The Chair welcomed the delegations to the 111th 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.

Working papers: In future, Working papers will only be in the English original without machine translations into French and German. From the feedback received and from own experience, the Commission services consider that the quality of the machine translations is in no way satisfactory because translated documents turn out to be partly unintelligible. These new arrangements will not affect the currently followed regime for guideline documents.

CIRCABC migration: The recent release of CIRCABC introduced a new presentation of information and a different way of navigating. The Commission services are currently streamlining the different parts in order to ease retrieval of documents and information.

Next meeting: The next meeting will probably take place in the first half of April 2019.

Update on proposals by the Commission

The Chair briefly mentioned the following:

- The e-commerce package related proposals for amending the VAT Directive and the VAT Implementing Regulation and the VAT payment data proposal in the field of administrative cooperation¹ are on track for adoption by the College in written procedure on 11 December 2018 with their presentation envisaged in the meeting of the Council Working Party on Tax Questions the next day.

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- E-publications: The Economic and Financial Affairs Council (ECOFIN) adopted the Commission proposal on 6 November 2018. Council Directive (EU) 2018/1713 of 6 November 2018 amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals was published in the *Official Journal of the European Union* (OJ) L 286 of 14 November 2018.
- Optional reverse charge/Quick Reaction Mechanism: Also on 6 November, ECOFIN adopted the Commission proposal. Council Directive (EU) 2018/1695 of 6 November 2018 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud was published in the OJ L 282 of 12 November 2018.

¹ Documents COM(2018) 819, COM(2018) 821 and COM(2018) 813.

- VAT “quick fixes”: Adoption is scheduled for the 4 December 2018 ECOFIN meeting².
- Generalised reverse charge: The adoption scheduled for 4 December had to be postponed due to the outstanding opinion of the European Parliament³.
- SME scheme: Despite lots of work having been carried out under the Austrian Presidency the file will have to be carried forward to the Romanian Presidency.
- VAT rates: No Council meeting had taken place to discuss the Commission proposal since the last VAT Committee meeting in April 2018.

Other topical issues

- MOSS Portal: All Member States not registered so far for the MOSS Portal were encouraged to do so and delegates were informed that the user guide uploaded on CIRCABC describes the steps to follow for such registration.
- List of gold coins valid for the year 2019: The list of gold coins for 2019 was published in the OJ C 412 on 14 November 2018.
- Fiscalis 2020 Workshops: Two VAT-related workshops had taken place in October 2018, organised by units of the Directorate Indirect Taxation and Tax administration of the Directorate-General for Taxation and Customs Union. A workshop organised by unit C.3 on recent VAT case law handed down by the Court of Justice of the European Union took place in Bari. Another workshop by unit C.1 on “Evaluation of the VAT travel agents margin scheme and consultation on reform options” was held in Berlin. The Chair thanked the Italian and German delegations for their Member States having hosted the two events.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2018)6398950)

The agenda was adopted as proposed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

The Chair stated that the minutes of the 110th meeting of 13 April 2018 had been agreed in written procedure with comments sent by one delegation regarding the quality of the machine translation into German and by another delegation stating its express agreement with the draft minutes.

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. Since the last meeting five guideline documents had been agreed.

² Adopted on 4 December 2018 and published in OJ L 311 of 7 December 2018.

³ Adopted on 20 December 2018 and published in OJ L 329 of 27 December 2018.

Consultation requests by Italy and the Slovak Republic pursuant to Article 155 of the VAT Directive had been successfully concluded in written procedure (on 21 June and on 21 November 2018 respectively).

3. INFORMATION POINTS

- 3.1** Origin: Commission
Reference: Article 218 of the Treaty on the Functioning of the European Union
Subject: VAT/GST related OECD files – state of play

Introducing the information point, the Commission services explained that they consider it important to provide regular feedback about ongoing OECD work on VAT related matters if there are new developments to share, especially with those Member States that are not members of the OECD.

Their presentation gave an overview of the organisational set-up of the OECD's centre for tax policy and administration and then introduced the main strands of work currently carried out in the field of indirect taxes (digital economy, marketplaces, sharing economy) and the next steps planned. Whilst work on the taxation of the digital economy will continue, the report on the enhanced role of marketplaces in the collection of VAT/GST is to be formally adopted at the Global Forum meeting in Melbourne in March 2019.

