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Value added tax

**Group on the Future of VAT
39th meeting – 14 October 2022**

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GROUP ON THE FUTURE OF VAT

GFV No 126

MINUTES

**39TH MEETING
– 14 OCTOBER 2022 –**

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1. WELCOME AND INTRODUCTION

The Chair welcomed the delegates and informed that the meeting was mainly dedicated to the **VAT package on travel and tourism**.

2. APPROVAL OF THE AGENDA

The agenda (document taxud.c.1(2022)7664124) was not contested or discussed.

3. NATURE OF THE MEETING

The meeting was not open to the public.

4. GFV N° 125 REVIEW OF THE VAT RULES APPLICABLE TO TRAVEL AND TOURISM SECTOR

4.1. Presentation of the interim report of the study prepared by the contractor

The contractor presented the interim report of the study on VAT rules applicable to the travel and tourism sector, which covers three parts: 1) Special VAT scheme for travel agents; 2) VAT rules on passenger transport; and 3) VAT refund to non-EU travellers and duty-free shop. In its presentation, the contractor focused on the major findings reached during the assessment of the current situation. With regard to each part of the interim report, the contractor presented the assessment and functioning of current VAT rules as well as the problems arising from those rules and their application.

Following the presentation of the interim report by the contractor, delegates expressed their views on the findings of the provisional analysis in the study, and a few delegates requested more detailed information on the methods used and the figures used by the contractor in the interim report. Additionally, it was discussed how businesses in different Member States see the content and application of the current VAT rules. Some delegates requested to receive the interim report of the study, to which the Commission services replied that no draft is being made available at this stage but the final report and results of the study will be communicated to Member States in due time.

4.2. Discussion on the options for review

4.2.1 *Introductory remarks*

The Commission services mentioned that the review of the VAT regime applicable to travel and tourism will consist of a single study. Although the study comprises three parts, the intention is to cover all of them in a single proposal, which is foreseen to be submitted at the end of 2023. In addition to this meeting with the Group on the Future of VAT, the Commission services will have a meeting with relevant stakeholders from the sector at the end of October 2022. The Commission services also pointed out that the VAT Expert Group will be kept informed as well.

The presentation of the interim report was followed by a presentation of the policy options that the Commission is considering to address the shortcomings of the current VAT regime applicable to travel and tourism. The Commission services introduced the policy options on the three sets of VAT provisions under revision and opened the floor for delegates to provide initial feedback on these policy options. The Commission services also invited delegates to provide feedback in writing within two weeks of the date of the meeting.

4.2.2. Policy options for VAT rules on passenger transport

At a general level, the policy options presented by the Commission services consist of a number of policy elements relating to the place of supply rules, as well as to rules governing input and output transactions. The different policy elements have been combined into four separate packages, each of which could form a final policy choice. The policy packages focus on the following elements: 1) administrative simplification; 2) exemption of international services; 3) taxation of intra-EU services; 4) green transport promotion.

During the discussion round following the presentation, a number of delegates pointed out that any changes to VAT rates, such as for example the removal of the current VAT exemptions applicable to passenger transport, would for political and social reasons be a very sensitive issue. It would lead to an increase in prices, which was seen problematic for some delegates. In this context, it was recalled that passenger ticket prices for air and sea transport are already expensive and include other levies. Certain delegates considered retaining current VAT exemptions justified due to the geographically isolated location of some Member States. Therefore, it was essential for geographical and social reasons to be taken into account during the course of the study.

Regarding the policy elements relating to the place of supply rules, a large majority of delegates considered that the simplest option would be for the place of supply of passenger transport services either in the country of departure or the country of destination. Certain delegates suggested that the place of supply could be divided evenly between the country of departure and the country of destination, whereas other delegates suggested differentiation in the place of supply rules for B2B and B2C supplies. Delegates were in general rather reluctant towards the policy element dividing the place of supply between the Member States where a transport service takes place as travel routes can be subject to sudden changes, particularly in air transport. Nevertheless, it was also pointed out that fair allocation of taxes cannot always be achieved if the place of supply is either the country of departure or the country of destination.

The majority of delegates expressed their support for the policy package targeting administrative simplification and considered the package to be a good starting point for attaining the objectives of legal certainty and simplicity. Several delegates mentioned that there is indeed a need for clarifying the rules governing the place of supply as well as the definition of the current exemptions applicable to passenger transport services. Additionally, the policy package exempting international passenger transport services received wide support from delegates, as it would create a level playing field for all passenger transport operators within international transport.

The policy packages leading to taxation of intra-EU passenger transport services and promoting green transport were supported by a few delegates. According to the delegates

supporting taxation of intra-EU passenger transport services, there are no reasonable grounds for exempting such services as other intra-EU services are in principle not exempted from VAT either. Regarding taxation of passenger transport services based on their environmental impact, several delegates requested more detailed information on how the environmental impact of different means of transport would be assessed. It was also pointed out by one delegate that VAT should not be a tool for pursuing environmental objectives.

