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Value added tax

**VAT Expert Group
33rd meeting – 14 March 2023**

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VAT EXPERT GROUP¹

VEG No 111

SUMMARY MINUTES

**33RD MEETING
– 14 MARCH 2023 –**

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¹ Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

1. APPROVAL OF THE AGENDA

The agenda (*document taxud.c.1(2023)1621939*) was not contested or discussed.

2. NATURE OF THE MEETING

The meeting was held in Brussels and was not open to the public.

3. POINTS FOR DISCUSSION – VAT IN THE DIGITAL AGE (ViDA)

3.1. Update on the state of play of negotiations in Council

The Commission services recalled that the ViDA legislative proposal was adopted on 8 December 2022 and provided an update on the state of play of the negotiations that have been held in Council since then.

The first meeting in Council took place under the Czech Presidency on 12 December 2022, where the Commission services made a detailed presentation of the impact assessment and the proposal and primary views from Member States were gathered. Negotiations resumed in January 2023 under the Swedish Presidency, with high level discussions on the three parts of the proposal. This was followed in February by an article-by-article examination, with several dedicated meetings being held for each part of the package. Three upcoming meetings are scheduled for March and April and the Swedish Presidency intends to have a political debate at the June ECOFIN for a general position on the file. Negotiations are expected to be continued under the Spanish Presidency (second half of 2023), which has identified ViDA as a priority file.

The Commission services underlined that no major issues of concern had been raised by Member States in Council and that, overall, the proposal was being well welcomed and receiving globally positive and constructive feedback.

Members were also informed that on 3 March 2023 the European Data Protection Supervisor (EDPS) issued a positive opinion on the ViDA proposal. It was highlighted in particular that, in the DRR part of the package, the EDPS welcomes the Commission's proposal to limit the reporting of data to a subset of the invoice and the fact that the name and addresses are not to be reported to tax administrations.

3.2. Presentation by the Commission of each part of the package

i. Digital Reporting Requirements - DRR

The Commission services introduced, via a PowerPoint presentation, the different topics of the DRR part of the ViDA proposal: the introduction of an EU digital reporting requirement, which would replace the current recapitulative statements; the partial harmonisation of reporting systems for domestic transactions; the changes made to e-invoicing, which will be the way of documenting the transactions under reporting obligations and which will become the default method for issuing invoices; and the

creation of a database (central VIES) for the exchange of information between Member States on intra-Community transactions.

Members expressed their support to the goals pursued by this part of the proposal and the need for harmonisation that would reduce the fragmentation of the current system. The aspects of the initiative that triggered reactions from the members were the following:

- It is important to ensure that the European standard covers all businesses' needs. In this regard, when the initial standard for B2G transactions was adopted, a stakeholder group was created. It would be advisable to do the same for the upcoming reform.
- Members preferred no clearance systems by the tax administration but were in favour of some kind of verification to be sure that the invoice is correctly issued.
- There are some sectors, such as the automotive industry, where the use of summary invoices is extended, so it would be important for them to keep the possibility to issue summary invoices.
- The collection of data needs to comply with the rules on data protection. Collection of personal data should be avoided and the principle of proportionality respected. The cybersecurity of data is another important aspect.
- The deadline of two days to submit the data seems too demanding. In particular, the acquirer will have more difficulties to comply with that deadline than the supplier. In this regard, it is necessary that Member States are not too strict with the application on the implementation phase and do not impose sanctions.
- Derogations should not be granted for the implementation of divergent reporting systems.
- The inclusion of the IBAN and payment details raises problems. In many cases invoices include multiple IBAN numbers where the payment can be done. Further, compensation of invoices is a common practice, in particular for intra-group transactions.
- The five-year period to store the data in the central VIES seems too long.
- It is important to begin as soon as possible to work on the technical specifications to ensure convergence. In any case, these technical specifications have to be published well in advance to allow businesses the smooth adaptation of their systems.

Members were invited to submit any further comments they may have in writing.

ii. Platform economy

The Commission services introduced, via a PowerPoint presentation, the different topics of the platforms part of the ViDA proposal: namely the application of the deemed supplier regime; the place of supply of the facilitation service; and the definition of short term accommodation rental. In addition, it was highlighted that there were mixed views in Council on the modalities of this part of the proposal, but the vast majority of Member States were not against it.

After the presentation, members were invited to exchange views and the following issues were raised:

- There may be an inconsistency in the VAT Implementing Regulation with the provision stating that a SME should not provide their VAT number to the platform (there are situations where this is necessary under the current rules).
- Members support the Commission services' view that there should be a uniform approach in all Member States in the VAT treatment of the facilitation services provided by platforms.
- The relationship between Article 28 and Article 28a is unclear, in particular in light of the CJEU Judgement of 28 February 2023, Fenix International, C-695/20. In addition, the Commission services' view that the facilitation fee is a separate supply from the underlying supplier is also unclear in the legal text.
- The proposal, as drafted, may inadvertently impact on foreign airline companies – this would need to be considered during the subsequent discussions –.
- It may be necessary to introduce a uniform definition of the term 'intermediary'.

