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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 1064 FINAL

MINUTES

122ND MEETING
– 20 MARCH 2023 –

The Chair welcomed the delegations to the non-public 122nd meeting of the VAT Committee.

Procedural, housekeeping and information points

Language regime: It was possible to speak in FR-DE-EN-ES-IT-PL and listen to FR-DE-EN. Two delegations stated their preference for having a full language regime for future meetings. The Chair noted the requests, explaining that the Commission services do what they can in this respect.

Next meeting: the 123rd meeting is likely to take place in the second half of November 2023.

Update on proposals by the Commission

The Chair informed delegations about the following:

- Vouchers: work is ongoing on the assessment report on the application of the provisions of the Voucher Directive which the Commission is required to present under the new Article 410b of the VAT Directive. A questionnaire to collect information from the Member States is currently being prepared by the Commission services and will be circulated in due course.

- Electronic exemption certificate/procedure: following the discussion with Member States in the Group on the Future of VAT (GFV) in December 2021, a technical study to assess the feasibility and costs of transforming the VAT and/or excise duty exemption certificate into an electronic form and putting in place an electronic procedure was launched. The outcome of the work was presented and discussed in the SCIT in November 2022 and in the SCAC in February 2023. The next step is a discussion in the GFV at its meeting in autumn.

- SME scheme – Implementation: a lot of work ongoing in relation to the implementation of Council Directive (EU) 2020/285, which introduces changes to the current SME scheme that will enter into force on 1 January 2025. In particular, the Functional and Technical specifications of the trans-European System for the SME special scheme had already been approved by SCAC and SCIC respectively and work on the development of an SME web-portal, Explanatory Notes and Guides is under way.

- VAT rules applicable to travel and tourism: the study launched to assess the functioning of the VAT rules applicable to travel and tourism sectors and to develop options for the simplification and modernisation of those rules is to be finalised shortly. However, decision has been taken to pause the work for the time being which is the reason why the public consultation, planned for the end of 2022/ beginning of 2023, has not been launched yet. A legislative initiative is still on the Agenda for next year.

- List of gold coins for the year 2023: the list of VAT exempt gold coins valid for the year 2023 was finalised and published in the Official Journal of the European Union (2022/C 448/04) on 25 November 2022. The exercise calling for input to the 2024 gold coin list will be launched soon.

- VAT e-commerce package: the permanent heads of the delegations in the VAT Committee, with SCAC delegates informed, have been requested (i) statistics for the first complete calendar year under the new e-commerce rules, based on the future revised Annex IV of Commission Implementing Regulation (EU) No 79/2012, currently being examined by the SCAC; (ii) information regarding VAT on distance sales of imported goods when the IOSS scheme is NOT used; (iii) the names of designated officials for the review and update of the national information displayed on the OSS web-portal. The requested information is to be provided by 1 April 2023 at the latest.

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- VAT in the Digital Age (ViDA): negotiations in Council are ongoing with high intensity, several meetings took place in January, February and March under the Swedish Presidency for each part of the package, which is overall well welcomed and receiving globally positive and constructive feedback from Member States.

Other topical issues:

- 2018 Proposal on VAT rates: delegations were reminded that the 3-month period within which Member States had to communicate to the VAT Committee the main provisions and conditions of rates derogations in their national law applied on 1 January 2021 in accordance with Union law, expired on 7 July 2022. On that basis, a list of derogations had been established and communicated to the VAT Committee on 22 September. 15 Member States have communicated measures. Some of the measures communicated are already covered by Annex III and others fall outside this exercise either being covered by Article 105a(2) and not open to other Member States or out of context. The Chair reminded that other Member States may decide to apply those derogations under the same conditions, but **adoption must take place within 18 months of entry into force of the new rules, so by 7 October 2023, and be communicated to the VAT Committee.** Lastly, the Chair stated that steps are being taken to adapt the Taxes in Europe database (TEDB) to accommodate for this reform of the VAT rates.

- Follow-up of the last VAT Committee meetings: Guidelines

    - Vouchers: the Chair noted that one delegation had not yet submitted their analysis on vouchers (in follow-up to Working paper No 1001) and their interaction with exemptions (like that under Article 138 of the VAT Directive) and examples, as announced during the 117th meeting of the VAT Committee. In the meantime, draft guidelines on certain other aspects of vouchers are in the process of being agreed.

- SMEs and the interaction with the rules on intra-Community acquisitions: the Chair indicated that the draft guidelines, based on Working paper No 1052, discussed during the 121st meeting, had not yet been established.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2023)1936817)

The agenda was adopted as proposed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

2.1. Minutes from the 121st meeting

The Chair mentioned that the minutes from the 121st meeting held on 21 October 2022 had been agreed in written procedure and had been published on CIRCABC.

2.2. Guidelines from previous meetings

The Chair stated that since the last meeting in October 2022, whilst no guidelines have been concluded, several guidelines in relation to vouchers and SMEs are in the process of finalisation via written procedure.

In addition, with regard to the draft guidelines on the *VAT treatment of crypto-assets* and on *digital payment services* (Guidelines from the 120th meeting), the Chair reported that following the written procedures, the revised draft guidelines were subject to an oral discussion before finalising them, in an effort to arrive at unanimous guidelines.

The Commission services then explained the targeted amendments made to the draft guidelines and invited delegations to share their views on the revised drafts.

