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Indirect Taxation and Tax administration
Value added tax

VAT Expert Group
34th meeting – 26 October 2023

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VAT EXPERT GROUP[1]

VEG NO 113

SUMMARY MINUTES

34TH MEETING
– 26 OCTOBER 2023 –

[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)11025897)* was approved and two topics were requested to be added under AOB: one in connection with the checking of the validity of VAT ID numbers via VIES on the web in Germany, and another one on the VAT treatment of donated and recycled goods.

2. NATURE OF THE MEETING

The meeting took place in the form of videoconference and was not open to the public.

3. NEW RULES ON COMMISSION EXPERTS' TRAVELS

The Commission services thanked the VEG for their note dated 25 July 2023 as regards the views of the group on the new rules on meetings with external experts. The Chair recalled that the decision to reduce the number of physical meetings was taken in light of the Commission's commitment to cut in half by 2024 greenhouse gas emissions linked to travel of staff and experts. In this context, DG TAXUD decided that, as a general rule and except in duly justified cases, all meetings of Commission expert groups will be held online and, if necessary, once a year in physical format. Therefore, this decision is not specific to the VEG, but applies to meetings of all expert groups managed by the Commission, whose travel costs are borne by the Institution.

The Commission services stressed that it will still be possible to organise physical meetings, but only in cases where there is a justified need. Furthermore, the Commission services indicated that they had taken note of the VEG's suggestion to extend the duration of VEG physical meetings to last more than one day or the combination of these physical meetings with those of the Group on the Future of VAT. This will be considered taking into account the importance of the topics on the agenda and the suitability of having both groups meeting together. As to the creation of subgroups, this has been done in the past and could be envisaged on a need basis.

The VEG, thanking the Commission services for the clarifications provided, expressed its support for the decision taken and its readiness to keep working on assisting the Commission in the development of the EU VAT system. One member suggested that, in addition to having at least one physical meeting per year, it would be advantageous to hold more frequent short virtual meetings to focus the work on specific topics as needed.

The Commission services thanked the VEG members for their support and took note of the suggestions made.

4. VEG N° 112: SPECIAL SCHEME FOR SMALL ENTERPRISES - MEMBERS' SUGGESTIONS OF TOPICS TO BE COVERED IN THE SME EXPLANATORY NOTES

The Commission services presented the first draft of the Explanatory Notes on the special scheme for small enterprises, 'SME scheme'. The objective of the Explanatory Notes is to provide practical information on the functioning of the SME scheme that is easy for small enterprises who are not experts in the field of VAT to understand. In this sense, the language used will be further adapted and the draft will be enriched with additional real-life examples and figures to provide concrete guidance to small enterprises.

VEG members made various suggestions of editorial nature and on topics they consider relevant to be included in the Explanatory Notes. Work will be undertaken to analyse the suggested additional topics with a view to include them in a more advanced version of the Explanatory Notes.

Some members offered to jointly further elaborate some of the topics suggested for the Explanatory Notes for the SME Directive. The deadline for delivering their input is **15 January 2024**. The Commission services thanked the members for their initiative.

5. INFORMATION POINTS

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

5.1. VAT in the Digital Age (ViDA) package – state of play of negotiations in Council

The Commission services provided a brief update on the state of play of the negotiations in Council of the ViDA legislative package. Under the ES Presidency, several meetings have been held on the three work streams of the proposal (19 and 20 July, respectively on the Platform and Single VAT Registration (SVR) parts, 11 and 12 September on the Digital Reporting Requirements (DRR) part and related administrative cooperation aspects, and on 9 October and 10 October respectively on Platforms and SVR). At the ECOFIN meeting held in June, most Member States expressed broad support on the package and the need to continue the discussion on more technical aspects. In addition, a dedicated Group on the Future of VAT meeting on DRR took place on 8 September 2023, at which with five Member States presented their national DRR systems.

Discussions on DRR will most probably be carried over to the Belgian Presidency, as this part of the proposal still needs further technical discussions. The main aim of this part of the initiative is to put in place a harmonised DRR system reducing fragmentation for businesses while providing Member States the information needed for control purposes.

The group was very appreciative of the update provided. A couple of members asked about the timeline for the implementation of the proposal, to which the Commission services explained that it is quite likely that the final timeline might have to shift and be adapted in accordance with the date on which the legislative proposal is finally adopted in Council.

When asked about specific technical issues of the proposal, the Commission services explained to the group that they could not comment on this or on any amendments made to the original proposal put forward by the Commission, as these aspects are still under discussion in Council.