Although the majority of delegates acknowledged the need to reform the existing VAT rules, several delegates suggested that there should be a transition period for the application of revised VAT rules to leave transport operators time for a smooth adaptation. Several delegates also pointed out that their view was not final and that further analysis and internal consultation are necessary.

4.2.3. Policy options regarding the special VAT scheme for travel agents

The main inconsistencies of the current rules have been grouped in four areas where the Commission deems a legal intervention necessary, namely 1) the scope of the special VAT scheme for travel agents; 2) the place of supply rules; 3) definitions of concepts; and 4) the calculation of margin. Each area includes a number of policy options.

Delegates were generally satisfied with the current functioning of the special VAT scheme for travel agents ('TOMS') and pointed out that the TOMS scheme fulfils its objectives in the sense that it still generates revenue for Member States and appears to be a valid means of simplification for travel agents. Therefore, the majority of delegates were willing to retain the core elements of the TOMS scheme. Nevertheless, there was a wide understanding among delegates that the existing TOMS scheme needs improvements to create a level playing field for travel agents and to ensure uniform application of the rules across Member States. While discussing the policy options for each of the four areas, delegates stressed the need to have clear definitions.

As regards the scope of the TOMS scheme, none of the delegates advocated maintaining the *status quo*. Several delegates highlighted the importance to remedy the problems related to the treatment of business to business ('B2B') supplies, which is very fragmented across Member States. The B2B optionality emerged as the most preferred option. However, several delegates were of the opinion that there should be no optionality for travel agents and the exclusion of B2B supplies from the scope of the special scheme should rather be mandatory. Additionally, a few delegates questioned the transaction-by-transaction approach included in this policy option and suggested an approach that would take into account supplies of travel facilities made within a certain period of time (global approach). In addition other policy options concerning the scope of the scheme, such as the exclusion of MICE (meeting, incentives, conference and events) services and the exclusion of wholesale supplies from received support from delegates.

With regard to the options on the place of taxation, several delegates considered it necessary to ensure that the margin of non-EU travel agents would be taxed. A few delegates pointed out that there are travel agents that have deliberately chosen to establish their business outside the EU, even though their target customers are primarily EU customers travelling within the EU. The majority of delegates expressed a preference for taxing only travel facilities by non-EU travel agents at the place of destination, whereas taxation at origin should remain for EU travel agents. Several delegates also indicated

interest in the option to tax both non-EU and EU travel agents at destination. In this context, some delegates expressed their concern about administrative costs related to this policy option and called for exploring measures to minimise such costs. The policy options relating to taxation at the place of the traveller's residence obtained less support. Some delegates pointed out that further analysis was needed in order for them to be able to comment on these policy options.

The policy options on definitions of concepts seek to clarify certain essential concepts used in the TOMS scheme: 1) Agent vs. Principal; 2) Travel facilities; 3) MICE; 4) Single item; and 5) Mixed supplies. The Commission services presented two approaches in defining either of these concepts. On the whole, delegates had rather divergent views on the suggested approaches. While a few delegates clearly indicated their preferences for the approach to be adopted, some delegates were open to discuss and examine both approaches included for each of the five concepts. As a general remark, it was pointed out that the definitions of concepts should be consistent and compatible with each other.

Regarding the definition of agent or principal, several delegates supported Approach 1, i.e. maintaining the *status quo*. Some delegates replied that they have not encountered practical problems with the definition of these concepts. One delegate requested clarification of the list of presumptive behaviours suggested in Approach 2, as it did not appear clear how this would act as a means of simplification.

Concerning the definition of travel facilities, Approach 1 gained broad support from delegates. According to this approach, a travel facility consists of a bundle of services including at least two items, two of which shall be accommodation, passenger transport or other travel services to the benefit of the traveller. In this context, it was pointed out that there is a need for clarification of this concept after the judgments of the Court of Justice of the EU ('CJEU').

However, a number of delegates considered that MICE services should, in line with Approach 2, be excluded from the scheme unless these are ancillary to the provision of transport or accommodation. One delegate held that the definition of MICE should be addressed in connection with resolving the questions on the treatment of B2B supplies due to their close interrelation.

Regarding the definition of a single item and mixed supplies, several delegates were in favour of Approach 1, which entails a simplification of the scheme: services supplied in isolation and in-house supplies would be out of scope. One delegate considered that the exclusion of services supplied as a single item from the scope would be contrary to the case law of the CJEU, and therefore, single items should be covered by the TOMS scheme if supplied by a travel agent.

The margin calculation includes three different policy options: maintaining the *status quo*, mandatory global margin and optional global margin. The majority of delegates supported the optional global margin approach, under which the travel agents can decide whether to calculate the margin on a transaction-by-transaction basis or on a global basis. The optional global margin approach was seen as providing more flexibility for travel agents in the sense that these would be allowed to choose the calculation method best suited to their specific business activities.