As regards the draft guidelines on the VAT treatment of crypto-assets, three delegations stated their readiness to agree, subject to some changes be introduced in points 1b and 3 of the draft guidelines. One delegation reiterated their disagreement with points 3 and 4, whereas one another delegation could not support point 4 of the draft guidelines. Finally, one of the above delegations which took the floor inquired on the possibility to change the subject of the guideline to refer to "crypto-currencies" rather than to "crypto-assets". In reply, the Commission services explained that the heading of each guideline takes the heading (and the subject respectively) of the Working paper from which it derives, so that no amendments could be made in this respect. The Chair thanked the delegations and concluded that when finalising the draft guidelines, the text of points 1b and 3 would be adapted to reflect the suggestions made.

As regards the draft guidelines on the VAT treatment of digital payment services, one delegation stated they still have issues with point 6 of the draft guidelines as it is not in line with a ruling of their national Supreme Court. One other delegation could still not agree with point 6, whereas another delegation could not support point 3 of the draft guidelines. The Chair thanked the delegations and concluded that points 1, 2, 4 and 5 were agreed unanimously, whereas points 3 and 6 almost unanimously.

3. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

3.1 Origin: Commission
References: Articles 168(e), 178(e) and 201
Subject: Importation of leased goods to be used for taxed activities – right to deduct VAT of the lessee
(Document taxud.c.1(2023)1890216 – Working paper No 1061)

The Commission services presented the Working paper, reminding that the possibility for a lessee of imported goods to deduct the VAT paid upon importation when the lessee is designated as liable for the payment of such VAT was discussed in 2013 during the 98th meeting[1]. The conclusion at the time was that the lessee of an imported aircraft is not entitled to deduct VAT in such situations, based on previous guidelines[2] agreed by the VAT Committee almost unanimously. Those guidelines had concluded that a taxable person designated as liable for the payment of import VAT pursuant to Article 201 of the VAT Directive is not entitled to deduct such VAT if he does not obtain the right to dispose of the goods as owner and the cost of the goods has no direct and immediate link with his economic activity. The Commission services further explained that the subject was put on the agenda in order to clarify whether the above conclusions should be maintained, considering that there are several recent rulings of the Court of Justice of the European Union ("CJEU") whereby deduction of the VAT paid is allowed for persons who are not the owner of the goods.

In their presentation, the Commission services first went through the respective CJEU rulings, in particular cases C-187/14, *DSV Road*[3], C-132/16, *Iberdrola*[4], C-405/19, *vos Aanemingen*[5] and *C-621/19 Weindel Logistik Service*[6]. They then analysed whether the conditions for the right to deduct VAT in relation to costs incurred by a taxable person, as confirmed by the CJEU in those rulings, can be said to be fulfilled when the lessee is designated as liable for payment of the import VAT due on the leased goods. In addition, the Commission services explained that operational leasing agreements in relation to aircraft are, in accordance with the respective EU legal framework, subject to strict time-limits and allowing a full deduction to a lessee would thus be disproportionate as the lessee will be able to deduct upfront the entire import VAT for the value of the aircraft which it may only use for a very limited period of time. Furthermore, allowing the deduction to the lessee could lead to problems with the adjustments required in cases where the owner, after expiry of the lease, puts this non-EU aircraft to private or more generally non-business uses. Finally, the Commission services stressed that the cases of aircraft lease where the aircraft is being brought into the EU under temporary admission with partial relief from customs duties should generally qualify for the exemption from VAT provided under Article 148(f) of the VAT Directive, as most airline companies likely to be the lessees carry out international transport.

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1 Working paper No 762 of 11 February 2013.
2 Guidelines resulting from the 94th meeting of 19 October 2011 – Document A – taxud.c.1(2012)243615 – Working paper No 716 (p. 159).
3 CJEU, judgment of 25 June 2015, *DSV Road*, C-187/14, EU:C:2015:421.
4 CJEU, judgment of 14 September 2017, *Iberdrola*, C-132/16, EU:C:2017:683.
5 CJEU, judgment of 1 October 2020, *vos Aanemingen*, C-405/19, EU:C:2020:785.
6 CJEU, order of 8 October 2020 in case 621/19, *Weindel Logistik Service*, EU:C:2020:814.

In the opinion of the Commission services, the previous conclusions as expressed in Working paper No 762 should be maintained. For the importer to be allowed to deduct the VAT paid upon importation, *(1)* the goods imported must be necessary to carry out his or her economic activity and *(2)* the costs of the importation need to be included in the cost of his or her output transactions. In the case of importation of an aircraft by the lessee, while the first condition is fulfilled, the second is not, as only the price of the lease and not the costs of the importation of the aircraft are included in the cost of the lessee's output transaction. The Commission services did take the view that Member States could use the margin of discretion granted by Article 201 of the VAT Directive and designate the owner as the importer and, therefore, the person being liable for VAT. This possibility would allow for the owner to deduct the VAT paid upon importation of the aircraft to the extent that it is used for the purposes of economic activities, and to adjust the initial deduction if there is a subsequent change in the use of the aircraft. Finally, given the specific legislative framework within which these operations involving aircraft take place, and their economic reality, the impact of denying the right to deduct VAT for the lessee on importation should be rather limited. This will reduce the possibilities for abuse, and minimise the difficulties in regularising the VAT deducted when the aircraft, after expiry of the lease, is put to uses which do not give rise to the right to deduct VAT.

In the ensuing discussions, slightly less than half of the delegations took the floor.