One member enquired about the meaning of '*validation*' in the context of e-invoicing, to which the Commission services clarified that this term does not refer to the validation of the content but rather to a technical validation of the format of the e-invoice.

One member also asked whether there had been any discussions on the possible implementation of a harmonised sanction regime to be applied in cases of noncompliance. In this regard, the Commission services replied that this particular issue goes beyond the remit of the proposal and it will be left for individual Member States to legislate on this.

Finally, the Commission services confirmed that the formal adoption of the ViDA legislative initiative will only take place once an agreement has been reached on the three parts of the package.

5.2. Customs reform, including the VAT proposal (COM(2023)262 final)

The Commission services presented the main elements of the customs reform package adopted on 17 May 2023, explaining that the reform aims at the simplification of customs processes for business, especially for the most trustworthy traders.

The reform is based on three pillars:

- An EU Customs Data Hub to digitalise the procedures, which will open for e-commerce consignments in 2028, followed (on a voluntary basis) by other importers in 2032, leading to immediate benefits and simplifications.
- A new EU Customs Authority that will help Member States to prioritise the right risks and coordinate their checks and inspections.
- A coordinated approach between customs and VAT rules regarding the importations of goods in the context of e-commerce.

One member asked about the interplay between the ViDA proposal, in particular the Single VAT registration part, and the customs reform.

The Commission services explained that the proposal (COM(2023) 262 final) lays down VAT rules relating to taxable persons who facilitate distance sales of imported goods, making online platforms, marketplaces or electronic interfaces the key actors in ensuring that goods sold online into the EU comply with all customs obligations as well. This proposal builds on the key elements of the ViDA proposal with regard to the single VAT registration pillar.

The e-commerce pillar of the customs reform entails:

- The alignment of the new customs proposal with the VAT framework (e.g. introduction of the concept of deemed importer enabled to use IOSS as the deemed supplier).
- The removal of the EUR 150 customs de minimis threshold which currently limits the application of the IOSS to distance sales of imported goods not exceeding EUR 150. The removal of the EUR 150 IOSS threshold will help to support the objective of a single VAT registration in the Union, in line with the ViDA proposal goals, by allowing IOSS registered traders to declare and remit

the VAT due on all their eligible supplies of IOSS goods, irrespective of their value in one single Member State. The application of the same rules on all goods irrespective of their value will help tackle VAT fraud and undervaluation.
- According to the rules proposed, electronic interfaces will be responsible for ensuring that customs duties and VAT are paid at purchase, so the consumers will no longer be hit with hidden charges or unexpected paperwork when the parcel arrives at destination.

The negotiations in Council on this package and on the IOSS related changes of the ViDA proposal will take place under the Belgian Presidency .

5.3. VAT e-commerce package – update

5.3.1. VAT e-commerce statistics

The Commission services presented the statistics on the VAT amounts declared in 2022 in the three special schemes of the VAT e-commerce package. The source data for these statistics were the VAT returns of the Member States of Identification as reported by the tax authorities.

Almost EUR 20 billion of VAT was declared via the three schemes (EUR 15 billion in the Union scheme, EUR 2 billion in the non-Union scheme and EUR 2.5 billion in the Import scheme) in 2022. The overall VAT declared in 2022 has increased in comparison to the extrapolated figures for the first year of application of the e-commerce package. This represents approximately a 25% increase in the total value of VAT declared across all three OSS/IOSS schemes. This overall increase is a testament to the continuous success of the new measures as it highlights how the package enabled Member States to protect the VAT revenues and contributed to a fairer and simpler system of taxation.

On 1 February 2022 there were approximately 90 250 registered traders in the Union OSS scheme and approximately 8 650 traders registered in the Import OSS scheme. By the end of 2022, these figures had increased to approximately 113 800 and 10 200 respectively. The registration numbers for the non-Union scheme remain relatively static. As at 31 December 2022, there were over 4 300 traders registered to use the non-Union scheme, which is down slightly from the figures registered in early 2022, which stood at just over 4 600 traders on 1 February 2022.

These figures validate the popularity of the e-commerce simplifications among traders in the e-commerce market.

A member of the VEG enquired whether the Commission received any feedback how the deemed supplier provision is applied in individual Member States. The Commission services confirmed that it had not received any information in this regard. Concerning controls and audit activities, the Commission services did receive feedback that some companies seemed to receive several requests for information directly from the Member States of consumption rather than from the Member State of identification. Consequently the Commission services informed the group that the applicable rules on how to request information from businesses will be recalled during the next SCAC-EG meeting.

