



EUROPEAN COMMISSION
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 1059**

**QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

ORIGIN: Poland

REFERENCES: Articles 146(1) and 147(2)

SUBJECT: Permanent address or habitual residence of non-EU travellers
- further analysis

1. INTRODUCTION

At its meeting on 28 March 2022, the VAT Committee had the occasion to examine and discuss¹ questions previously raised by a delegation regarding the application of the rules governing the exemption for supplies of goods that are exported in the personal luggage of non-EU travellers.

From discussions, it seemed that Member States shared some of the views and concerns expressed by the Commission services, and four questions were submitted to Member States in order to collect more detailed information on the national experience in applying such rules. This paper includes the feedback received from certain Member States.

2. SUBJECT MATTER

In the previous Working paper², the Commission services endeavoured to provide guidance on some aspects of the application of Articles 146(1) and 147(2) of the VAT Directive³ concerning the VAT exemption for supplies of goods that are exported in the personal luggage of non-EU travellers. For that purpose, the questions addressed to delegations attending the meeting focused on practical aspects related to the application of the rules.

Replies to the following questions have been submitted to the Commission services:

- whether the permanent address or habitual residence of the traveller is being checked systematically (or only the destination or nationality of the traveller);
- which other documents, if any, apart from passport and identity card, are used or accepted as proof;
- which practical approach is applied in those cases where the permanent address or habitual residence cannot be established with certainty;
- whether tax authorities have or can gain access to the information that travellers may have provided to the travel company with a view to their journey (identification and permanent address).

3. COMMISSION SERVICES' OPINION

3.1. What information should be checked

The exemption applies only to supplies of goods to travellers not established in the EU. Additionally, proof of exportation of the goods in the personal luggage of the traveller out of the EU territory must be provided. Therefore, in order to comply with the conditions laid down in Article 147(2) of the VAT Directive, it is required that both the permanent address or habitual residence of the traveller, and the information on the destination are checked.

¹ See minutes of the 120th meeting (Working paper No 1039).

² Working paper No 1039, *Permanent address or habitual residence of non-EU travellers*.

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

3.2. What documents should be considered as valid proof

Given that the list of documents set out in Article 147(2) of the VAT Directive is non-exhaustive the authority carrying out the control may rely on documents other than those mentioned in that provision. However, it is essential that any document provided by a traveller as evidence of its permanent address or habitual residence includes a reference to the identity of the traveller. However, in case that the documents showing the identity of the traveller do not provide information about the permanent address or habitual residence, other documents should be taken into account.

The decision on which documents constitute valid proof of the permanent address or habitual residence of the traveller is left to the discretion of Member States. In this respect, Member States should ensure that the list of documents considered as valid proof does not render the exercise of the right of exemption practically impossible or excessively difficult.

It follows from the above, that Member States should consider as the decisive proof that the person is a non-EU traveller the place of actual residence of the traveller rather than that person's nationality. This would ensure equal treatment of EU citizens and non-EU citizens. Although identity documents must be considered as proof of residence, supporting evidence could be additionally required for verification purposes. Such documents are, for example, visas, work permits, rental contracts, work contracts as well as documents issued by the authorities of the country of permanent residence.

3.3. What should be done in case of contradicting means of proof

In case the permanent address or habitual residence of the traveller cannot be determined with certainty by means of a single proof, Member States are allowed to request to the traveller to submit supporting evidence of its place of residence. However, in case of contradictory elements of proof the national authority is entitled to refuse the application of the exemption. Regarding the number of elements that should be looked at in order for proof to be consistent, the approach to be followed could be to allow the control to a limited number of elements to not make the process too burdensome. Such approach is already in place for VAT purposes in other context in order to determine the place of supply⁴. The Commission services are of the view that this approach should be followed also regarding the proof of exportation required in Article 147(2) of the VAT Directive.

3.4. Should tax authorities be entitled to access information provided by the traveller to third parties

The Commission services are of the view that tax authorities are in principle entitled to access information provided by the traveller to third parties, upon request and in compliance with data protection rules⁵.

⁴ See Articles 12, 13 and 24b of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p. 1).

4. DELEGATIONS' OPINION

The delegations are requested to give their opinion on this matter.

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Summary of replies from Member States

1. What information should be checked

The replies provided by Member States indicate that some Member States have a well-established practice of checking systematically the permanent address or habitual residence of the traveller. There are differences between Member States as to how this works in practice.

Based on the replies provided, in most Member States the place of residence of the traveller is checked at the latest, i.e. at the moment of leaving the EU. These checks are usually performed by national customs authorities either manually or by means of an automated procedure. In a few Member States, retailers are required to check the place of residence at the time of purchase. Retailers may perform checks themselves or they may contract the execution of verification tasks to VAT refund operators. The majority of the Member States agreed with the Commission services that the nationality of the traveller is not relevant for ascertaining the traveller's eligibility for VAT refund.

It appears from the replies, that some Member States allow customs authorities and retailers to ascertain the traveller's eligibility on the basis of the passport or identity card. One Member State submitted that travellers must be able to establish that their permanent address or habitual residence has been outside the EU for at least 12 consecutive months. In one Member State, retailers are obliged to collect and retain records of the traveller's inbound and outbound journey dates, passport number and permanent address outside the EU, as well as a signed declaration that the traveller is not resident in the EU or Northern Ireland at the time of the purchase.

The automated system in place in one Member State ascertains the traveller's eligibility in accordance with the address entered in the refund document by the traveller, and customs authorities perform detailed checks on the traveller's place of residence based on the outcome of a risk assessment made in the automated procedure.

2. What documents should be considered as valid proof

While most of Member States have no official listing in terms of what documents are accepted as valid proof of permanent address or habitual residence of traveller, some Member States have very strict rules on accepted documents in this respect. Based on the replies provided, most of Member States consider passports, residence visa in the passport, Schengen visas, work permits and identity cards issued by the public authority of residence as the primary evidence of permanent address or habitual residence.

In response to problems related to verifying the place of residence from traveller's identity and travel documents, several Member States allow travellers to provide supporting evidence of their place of residence. In particular for EU citizens with a permanent address or habitual residence outside the EU, supporting documents are an essential means of proving the residence. Such documents are, among others, driving licences, rental contracts, employment contracts as well as official confirmation documents issued by the authorities of the country of permanent residence. These supporting documents are accepted by Member States as valid proof, and they have in common that they must include a reference to the identity.

One Member State submitted in its reply that it has set up measures to distinguish residents of Northern Ireland from those residing in the rest of the United Kingdom. Travellers from the United Kingdom who wish to avail of the VAT exemption may use as supporting evidence of residence municipal tax assessment notices and electricity, gas or water bills issued in Great Britain less than 12 months ago.

As regards citizens of third countries, some Member States considered that citizens of third countries with a residence permit or a work permit in the EU are to be regarded as residents in the EU.

3. What should be done in case of contradicting means of proof

In case of uncertainties in determining traveller's permanent address or habitual residence, the majority of the Member States allow travellers to provide a broad range of evidence proving their place of residence. It was also pointed out that often more than one proof is needed to determine traveller's place of residence with certainty.

Additionally, some Member States recalled that it is in the interest of the traveller to submit sufficient evidence in order to prove its entitlement to the VAT exemption. Therefore, each of the Member States replied that the failure by the traveller to provide non-contradictory proof of its permanent address or habitual residence results in refusal of VAT exemption.

4. Should tax authorities be entitled to access information provided by the traveller to third parties

According to the replies given by Member States, in none of the Member States tax authorities have access to the information provided by the traveller to third parties with the view of its journey.