Eight delegations agreed with the Commission services' opinion expressed in the Working paper. One of these delegations emphasised the two conditions confirmed by the CJEU in its case-law and stressed that since the lessee is not the owner of the imported goods and their cost is not part of the price of the lessee's output transactions, the lessee should not be allowed to deduct the import VAT on the leased goods. Another delegation pointed out that since the CJEU in its ruling in case C-621/19, *Weindel Logistik Service*, agreed with the VAT Committee guidelines at issue here, the VAT Committee should agree with itself. Another delegation found that the lessee should not be designated as the person liable to pay the import VAT. Whilst the situation at issue is not entirely the same as the ones subject to the cited CJEU case-law, one other delegation stressed that given that the imported leased goods are used in the economic activity of the lessee, it is important to stick to the conditions that need to be fulfilled to allow a right to deduct as confirmed by the CJEU in its rulings. This delegation also agreed that allowing a right of deduction for the lessee would lead to practical problems and informed that they are not encountering issues as they do not allow the lessee to act as the importer. One other delegation also confirmed that they do not allow the lessee to be designated as the importer. Lastly, one delegation expressed the opinion that the case at issue only applies to operational lease and not to financial lease as in the latter case the ownership of the goods would be transferred and the costs would be factored into the lease. The Commission services confirmed this latter point.

By contrast, four delegations expressed theirs doubts regarding the conclusions in the Working paper. In particular, one delegation pointed out that the VAT Directive leaves it to Member States to decide who is the person liable to pay the VAT on importation and stated that if the lessee acts as the importer, it should be possible for him or her to deduct the import VAT. In their opinion, there is a direct and immediate link between the importation and the economic activity carried out by the lessee, therefore for practical reasons and to avoid double taxation, it should be possible for the lessee to deduct the import VAT on the leased goods. Another delegation indicated that, whilst still analysing

the paper, they understand the logic built up based on the CJEU case-law, but considered nevertheless that the economic rationality of the transaction should guide the decision regarding deduction and voiced concerns with a too strict interpretation whereby only the owner of the imported leased goods bears their cost. Another delegation stressed that, on the one hand, the CJEU's rulings provide clear criteria that must be met for the import VAT to be deducted, one being that the cost of the imported goods must be included in the price of the output transactions, but on the other hand the lessee does not get a right of deduction for the imported goods which he or she uses in his or her economic activity. This was a source of concern as it might, in their view, infringe the principle of fiscal neutrality and undermine also the principle of proportionality, with additional financial burden for the lessee compared to situations where the leased goods come from within the EU. Lastly, they expressed doubts as to whether the cited CJEU case-law is sufficient for analysing the case of imported leased goods. Finally, one other delegation reiterated their doubts as already expressed in the past. In their view, designating the owner as the importer may not necessarily be possible. That delegation also inquired whether only import of leased aircraft are concerned or import of any kind of goods. In reply, the Commission services stated that the subject is not limited to the import of leased aircraft but applies to the import of leased goods in general, which prompted that delegation to reiterate more strongly their concerns.

The Chair concluded that as most delegations agreed with the conclusions in the Working paper, the previously agreed guidelines would not be modified.

3.2 Origin: Denmark
References: Articles 30a, 30b and 73a
Subject: Vouchers in the form of City Cards – follow-up
(Document taxud.c.1(2023)1892223 – Working paper No 1062)

The Commission services presented the Working paper, reminding that the issue of city cards had first been evoked by stakeholders and was subsequently discussed at the 112th and 114th meetings of the VAT Committee. At the time, however, delegations did not find it possible to draw any firm conclusions given the lack of details on the business models used to operate such city cards. The discussion was subsequently put on hold as a case C-637/20, *DSAB Destination Stockholm*, was submitted to the CJEU on the issue of city cards. With that case decided[7], Denmark asked the VAT Committee to look once again at the subject and clarify also how to calculate the consideration of city cards including on the basis of the details of one type of city card provided by the Danish delegation themselves.

In their presentation, the Commission services pointed out from the outset that although Member States may submit questions arising from concrete cases, the VAT Committee is not the appropriate forum to decide on such cases and any discussion should only take place where it can provide some guidance at EU level for a harmonised interpretation of the VAT Directive. That was considered met in the case at issue as the concrete case only served as a backdrop to the issues raised by the Danish delegation and the factual circumstances simply illustrated the operation of one of the business models put in place for city cards. This, together with the decision taken by the CJEU in the *DSAB Destination*

[7] Judgment delivered on 28 April 2022.

Stockholm case, provided an opportunity to shed more light on how to interpret the rules of the Voucher Directive[8] in relation to city cards.

In the opinion of the Commission services, based on the cases at hand and with a view to the conclusions reached by the CJEU in the *DSAB Destination Stockholm* case, it is possible to conclude, subject to a case-by-case verification, that:

(1) a city card can be said to satisfy the conditions laid down in Article 30a(1) of the VAT Directive for being a voucher;
(2) the city card as presented must be seen to be a multi-purpose voucher (MPV) falling under Article 30a(3) of the VAT Directive as the services to be supplied are unknown at the time of purchase and given the difference in VAT treatment, it is impossible to determine the VAT due required for it to qualify as a single-purpose voucher (SPV) captured by Article 30a(2) of the VAT Directive;
(3) in the absence of sufficient information, third-party suppliers in calculating the taxable amount of the supply made in return of the city card would need to rely on the related documentation to determine their part of the monetary value while the issuer for its supply must base itself on the consideration paid for the city card less payments made to other suppliers, this based on Article 73a of the VAT Directive.

Before opening the floor to all delegations, the Chair thanked the Danish delegation and invited them to comment on the analysis in the Working paper.