The topic of “sharing economy” came up in the most recent meeting of Working Party 9 (WP9) in the first half of November. Most likely, the issue will present the next major working point of WP9 as it is equally challenging for tax administrations from the point of view of governance due to constantly evolving business models and for economic operators who stress the need for clear rules and legal certainty as well as the risk of double taxation.

The Commission services reminded delegations that sharing economy had been the topic of Working paper No 878 discussed during the 105th meeting on 26 October 2015 after which a set of guidelines had been agreed. After those initial works no deeper assessment of the issue followed. In view of the OECD project, discussions need to be resumed with delegations in the Group on the Future of VAT (GFV) whose task is to discuss pre-legislative initiatives and exchange opinions on the preparation of future VAT legislation.

One delegation took the floor to second the Commission services on their suggestion to take up discussions on sharing economy in the GFV, as it was important to reflect OECD work at EU level and get a step ahead in order to be at the forefront of shaping global discussion and legislation.

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

- 4.1** Origin: Italy
Reference: Article 11
Subject: VAT grouping – adaptations
(Document taxud.c.1(2018)6252074 – Working paper No 959)

The Commission services briefly introduced the Working paper. They reminded delegations that based on Working paper No 933 the VAT Committee had already dealt with a first Italian consultation request on grouping during its 109th meeting on 1 December 2017. At the time, the VAT Committee had taken formal note of Italy’s intention to introduce VAT grouping into their national legislation as of 1 January 2018 with the grouping scheme taking effect from 1 January 2019.

The Italian authorities submitted their additional consultation request in order to provide legal certainty for the integration into their national grouping scheme of Cooperative Banking Groups (“CBG”) for whom they consider the currently applicable definition of the financial link as not appropriate. Under current Italian legislation, the financial link between VAT group members is defined as a majority of voting rights by which a parent company controls its subsidiaries. In the case of CBG, it is instead the cooperative banks that own a majority of their head company (the “societa’ capogruppo”). That head company must manage, coordinate and control the group of banks as a whole under a so-called cohesion contract, which is regulated under specific legislation. Therefore, in such a scenario the control required in order to fulfil the financial link requirement under Italian legislation does not stem from holding a majority of voting rights but it follows from the contractual relationship between the CBG and its members as defined in specific legislation.

Upon invitation by the Chair, the Italian delegation explained that with the cooperative banking group regulation having entered into force the single cooperative banks have to select a bank that they own to task it with the control of the whole group. That is why the contractual links in cases of CBG had been added to the definition of what constitutes control and therefore what amounts to a financial link in the draft legislation.

As to the existence of economic and organisational links in the grouping scenario for CBGs, the Italian delegation further explained that so far they had not had the opportunity to look closely into the establishment of those two links.

None of the other delegations asked for the floor.

Concluding the exchanges, the Chair thanked the Italian delegation for the clarifications provided and stated that the VAT Committee had formally taken note of the second Italian consultation on VAT grouping in accordance with Article 11.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.1** Origin: Poland
References: Articles 25 and 28
Subject: VAT treatment of organisations collectively managing copyright and related rights – deferred from the 110th meeting
(Document taxud.c.1(2018)1700859 – Working paper No 943)

The Commission services presented the Working paper whose discussion had had to be deferred from the previous meeting in April 2018 due to time constraints. They briefly explained the functioning of collective management of copyright that in many cases is the only way for authors to obtain remuneration for their work. They also pointed out that such organisations in the Member States differ in their set-up and management.

The Polish request deals with the collective management of copyright and asks for clarification of a number of issues that followed from the ruling of 18 January 2017 by the Court of Justice of the European Union in *SAWP* (case C-37/16). *SAWP* is a collective management organisation (“CMO”) in Poland which levies, on behalf of right holders, fees on the sale of blank media and of recording and reproduction devices by the producers and importers of such devices and blank media for reproducing works for personal use (fair compensation for private copy under Directive 2001/29/EC).

The Commission services explained the different sections of the Working paper drawn up in reply to the questions submitted by Poland and the conclusions they had reached in their own assessment of the issues.

After the introductory presentation, the Polish delegation thanked the Commission services for the establishment of the Working paper and took the opportunity to ask further questions with regard to the application of Article 28 and the invoicing schemes.

The Chair responded that the Working paper had analysed all the questions as put by the Polish authorities in relation to the work of a specific entity and reminded delegations that it was not normal practice for the VAT Committee to deal with specific business cases. Whilst the additional questions on Article 28 were fundamental, they were of such a general nature that they could not be dealt with on the spot. If a new request accompanied by a sufficiently thorough preliminary analysis of the subject matter were to be submitted by a delegation, the Commission services would take it up in a future meeting. The subject matter was very important in view of its interlinkages with ongoing work in the OECD as presented earlier during the meeting as well as with the issues to be discussed later under agenda point 5.3 concerning platforms.