5.3.2. Commission Implementing Regulation (EU) 2023/2184

The Commission services informed the experts that the Commission adopted Commission Implementing Regulation (EU) 2023/2184 on 16 October 2023 amending Implementing Regulation (EU) No 79/2012 as regards statistical data that Member States are to communicate to the Commission.

Annex IV to Commission Implementing Regulation (EU) No 79/2012 sets out the list of statistical data that the Member States are to communicate to the Commission for the evaluation of Regulation (EU) No 904/2010.

Council Regulation (EU) 2018/15413 amended Regulation (EU) No 904/2010 to introduce a number of new administrative cooperation tools. It is therefore necessary to adapt the provisions in Implementing Regulation (EU) No 79/2012 as regards the statistical data needed to evaluate the functioning of Regulation (EU) No 904/2010.

Annex IV to Commission Implementing Regulation (EU) No 79/20122 now contains four parts A – D. Two entirely new parts C and D were inserted in order to put the submission of data by EU Member States to the Commission in relation to the VAT refund procedure and One-Stop Shop (OSS) statistics on proper legal footing.

Part C provides for the provision of yearly statistical data on the status of VAT refunds in a structured and uniform way across the Member States and, thereby, ensures the monitoring of the good functioning of the VAT refund procedure.

Part D provides for the provision of statistics in accordance with Chapter XI of Regulation (EU) No 904/2010 in order to allow for the effective monitoring of the functioning of the new EU VAT e-commerce special schemes, which came into effect on 1 July 2021. Under Part D, Member States are required to provide data in relation to the following key areas: Registrations, VAT returns and VAT payments.

The new Regulation comes into force in 2024, at which point Member States will be required to provide data in relation to 2023.

5.4. Travel and Tourism package – update

The Commission services informed the group that work on this initiative had been paused due to other priorities. The final report of the study was delivered by the contractor. However, since the study will probably feed into a future legislative initiative, it will only be made public when that initiative is adopted.

5.5. Reporting on Vouchers – update on the state of play

It was recalled to the group that in accordance with Council Directive (EU) 2016/1065 of 27 June 2016 amending the VAT Directive as regards the treatment of vouchers, the Commission is obliged to draw up an assessment report by 31 December 2022, on the application of these rules, with particular regard to the definition of vouchers, the VAT rules relating to taxation of vouchers in the distribution chain and to non-redeemed vouchers. The information that will feed the report has been collected from Member States and is currently being processed.

6. AOB

6.1. VIES - Issues encountered in Germany

One member explained the issues encountered in Germany when requesting the validity of VAT ID number via VIES on the web, in particular due to a "high traffic" error message.

The Commission services confirmed that the IT monitoring teams have also noticed the issue and consider that it is an isolated case that does not affect other Member States. The Commission services and the German VIES team are in contact to discuss how the situation can be improved. It was also clarified that this error message is produced when the capacity of a national system is reached in order to protect it. In these situations certain requests are blocked but only temporarily. In most of the cases, a second retry is answered successfully.

The Commission services noted that the situation will be largely improved once the ViDA proposal is implemented. The new VIES on the Web service will be based on the central VIES and will be easier to scale, operate and troubleshoot because the data will come from a single database that will be maintained and operated under the same technical team. Therefore, the ViDA proposal will lead to a better service to EU tax payers.

6.2. VAT treatment of donated and recycle goods

Another member asked the Commission services if there was any ongoing work within DG TAXUD to introduce new measures aimed at making the recycling and/or the donation of unsold goods more favourable for businesses from a VAT point of view.

The Commission services replied that they were aware of the practice currently used by some businesses whereby unsold goods are systematically destroyed in order to keep the right of deduction previously exercised in connection with those goods. There is no intention to change the current rules in this regard. In the Commission services' view, changing the VAT treatment of donations by allowing the right of deduction on donated goods would open the door for VAT fraud and would also create a distortion of competition to the detriment of charity organisations, which do not have the right to deduct input VAT on goods donated by them. The Commission services concluded that, rather than making donations more attractive from a VAT point of view, it would be more consistent with the green deal to penalise the destruction of goods. Such a measure would encourage businesses to donate unsold good. As for the possibility to introduce a lower rate for recycled goods, the Commission services pointed out that it is not possible to change the VAT treatment of a transaction depending on the way goods are produced.

The Chair closed the meeting by thanking members for their participation and announced that the next meeting of the group is not yet confirmed, but will most likely be physical and tentatively scheduled for 18 March 2024.

7. LIST OF PARTICIPANTS

Commission services and the members of the VAT Expert Group as published in the Register of Commission Expert Groups[2].

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[2] https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1