The Danish delegation thanked the Commission services for preparing the paper and stated that they followed the analysis therein. As regards the taxable amount of an MPV in the case of third-party suppliers where the issuer would be paying the redeemer/ service provider a percentage of the normal price and not the full value of the service provided, that reduction could possibly be seen, in the opinion of the Danish delegation, as a price discount rather than a fee retained as a consideration for a promotion service. In the case where the issuer is also among the redeemers of the city card, the Danish delegation inquired whether for determining the consideration for its supply the issuer must base itself on the residual amount, in other words on the consideration paid for the city card less payments made to other suppliers. The Commission services confirmed that this would indeed be the case.

The Chair then opened the floor to all delegations and about one third of the delegations took part in the discussion that followed.

Most delegations generally agreed with the analysis in the paper and the conclusions drawn by the Commission services. Regarding the taxable amount of an MPV in case of third-party suppliers where the issuer would be paying the redeemers/ service providers only a percentage of the normal price and not the full value of the services provided, most of the delegations who took the floor indicated that they would rather perceive the reduction as a price discount than a fee retained as a consideration for a promotion service. Some delegations stressed the importance of looking at the additional information in the related documentation for understanding what is paid to third-party service providers and what is left for the city card issuer. One delegation stated that although they would rather

[8] Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers.

consider the reduction in the price paid by the issuer to the service provider as a price discount and not a fee for a promotion service, it is not impossible that in certain circumstances a promotion service could potentially be identified.

By contrast, one delegation stated that their opinion differed from the approach taken in the paper. In particular, this delegation could see a confusion between a voucher and a subscription paid for access to a transport service. In the scenario of the Danish city card, they took the view that the transport service by the city card issuer could be considered as provided against a subscription fee, whereas an MPV exists in relation to the access to the museums and any other services. Regarding the taxable amount in case of MPVs, this delegation was of the opinion that taking the monetary value indicated on the MPV itself to be the taxable amount would result in an artificial overestimation of the latter.

Another delegation suggested the possibility of considering the city card as a hybrid product, consisting in a transport service and an MPV, and emphasised the need for a case-by-case analysis of the details of the contractual relationship between the city card issuer and the providers of the underlying services.

Finally, one delegation stated that in the case of a very active tourist who would consume all the services offered by the voucher, the taxable amount should not be higher than what was paid for the voucher itself.

In addition, several delegations stressed the need to determine a common approach for the cases when a voucher is not redeemed. Some of these delegations stated that there should be no taxation as there is no taxable event in that case. One delegation took the view, however, that taxation should apply as, even if unused, the city card provides its holder the possibility to use the underlying services.

On the suggestion made by one delegation to possibly consider the transport service provided by the city card issuer as a service against subscription, the Commission services explained that in the *DSAB Destination Stockholm* case the Advocate General addressed this in the respective Opinion, discarding that the city card could be seen as a ticket and thus a subscription paid for a transport service. On the suggestion to possibly consider the city card as a hybrid product, the Commission services stressed the difficulty to determine what amount is to be allocated to a subscription and on what basis so as to separate the transport service from the other services underpinning the city card.

In reply, one of the concerned delegations noted that the possibility for a subscription for the transport service deserves more reflection as a business model where the issuer does not get anything in return for the services it provides seemed strange, but pointed to the importance of making the assessment based on the details of the contractual relations.

In concluding the discussion, the Chair stated that the Commission services would then reflect whether to prepare draft guidelines on the subject.

3.3 Origin: Poland
References: Articles 132(1)(i) and 132(1)(j)
Subject: Application of the VAT exemption to educational services
(Document taxud.c.1(2023)1740719 – Working paper No 1058)

The Commission services presented the Working paper that had been prepared following a question by Poland on the application of the VAT exemption provided for in Articles 132(1)(i) and (j) to a scenario, in which higher education institutions, such as public universities, conclude contracts, against payment of a remuneration, with lecturers in order for the latter to provide knowledge transfer services to students at those institutions. In particular, Poland seeks to clarify: (i) whether the services provided by the lecturers, who are natural persons and active VAT taxable persons, fall under the VAT exemption provided for in Articles 132(1)(i) and (j) and if so, under which one of these two provisions; and (ii) whether in the scenario, as described above, the lecturers could qualify as "other organisations recognised by the Member State concerned as having similar objects" within the meaning of Article 132(1)(i).

In the opinion of the Commission services, based on the scenario under discussion and in view of the jurisprudence by the CJEU, it is possible to conclude that, subject to a case-by-case analysis:

- the services provided by lecturers as described in the scenario under discussion do not fall within the scope of the exemption provided for in Article 132(1)(i), as the lecturers cannot be considered to be an organisation recognised by Member States as having similar objects as bodies governed by public law, within the meaning of Article 132(1)(i), despite the fact that the term "organisation" may also include natural persons;
- the services provided by lecturers as described in the scenario under discussion could fall within the scope of the exemption provided for in Article 132(1)(j). This ultimately depends on the interpretation of the term "privately", whereby one would have to ask as did the CJEU in case C-445/05, *Haderer*, whether the services are supplied by the lecturers at their own risk and on their own account. Indications in order to ascertain whether the services are in fact supplied by the lecturers at their own risk and on their own account, may be derived from the scope and content of the contractual relations entered into by the lecturers and the public universities.

Before opening the floor to all delegations, the Chair invited the Polish delegation to comment on the analysis in the Working paper.