As no other delegation asked for the floor, the Chair concluded the agenda point and announced the drafting of guidelines.

- 5.2** Origin: Germany
Reference: Article 2(1)(c)
Subject: Conditions for there being a taxable transaction when Internet services are provided in exchange of user data
(Document taxud.c.1(2018)6248826 – Working paper No 958)

The Commission services presented the Working paper that had been drafted based on questions submitted by the German delegation. They explained that the German authorities had asked to assess whether Internet services provided free of monetary consideration against the provision by a customer of his personal data were taxable transactions. In addition, they wanted to know if it was found that such a supply of IT services was subject to VAT, how the taxable amount could then be determined.

The Commission services explained that in their assessment of the questions they had come to the same conclusions as the German delegation. 1) Private users' permission to IT service providers to exploit their personal data would rather fall within the scope of those users managing their private sphere. In such a scenario it can be assumed that private users do not consciously act to obtain an economic gain and carry out an economic activity but that they only want to be able to use specific IT services that without agreeing to the terms and conditions of the providers they cannot accede to. 2) The supply by the IT provider of IT services without monetary consideration is not a taxable transaction as no direct link can be established between the service provided to a specific customer and the user data received from that customer. The reason is that the personal data against which the provider grants the use of an IT service can vary considerably in quantity and quality from one user to the other. 3) If the supply of IT services as described constituted a taxable transaction, the taxable amount would be the cost for the supplier of providing the IT service to a specific customer.

The German delegation thanked the Commission services for their analysis, which coincided with their own assessment. They further mentioned that discussion whether the provision of user data is a taxable supply is ongoing in tax administrations as well as in academic circles.

In the ensuing discussions, several other delegations asked for the floor. Most agreed with the Commission services' analysis but some delegations also remarked that they had not yet arrived at a definite position because discussions in their Member States were ongoing and hasty conclusions should be avoided. A few delegations also pointed to constantly emerging new models of economic activity and wondered whether there was a need to redefine the concept of "economic activity". One delegation stated that discussions showed that to deal with new challenging business models there was a tendency to draw on concepts stemming from direct taxation, such as the "nexus", to assess whether a supply is subject to VAT.

The Chair concluded that an attempt to draw up some general guidelines would be made but that the debate on the issues raised would most likely be continued in a future meeting.

- 5.3** Origin: Estonia
References: Articles 44, 45, 46, 48 and 58 of the VAT Directive
Article 18 of the VAT Implementing Regulation
Subject: Services provided by an electronic platform connecting for remuneration, by means of a smartphone application, a driver using his own vehicle with persons who wish to make urban journeys
The significance of the VAT identification number – continuation of discussions at the 110th meeting
(Document taxud.c.1(2018)1735106 – Working paper No 947)

The Commission services briefly summarised the discussions during the previous meeting in which exchanges on the second part of the Working paper about the significance of the VAT identification number for identifying the status of the customer had been concluded. Thereupon, draft guidelines on the matter had been prepared and a written procedure for obtaining agreement launched with the deadline of 5 December 2018 for submitting replies.⁴

The initial exchanges with delegations on the first part of the Working paper dealing with a specific set of services provided by electronic platforms, however, had remained rather general. Many of the delegations taking the floor had stated that their administrations had not yet reached firm views on the issues raised and that internal reflections were ongoing. Therefore, it was important to continue discussions on that part.

The Commission services went again through the different questions set out in section 3.1.2 of the Working paper before opening the floor for delegations to present their overall position on all of them.

Nearly half of the delegations took part in the discussions. Whilst there was consensus that from the perspective of the customer the driver in the scenario at issue provided a transport service, delegations held diverging views on how to qualify the relationships platform/customer and platform/driver. A few delegations mentioned that they had not yet reached a formal position. Others maintained that when defining “electronic services”, the means for providing a service had prevailed in the analysis without paying sufficient attention to the nature of the service.

Reacting to a wish for establishing guidelines voiced by a few delegations, others thought that was premature considering the constant evolution of different business models. They preferred to be cautious and first examine the issues further, possibly in the Group on the Future of VAT, as one delegation suggested. Another delegation preferred awaiting the outcome of work undertaken by the OECD on the matter.