There were also a few comments on the content of the policy options regarding the margin calculation. Some delegates considered that the time period for the calculation of the margin should be shorter than one calendar year. One delegate expressed its concern as to whether the change of chargeability to the date of commencement of the trip would add to the administrative burden of travel agents.

4.2.4. Policy options related to VAT refund scheme for tourists and duty-free shops

The Commission services presented four different policy options with a view to mitigating the problems arising from the current VAT refund scheme for tourists. Similarly, four different policy options for duty-free shops were presented.

Regarding the VAT refund scheme for non-EU travellers, a number of delegates were rather open to the idea of establishing interoperability between the existing digitalised systems of Member States and welcomed the digitalisation of VAT refund systems, while a few delegates preferred maintaining the *status quo*. In this context, it was emphasised that the interoperability and digitalisation of the VAT refund system should be implemented in such a way that Member States can keep their existing systems in place, with harmonisation of national systems sought only in so far as necessary. Among those not yet having implemented a digital refund system, the majority of delegates considered full harmonisation of national systems with a central data repository to be the ideal solution. However, the costs and benefits of such harmonisation should be evaluated in advance by the Commission.

It was also pointed out that the revision of the VAT refund scheme for tourists should first and foremost address the problems arising from the situation where a traveller purchases goods in one Member State and exits the EU from another Member State. For this purpose, it should be possible to exchange information between Member States so as to enable them to establish sufficient means of control and risk assessment. Delegates were rather reluctant to the policy option entailing regulation of relationships between merchants, travellers and VAT refund operators, and deemed that legal and technical harmonisation is feasible without interfering with these contractual relationships.

Regarding the policy options for duty-free shops, the majority of delegates that responded rather preferred to maintain the *status quo*. A number of delegates did not take a position on the different policy options as they were awaiting the final results of the study and/or more detailed information on the policy options.

Some of the delegates advocating maintaining the *status quo* considered that extension of the VAT exemption for duty-free shops would not contribute to creating a better and more coherent VAT system, and to extend the exemption for excisable goods would in any event be problematic to control. In addition, delegates were concerned that extension of the VAT exemption would raise questions on how to ensure that the goods actually exit the EU and how to make such control measures function in practice.

5. INFORMATION POINTS

A) VAT e-commerce – update

The Commission services provided an update on the new VAT rules on e-commerce, which have been in application for more than a year. The Commission services highly appreciate continuing efforts taken by Member States to finalise its implementation.

The ex-post evaluation carried out six months after the entry into application of the VAT e-commerce package confirmed its success, fulfilling the objectives of fairer taxation and simplification for businesses. However, the Commission services drew the attention of delegates to a few IT implementation issues and referred to the letter sent on 12 October 2022. It was recalled that in order to stabilise the system, it is of utmost importance that all Member States solve all the reported errors, in conformity with functional and technical specifications.

B) 2020 Action Plan – Update of the state of play

Way forward on VAT in the digital age proposal – update

The Commission services informed that the Regulatory Scrutiny Board gave a positive opinion on the impact assessment and the legislative proposal is currently under formal consultation by other Directorate-Generals (i.e. interservice consultation).

The Commission services will prepare the legislative proposal for adoption, which is planned for 16 November 2022. Two meetings in Council are expected to be organised by the Czech presidency in November and December 2022 to present and discuss the proposal. Discussions on the proposal will resume under the Swedish presidency.

C) VAT exemption decisions

The Commission services provided an update on the state of play of the following decisions:

Extension of Commission Decision 2020/491 (COVID Decision)

Delegates were informed that Commission Decision (EU) 2022/1511 of 7 September 2022 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2022 had been prolonged for the fifth time upon requests of five Member States until 31 December 2022.

The Commission services are monitoring whether new requests will be submitted before the expiration. In this regard, it was recalled that in case of prolongation, Member States have to request this in time in order to have such prolongation adopted prior to the expiry of the current decision.

Support to Member States in the field of VAT and customs duty in order to help mitigate the humanitarian impacts of the Ukraine crisis

Commission Decision (EU) 2022/1108 of 1 July 2022 on relief from import duties and VAT exemption on importation granted for goods to be distributed or made available free of charge to persons fleeing the war in Ukraine and to persons in need in Ukraine is applicable to 18 Member States until 31 December 2022.

The duty and VAT waiver applies to goods imported by:

- State organisations (public bodies and bodies governed by public law including hospitals, governmental organisations, regional governments, communes/towns, etc.)
- Charitable or philanthropic organisations approved by the competent authorities of the Member States.

6. AOB

The Commission services thanked the delegates for their participation and the fruitful discussions and informed that the next meeting of the group is scheduled for 9 December 2022 in Brussels.

7. LIST OF PARTICIPANTS

Commission officials from DG TAXUD Unit C1, and the members of the Group on the Future of VAT as published in the Register of Commission Expert Groups and other similar entities¹.

¹ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2609&NewSearch=1&NewSearch=1>