The Polish delegation thanked the Commission services for preparing the paper, indicating their interest in hearing the views of the Commission services and other delegations on the subject. In their view, the services provided by lecturers as described in the scenario under discussion do not fall within the scope of the exemption provided for in Article 132(1)(j) as these services cannot be regarded as tuition given privately, in view of the CJEU's ruling in case C-473/08, *Eulitz*. However, the exemption under Article 132(1)(i) might possibly apply on condition that the lecturers could be qualified as "other organisations recognised by the Member States concerned as having similar objects". Finally, the Polish delegation stated that as the exemption might be interpreted differently by Member States, they would like that guidelines be agreed on the subject.

In the ensuing discussions, seven delegations took the floor.

One delegation stated that in the scenario under discussion the services provided by lecturers would not fall within the scope of the exemptions under Article 132(1)(i) and (j), and referred also to cases from their Supreme Administrative Court in relation to similar scenarios. Such services would not be considered a supply of educational services, but rather a supply of staff for teaching at educational institutions, so that such services would not be exempt.

Another delegation stated that they do not have exactly this type of scenarios or contracts of mandate in their universities, as in their national practice the contract arrangements and the remuneration received by the lecturers have the form of employment contracts and salary so that such services would fall outside the scope of VAT. This delegation nevertheless agreed with the analysis and conclusion in the paper that the services in the scenario described do not fall under Article 132(1)(i) as the lecturers cannot be regarded as an organisation recognised by Member States as having similar objects as bodies governed by public law. Regarding the application of Article 132(1)(j), that delegation stressed that whilst they did not have a definitive position, they were a bit hesitant to consider such services as tuition provided privately by the lecturers although that could be the case depending on the circumstances and the contractual arrangements which would require a case-by-case analysis. That delegation also referred to the possibility for such services to be taxable services as it is not uncommon for university professors to provide expert services on a commercial basis.

Another delegation put in question that the services under discussion could be qualified as educational services, referring to the CJEU case-law with regard to swimming classes (case C-373/19, *Dubrovin & Tröger - Aquatics*) and driving lessons (case C-449/17, *A & G Fahrschul-Akademie*).

Another delegation agreed that such services do not fall under Article 132(1)(i), but expressed doubts that Article 132(1)(j) could apply.

Another delegation agreed that the scenario under discussion does not fall under Article 132(1)(i) but that it could, depending on the contracts concluded in the individual case, fall under the exemption of Article 132(1)(j). This delegation considered it important to look at the contractual relationship on a case-by-case basis and pointed out that the contractual relationship between the university and the lecturer could, in the individual case, also be qualified as a relationship between employer and employee under Article 10.

Another delegation took the view that Member States have a wide discretion when it comes to the term "other organisations recognised by the Member States concerned as having similar objects" as confirmed by the CJEU case-law and that the scenario in question would fall under Article 132(1)(i). This delegation expressed doubts that the supply of educational services by lecturers could fall under Article 132(1)(j).

Finally, one delegation expressed the view that the two exemptions in Article 132(1)(i) and (j) should be considered together and that the services in the scenario under discussion should in any case fall under one of the two exemptions.

In reply, the Commission services indicated that the CJEU in the *Haderer* case dismissed the idea that the exemptions have to be looked at together, stating that the exemptions are governed in detail by Article 132(1) and that each exemption needs to be interpreted narrowly. With regard to the jurisprudence referred to by one of the delegations, the Commission services reminded that the CJEU in the cases quoted considered the services as not falling under the term "school or university education" within the meaning of Article 132(1), as it concerned specialised tuition which does not amount to the transfer of knowledge and skills which is characteristic of school or university education. By contrast, the question put forward by Poland is different and concerns "school or university education", in line with the jurisprudence of the CJEU.

In conclusion, the Commission services stressed that it is necessary to look at each individual case and the content of the contract concluded between the public university and the lecturers in order to assess whether the provision of educational services by lecturers could be exempted. The outcome of such assessment of the individual case could however equally be that these services would not be exempted.

The Chair thanked the delegations and concluded that his services would reflect on the preparation of draft guidelines.

3.4 Origin: Poland
References: Articles 146(1) and 147(2)
Subject: Permanent address or habitual residence of non-EU travellers - further analysis
(Document taxud.c.1(2023)1794144 – Working paper No 1059)

The Commission services presented the Working paper that was prepared as a follow-up to the discussion during the 120th meeting when the VAT Committee dealt with questions raised by Poland regarding the application of the rules governing the exemption for supplies of goods that are exported in the personal luggage of non-EU travellers. They reminded that four questions had been submitted to Member States in order to collect more detailed information on the national experience in applying such rules and thanked those delegations that had responded.

Regarding the first question on *what information should be checked*, the Commission services take the view that 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 and it is therefore required that both the permanent address or habitual residence of the traveller, and the information on the destination are checked.

Regarding the second question on *what documents should be considered as valid proof*, the Commission services are of the opinion that since the list of documents set out in Article 147(2) is non-exhaustive, the authority carrying out the control may rely on documents other than those mentioned in that provision. The decision on which documents constitute valid proof of the permanent address or habitual residence of the traveller is left at the discretion of Member States. In case the documents showing the identity of the traveller do not provide information about the permanent address or habitual residence, recourse should be made to other documents. Member States should consider as the decisive proof that a 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 and non-EU citizens. Although identity documents must be considered as proof of residence, supporting evidence could be additionally required for verification purposes such as, for example, visas, work permits, rental contracts, work contracts as well as documents issued by the authorities of the country of permanent address or habitual residence.

Regarding the third question on *what should be done in case of contradicting means of proof*, the Commission services took the view that, 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 the traveller to submit supporting evidence of its place of residence. 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 being limited to a number of elements to avoid making the process too burdensome. Such approach is already in place for VAT purposes in the context of determining the place of supply.