The Chair concluded that administrations already face or will soon have to face the issues discussed. For further work on the matter, her services would heed the call for a cautious approach in view of constantly evolving business models. As it would obviously be impossible to solve all kinds of business models, they would rather look into certain types of platform services and would try to draft some guidelines to

⁴ Guidelines already published here: https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-vat-committee-meetings_en.pdf

which delegations could react. Such guidelines might help focus discussions in order to advance and arrive at a common position as to the VAT treatment of the services involved.

- 5.4** Origin: Commission
Reference: Article 132(1)(a)
Subject: Application of the exemption for “public postal services”
(Document taxud.c.1(2018)6354142 – Working paper No 960)

When presenting the Working paper, the Commission services first reminded delegations of the discussions held during meetings in 2009 and 2010 about the application of the exemption laid down in Article 132(1)(a) of the VAT Directive. These occurred in follow-up to the ruling of 23 April 2009 by the Court of Justice of the European Union in *TNT Post UK Ltd* (case C-357/07). The discussions had led to the drafting of guidelines on public postal services and the scope of the relevant exemption. However, to date Member States’ interpretations of the exemption still vary considerably and there is no level playing field for operators providing certain services.

Therefore, the Working paper sought to determine in detail which postal operators and which postal services are exempted. To this end, the Working Paper revisited the scope of the exemption in light of the pertinent case-law, the almost unanimously agreed guidelines stemming from the 90th meeting, and the Third Postal Directive 2008/6/EC.

The Commission services explained that the VAT exemption only applies to services supplied by the “public postal services” acting as such. That means that these services must fall under the “universal service” provided for in the Third Postal Directive, which sets out the minimum service required. The Third Postal Directive leaves a wide margin of discretion to the Member States to include in the universal service additional postal services according to their specific national requirements. However, it was pointed out that the VAT exemption under Article 132(1)(a) is directly placed under the heading “Exemptions for certain activities in the public interest” which frames the scope that Member States have for their national legislation on the matter.

Two delegations asked for the floor in the ensuing discussions. Whilst one delegation disagreed with the Commission services’ conclusions drawn in section 3.3 of the Working paper and maintained that in their Member State there is no universal service provider, the other delegation fully supported the Working paper’s conclusions.

The Chair wrapped up the exchange by stating that the Commission services would further reflect on how best to follow up the discussion.

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

- 6.1** Origin: Commission
Subject: Case-law – Recent judgments of the Court of Justice of the European Union

(Document taxud.c.1(2018)6398835 – Information paper)

Delegations took note of the Information paper with the overview of the case law since the previous meeting.

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(2018)6370928 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding a recently notified option exercised under Article 199, thanked the delegation concerned and reminded all delegations to notify in due time whenever necessary.

- 7.2** Origin: Commission
Subject: Specimen Management System – Export stamps for tourists
(*Oral exchange*)

The Commission services reminded delegations of the exchange held in the previous meeting and provided guidance on the dedicated database.

Conclusion

The Chair closed the meeting by thanking the delegations for their participation in the discussions and specifically the interpreters for their flexibility and their much-appreciated contribution to the meeting.

LIST OF PARTICIPANTS - LISTE DES PARTICIPANTS - TEILNEHMERLISTE

BELGIQUE/BELGIË/BELGIUM	Ministry of Finance
БЪЛГАРИЯ/BULGARIA	National Revenue Agency
ČESKÁ REPUBLIKA/CZECH REPUBLIC	Ministry of Finance
DANMARK/DENMARK	Ministry of Taxation Tax Agency
DEUTSCHLAND/GERMANY	BMF Ländervertreter
EESTI/ESTONIA	Ministry of Finance
ÉIRE/IRELAND	Revenue Commissioners
ΕΛΛΑΔΑ/GREECE	Permanent Representation
ESPAÑA/SPAIN	Ministry of Finance Permanent Representation
FRANCE	Ministère des finances
HRVATSKA/CROATIA	Ministry of Finance
ITALIA/ITALY	Ministry of Economy and Finance Agenzia delle Entrate
ΚΥΠΡΟΣ/CYPRUS	Ministry of Finance
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance
LUXEMBOURG	Ministry of Finance
MAGYARORSZÁG/HUNGARY	Ministry of Finance
MALTA	Ministry for Finance
NEDERLAND/NETHERLANDS	Ministry of Finance
ÖSTERREICH/AUSTRIA	Ministry of Finance

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