The Commission services responded that the above points had also been raised by Member States during Council discussions, and that, together with the Swedish Presidency, the Commission services were reflecting further on these issues with a view to addressing the concerns expressed.

Members also questioned whether the Commission services had received feedback from the Canadian colleagues and the Canadian experience on the use of the deemed supplier model, to which the Commission services replied in the affirmative, highlighting that the model was a success. Lastly, a question was raised as to why delivery transport had not been included in the scope, to which the Commission services responded that no distortion of competition had been found or reported to exist in this area.

iii. Single Place of Registration – SVR

The Commission services introduced, via a PowerPoint presentation, the different topics of the SVR part of the ViDA proposal: the improvements to the current e-commerce rules as well as the further reduction of multiple VAT registrations via the extension of the deemed supplier provisions; the new One-stop Shop (OSS) transfer module; the mandatory reverse charge application; and the mandatory Import One-Stop Shop (IOSS) for electronic interfaces.

In addition, the Commission services outlined the points of this part of the proposal on which Member States had expressed mixed views in Council, namely, the functioning of the obligatory reverse charge mechanism, the integration (or not) of the 'transfer of own goods' module in the current OSS, and the overall scope of the deemed supplier provision.

While the proposal was generally welcomed, certain questions were raised and some doubts were expressed.

Members had diverging views on the full extension of the deemed supplier provision. While many of them expressed their support and agreed to the objectives (level playing field, simplification, fraud prevention) behind it, others would rather see the scope limited

(e.g. excluding domestic transactions). Members raised the question of increased liabilities for platforms; in particular in those situations whereby the underlying suppliers deal themselves with the logistics. Deeming provisions for the transfer of own goods only seemed to get more support. Questions were also raised in relation to the data reporting and the link (or overlap) with DAC7 and CESOP. During the meeting, suggestions were made for ‘data sharing’. Some concern was expressed as regards the interplay between the deemed supplier provision and ‘chain transactions’.

Although some members pleaded for overall ‘policy’ comments from the group, some remarks focussed already on the legal drafting of individual articles (e.g. Articles 138, 262, 272, 369xi of the VAT Directive).

Discussion took place as regards the obligatory reverse charge (for Member States) and the ‘option’ for taxable persons since, as pointed out in the meeting, it might be useful to register for VAT purposes in order to deduct input VAT (instead of having to ask for a refund). Other members expressed concern about (commercial) problems between supplier and customer because of the option for the supplier. One member further emphasised that the ‘reverse charge’ was also used as an anti-fraud measure and should, therefore, rather be obligatory in all circumstances.

The ‘transfer of own goods’ module was generally welcomed although the issue was raised about the exclusion of ‘capital goods’ from the scheme. Upon demand, it was further clarified that ‘export’ was not covered by the module.

Concerning the provisions relating to the IOSS scheme the Commission services clarified that the ViDA package does not include any changes relating to the goods with a value exceeding EUR 150, which will be treated together with the customs reform proposal.

Members also emphasized that any IT change will require sufficient time from businesses as well, as the corresponding IT implementation can only start when national specifications are available.

In reply, the Commission services reacted to all of the above-mentioned issues, providing additional background information, and agreed to look into the suggested changes in the proposal.

4. INFORMATION POINTS

The Commission services presented the latest developments in their on-going work, in particular in relation to:

4.1. 2020 Tax Action Plan – update on the state of play

i. Travel and Tourism package

In their update on the travel and tourism package set to deliver on action points included in the 2020 Tax Action Plan, the Commission noted that a study to deliver the necessary data is currently being finalised. The foreseen open consultation is however delayed.

ii. Financial services

This action point was included in the 2020 Tax Action Plan. The Commission services briefly updated members on the state of the work on this file where no decision has yet been taken.

4.2. CJEU Case C-235/18 Vega International: Fuel cards – state of play

The Commission services updated on the work undertaken to address the concerns resulting from the *Vega International* case. Efforts are made to explore the potential for the various buy and sell models to be treated as falling under the commissionaire rule. Alongside the input provided by Member States, the Commission services are consulting stakeholders with a view to identifying possible criteria that, if met, would justify buy and sell models falling under the commissionaire rule. The intention is to bring the matter back to the VAT Committee in autumn to discuss the criteria identified. Meanwhile, Member States are encouraged to await the outcome of this discussion.

5. AOB

E-commerce Europe informed members about three ongoing projects in the postal world:

- A new Standardisation Request (Mandate 590) adopted on 18 January 2023 to develop standards in support of postal services and the improvement of quality of service. CEN is requested under the new mandate to develop 13 standardisation items (new standards and update old ones) during a 4 years' mandate (DDL on 19/1/2027).
- Electronic Freight and Transport Information (eFTI), where implementing acts are currently under preparation.
- Universal Postal Union (UPU) study to assess how much postal flows have been impacted by VAT changes.

The Chair thanked members for their participation and co-operation and announced that the next meeting was not yet confirmed but will probably take place in October 2023.

6. LIST OF PARTICIPANTS

Commission services and the members of the VAT Expert Group as published in the Register of Commission Expert Groups².

² <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>