Regarding the fourth question on *whether tax authorities should be entitled to access information provided by the traveller to third parties*, the Commission services take 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 rules.

Before opening the floor to all delegations, the Chair invited the Polish delegation to comment on the analysis in the Working paper.

The Polish delegation thanked the Commission services for preparing the paper and expressed their agreement with the analysis in relation to the first, third and fourth questions. On the second question, the Polish delegation agreed in principle that since the list of documents in Article 147(2) is non-exhaustive, the decision on which documents constitute valid proof of the permanent address or habitual residence of the traveller is left at the discretion of Member States. While the place of permanent residence is not linked to the nationality of the traveller, they however noted that identity documents do not usually contain information on the permanent address or habitual residence and considered it unjustifiable to require to establish the place of residence if such information is not included in the identity document. For this reason, they consider the place of residence to be the country which issued those identity documents and only in exceptional cases, such as where a traveller hold a passport from two countries, other documents should be allowed to confirm the place of residence. They also expressed doubts that a traveller will have a rental contract or work contract with them in case the identity documents are not enough, suggested that documents proving payment of personal tax could be used whereas other documents like civil contracts should not be used as they could be outdated and may not always reflect reality.

In reply, the Commission services recognised that most identity documents do not provide the place of residence, but explained that in case the traveller is able to provide this information, it cannot be refused and should be used as additional proof.

As no other delegation wanted to take the floor, the Chair concluded that his services will prepare draft guidelines. In response, two delegations expressed doubts that guidelines

were necessary. In reply, the Commission services reminded that one set of guidelines, which were considered unnecessary by some delegations at the time they were discussed, subsequently turned out to be amongst the most quoted and useful guidelines ever agreed.

3.5 Origin: Commission
References: Articles 2, 9, 47 and 58
Subject: Initial VAT reflections on non-fungible tokens
(Document taxud.c.1(2023)1930643 – Working paper No 1060)

The Commission services indicated that the subject of the VAT treatment of non-fungible tokens (hereafter "NFT") is on the agenda for the first time and explained that the purpose of the Working paper is to launch a discussion on the VAT treatment of transactions linked to NFTs with a view to agreeing a common approach in this area across the EU. Being discussed for the first time and given its many dimensions, the paper was to be considered a work in progress.

In their presentation, the Commission services described the concept of NFTs, namely a digital unit (commonly referred to as a token) on a distributed ledger which consists of an identification code and metadata. The identification code is used to identify the token whereas the metadata refers to the asset the NFT represents. They then explained that the paper considered whether supplies of NFTs are transactions in goods or services, by comparing NFTs with some real-life instruments such as property titles and vouchers, and then analysing the possibility of NFTs to be composite supplies or, as seems to be the more widespread view, electronic services. In the opinion of the Commission services, a case-by-case assessment is necessary to determine whether the supply of NFTs is a transaction in goods or services. Even if the current majority view considers NFTs to be electronic services, this qualification cannot be generalised to all NFTs given the different possibilities regarding the object of the transaction. The presentation then focused on the VAT treatment of the key transactions linked to NFTs, in particular "minting" (making and uploading NFTs onto a digital ledger), "trading" (buying and selling of NFTs) and "earning" (receiving NFTs as a reward).

As regards "minting" of NFTs, the Commission services expressed the view that the existence of a legal relationship between the parties involved (the one requesting minting and the network validators involved in the said publication) needed to be clarified as this would determine whether the fee paid for the minting could be seen as the consideration or not. If the fee would be the consideration, then the minting would be within the scope of VAT. However, if the identity of the parties involved would not be disclosed as appears currently to be the case, the minting would be outside the scope of VAT and the issue worth examining would seem to be whether the existing approach regarding the definition of 'consideration' for VAT purposes was in line with the purpose of VAT as a broad-based tax so that minting could fall within the scope of VAT. Provided the issue with the legal relationship could be solved, in the opinion of the Commission services, minting would qualify as an electronically supplied service as it does not require much human intervention and is dependent upon information technology for its supply.

As regards "trading" of NFTs, the Commission services explained that NFTs can be sold on the primary market by its creator but also on the secondary market amongst traders and collectors. They mentioned that most of the issues arise in the context of the secondary market, for example regarding the method to be used for taxing the resale of NFTs and

whether the margin scheme could be used. Another issue mentioned was whether the royalty that is typically paid to the NFT creator each time his or her NFT is sold on the secondary market falls within the scope of VAT.

As regards "earning" of NFTs, the Commission services took the view that a case-by-case analysis seems always necessary.

Finally, the Commission services reiterated that the purpose of the Working paper was to initiate a discussion on this new and complex subject so as to have the views and experience of the delegations before a more substantial paper could be prepared for a future meeting.

In the ensuing discussions, almost half of the delegations took the floor, and they all thanked the Commission services for producing the paper on this complex subject and for the opportunity to have a discussion on the underlying issues which are gaining in development and popularity.

One delegation mentioned that they broadly agree with the qualifications of NFTs in the paper but expressed doubts regarding the possibility for a legal relationship to exist for VAT purposes in case of unknown customers. When the supplier does not know his or her customer, the first faces problems with the burden of proof in relation to Article 169 of the VAT Directive when the clients are located outside the EU. This delegation mentioned that their national court had ruled that, based on statistics, 75% of customers validating transactions with bitcoins are located outside the EU. This delegation took the view that an NFT, as a token, is always linked to an underlying asset and cannot be split from it, and expressed a wish that this point be explored further. On the issue whether a gamer who earns NFTs for his or her success can be seen as a taxable person, they considered this highly hypothetical, in view also of the burden for tax administrations. Finally, that delegation considered it necessary to refrain from hasty conclusions.

Another delegation welcomed the opportunity to discuss the VAT treatment of NFTs and find a common position as these are more and more used in different areas of the economy not limited to gaming but also in artwork. In their view, the paper raises many issues and opens questions to be looked at in the future. That delegation stressed that NFTs should be seen as a digital proof of an underlying asset, which could be a variety of different things, and the real challenge is to be able to identify what assets are attached to NFTs to find the appropriate tax framework. This delegation generally agreed with the analysis in the paper that not all NFTs can be qualified as electronically supplied services and that NFTs could correspond to a good or a service, the latter not necessarily electronic in nature. They were uncertain as regards minting and how NFTs are generated, whether minting is an electronic service or whether it may require another service, and whether - because of the anonymity of the parties involved in the minting - the requirement for the existence of a direct link should not be set aside. On the issue of a gamer who gets NFTs as a reward for his or her play, that delegation took the view that this should be outside the scope. Regarding the trading of NFTs by gamers, that delegation could not see why the buying and selling should not be treated as any other taxable transaction.

Another delegation agreed with the analysis in relation to the qualification of NFTs and the comparisons with property titles, vouchers and electronically supplied services, but had issues understanding how a token can be of a greater value than the value of the

underlying asset given that the token is a proof of the value of the asset and requested more information with examples to be further provided. This delegation believed that "minting" should be seen as an electronically supplied service and expressed the view that, to overcome the hurdle created by the anonymity of the parties involved, the possibility of 'de-anonymising" the minting market could be further explored, as well as who receives the consideration for the "minting" and "trading".

Another delegation stressed the need and their interest in continuing the work and the discussion on the subject which in their view is very complex. They stressed the importance of keeping in mind the underlying assets and suggested to analyse and clarify how NFTs are used and how the delivery of the underlying assets takes place.

Another delegation considered the discussion very useful and the paper a very good start considering the complexity of the topic. That delegation agreed with the need to refrain from drawing hasty conclusions. They expressed the view that NFTs are complex for a variety of reasons, first because they could be about anything, there might not even be an underlying asset; second, because of the blockchain used which is quite new; third because of the way NFTs are traded via decentralised exchanges which are difficult to regulate and control. That delegation agreed with the analysis in the paper that NFTs could be anything, including a property title, a voucher or even a composite supply, but expressed doubts whether the minting can be treated as an electronically supplied service considering the way they are created which requires, in their view, more than minimum human intervention and the nature of NFTs as unique tokens. That delegation also saw issues determining reliably the place of supply in case NFTs were considered electronically supplied services as the customer is only identified with a digital address which could lead to problems of double or non-taxation. They suggested discussing, and possibly finding an agreement, on a harmonised VAT treatment of NFTs to avoid issues of double or non-taxation. As regards NFTs "trading", that delegation suggested drawing comparison with the trading of financial instruments. As regards the issue of the royalties paid to the NFT's creator each time the NFT is sold on the secondary market, that delegation could not see such royalties as being outside the scope of VAT referring to what the CJEU's stated in paragraph 49 of its judgment in case C-51/18 *European Commission v Republic of Austria*. Finally, that delegation pointed out that the topic merits a lot of discussion and suggested the possibility of having a Fiscalis workshop with experts in the field to understand the technology at issue and agree on the appropriate VAT treatment of the various NFT-related transactions.

One delegation stressed that in relation to "minting" and the fee paid to the validators, the possibility for a legal relationship to exist between the parties involved should not, at this stage, be completely ruled out so that minting could be taxed if such a relationship could be established. As regards "trading", that delegation took the view that supplies of NFTs are normally electronically supplied services. Since a large part of that trade is done via marketplaces and the buyer is not necessarily aware of the identity of the seller because this information is not shared by the marketplaces, that delegation suggested that the application of Article 9 of the VAT Implementing Regulation to the trading of NFTs could possibly be considered.

Another delegation stated that they do not have a clearly established VAT practice or national court cases in respect to NFTs but nevertheless agreed with the analysis on most of the matters in the paper, referring particularly to the qualification of NFTs that they

could be either goods or services, and cannot in all cases be regarded as electronically supplied services. That delegation indicated that, overall, the paper sets the scene very well and expressed their willingness to continue the discussion further.

Another delegation echoed most of the views expressed by previous delegations as regards the complexity of the topic and stated their interest in working together to find a common position considering the speed of development of these types of products and referred to the possibility of assessing other types of tokens such as utility tokens, etc. That delegation stated that they have little experience mainly due to traders being below the national SME exemption but cited digital artwork as an example where they have seen traders. They could consider NFTs to be electronically supplied services and expressed the view that the anonymity of the parties involved is what makes it extremely difficult to identify the place of supply as digital identity contains no geographical connotation.

Another delegation considered the paper very informative on this complex topic and a good starting point for further analysis and discussion. Whilst they were still examining the paper, they could generally agree with some of the views taken in the paper, referring to the qualification of a NFT as a good or a service. As regards "minting", that delegation saw a reason to tax these services. In their view, there is a direct link between the fee the validator receives and the minting service, and the issue with the anonymity of the parties should not prevent the minting service from being taxed. On the place of supply rule, that delegation stated that as there is no proof of the location of the customer, taxation could take place where the supplier is established but expressed a wish to see a more detailed analysis on this point. In relation to the earning of NFTs by gamers, that delegation considered that the VAT consequences for the party giving NFTs as a reward, on his or her economic activity and the right of deduction, should be examined in more detail and supported the suggestion by another delegation that it could be useful to hear the views of experts on this subject.

Another delegation questioned why minting services should not be taxed due to the anonymity issue, drawing a parallel with sales in supermarkets or at local markets or in restaurants to clients whose identity is not known as they pay in cash, but which are taxed even if there is no legal relationship with the anonymous client. In reply, the Commission services clarified that in the cases mentioned the place of supply is known, whereas in relation to NFT transactions neither the location nor the identity of the customer are known.

In conclusion, the Chair thanked delegations for their comments and stated that the Commission services will reflect on the way forward and how to continue the work in the future.

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

4.1 Origin: Commission
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union
(Document taxud.c.1(2023)1803054 – Information paper)

The Chair drew delegations' attention to the Information paper with the overview of judgments handed down since the cut-off date for the previous meeting's overview paper (18 rulings covering the period from 22 September 2022 up until 17 February 2023). He also reminded that requests for discussion of a case in a future meeting need to be accompanied by the interested delegation's own analysis of the matter on the basis of which the Commission services will establish a working paper.

No delegation asked for the floor and the Chair concluded the discussion.

5. ANY OTHER BUSINESS

5.1 Origin: Commission
Subject: Informing the VAT Committee of options exercised under Articles 80, 101a, 167a, 199 and 199a of Directive 2006/112/EC
(Document taxud.c.1(2023)1923919 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding a recently notified option exercised under Article 101a of the VAT Directive, thanked the delegation concerned and invited all delegations to notify in due time whenever necessary.

5.2 Origin: Commission
Reference: Article 211
Subject: VAT aspects of centralised clearance for customs upon importation – update
(Document taxud.c.1(2023)1796769 – Working paper No 924 REV9)

The Commission services presented the Working paper by drawing delegations' attention to the ninth version, which updated *section 1* of the paper in relation to the work of the customs project groups.

Delegations were then invited to verify the correctness of the information for their Member State in Annex 2 to the latest ninth version of this paper and to come forward immediately in case anything had to be changed.

One delegation asked for the floor, indicating an ongoing discussion on the introduction of postponed accounting.

The Chair thanked that delegation for the information, reminded of the need to send any update in written after the meeting and concluded the discussion on this item.

5.3 Origin: Commission
Subject: Case C-235/18, *Vega International*: Fuel cards
(Update on the state of play)

In their update on the state of play, the Commission services reminded that the subject of the *Vega International* case and its implications on the VAT treatment of the provision of fuel cards had already been discussed twice at the 119th and 121st VAT Committee meetings and a presentation from members of the VAT Expert Group on the outcome of the work carried out by the group took place at the 120th VAT Committee meeting. The *Vega International* case was based on a specific business model. During the discussion at the last meeting, suggestions were made about possible criteria to set the line and distinguish between what falls under Article 14(1) and what could fall under Article 14(2)(c) of the VAT Directive. Delegations had thus been asked to provide suggestions, on the basis of which the Commission services could prepare guidelines.

The Commission services explained that they also engaged with stakeholders which, having seen the Working paper for the last meeting, also came forward with possible criteria. The Commission services will then follow-up on this work in the VAT Committee. Finally, delegations were encouraged to wait until the discussion in the VAT Committee is concluded and guidelines are agreed before adapting their national practice.

As no delegation asked for the floor, the Chair reminded about the importance of reaching a common and consistent position on the issues stemming from the *Vega International* ruling for the application of the VAT Directive to the supply of fuel cards, stressed that the issue has a high impact on an important economic sector and called for pragmatism and a sense of compromise.

Conclusion

The Chair closed the meeting by thanking the delegations for their participation in the discussions.

ANNEX

LIST OF PARTICIPANTS

BELGIQUE/BELGIË/BELGIUM	Ministry of Finance
БЪЛГАРИЯ/BULGARIA	Ministry of Finance National Revenue Agency
ČESKO/CZECHIA	Ministry of Finance
DANMARK/DENMARK	Ministry of Taxation Tax Agency
DEUTSCHLAND/GERMANY	Federal Ministry of Finance
EESTI/ESTONIA	Ministry of Finance
ÉIRE/IRELAND	Revenue Commissioners
ΕΛΛΆΔΑ/GREECE	Independent Authority for Public Revenues
ESPAÑA/SPAIN	Ministry of Finance Permanent Representation
FRANCE	Ministry of Finance
HRVATSKA/CROATIA	Tax Administration Permanent Representation
ITALIA/ITALY	Ministry of Economy and Finance
ΚΥΠΡΟΣ/CYPRUS	Ministry of Finance
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance Tax Administration
LUXEMBOURG	Administration de l'enregistrement, des domaines et de la TVA
MAGYARORSZÁG/HUNGARY	Ministry of Finance
MALTA	Ministry of Finance and Employment
NEDERLAND/NETHERLANDS	Ministry of Finance

ÖSTERREICH/AUSTRIA	Federal Ministry of Finance
POLSKA/POLAND	Ministry of Finance
PORTUGAL	Ministry of Finance
ROMÂNIA/ROMANIA	Ministry of Finance
SLOVENIJA/SLOVENIA	Ministry of Finance
SLOVENSKO/SLOVAKIA	Ministry of Finance
SUOMI/FINLAND	Ministry of Finance Tax Administration
SVERIGE/SWEDEN	Ministry of Finance Tax Authority

EUROPEAN COMMISSION