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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1079 FINAL

MINUTES

123RD MEETING
– 20 NOVEMBER 2023 –

The Chair welcomed the delegations to the non-public 123rd meeting of the VAT Committee that took place in the form of a videoconference.

He recalled the decision taken by DG TAXUD whereby all meetings with expert groups will, as a general rule, be held online, and physical and/or hybrid meetings will be held once a year in duly justified cases. This decision is based on a general common policy of the Commission laid down in the Communication on Greening the Commission and its commitment to reduce greenhouse emissions linked to travel of staff and experts whose costs are borne by the Commission.

Next meeting: the 124th meeting is likely to take place in mid-April 2024.

Update on work by the Commission

The Chair informed delegations about the following:

- VAT e-commerce statistics: in 2022 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) which represents an increase by 25% in comparison to the figures for the first year of application of the e-commerce package. This overall increase is a testament to the continuous success of the new measures.

- Commission Implementing Regulation (EU) 2023/2184: adopted on 16 October 2023 amending Implementing Regulation (EU) No 79/2012 as regards statistical data that Member States are to communicate to the Commission. Two entirely new parts C and D were inserted in Annex IV. Part C provides for the provision of yearly statistical data on the status of VAT refunds whereas Part D provides for the provision of statistics to allow for the effective monitoring of the functioning of the new EU VAT e-commerce special schemes.

- SME scheme – Implementation: the new rules will apply as from 1 January 2025. Work is ongoing on:

    - the preparation of *Explanatory Notes*. A first draft was discussed with the VAT Expert Group (VEG) and the Group on the Future of VAT (GFV) members at the meetings that took place on 26 October and 9 November respectively and written comments on this first draft are welcome by mid-January 2024. A new revised draft of the Explanatory Notes will be established on this basis that will be shared and discussed with the VEG/ GFV members in February/ March 2024. Work done in the VAT Committee will also feed into the new revised draft of the Explanatory Notes;
    - the preparation of an *SME Guide*;
    - the development of a *SME web portal*, which will provide small businesses with information on the new rules, access to the relevant EU VAT legislation, the SME guide currently under preparation and the Explanatory Notes once finalised, the national VAT rules in relation to the SME scheme applicable in each Member State and the SME national contacts in each Member State;

- the development of a *new application*, *SME-on-Web*, to enable verification of the exempt status of SMEs;
- *Online national visits* in the context of the IT implementation, with *conformance tests* set to run in the period 1 April-31 December 2024.

- Exemptions for International Organisations – Electronic exemption certificate/ procedure: during the meeting of the GFV that took place on 9 November 2023, all delegates supported the approach to digitalise the procedure and almost all supported the proposal to base the establishment and implementation of the electronic exemption certificate on option 3 (PDF e-form with complete e-process). SCAC and SCIT will look further into technical details that should also allow Member States to obtain elements needed for calculating their costs.

- Customs reform, including the VAT proposal (COM(2023) 262 final): the Commission adopted on 17 May 2023 the customs reform. The *e-commerce pillar* aims at a coordinated approach between customs and VAT rules regarding the importations of goods in the context of e-commerce. In particular, the *VAT proposal* (COM(2023) 262 final) lays down rules relating to taxable persons who facilitate distance sales of imported goods, making online platforms key actors in ensuring that goods sold online into the EU comply with all customs obligations. The e-commerce pillar entails that: *(i)* Platforms will be responsible for ensuring that customs duties and VAT are paid at purchase, so consumers will no longer be hit with hidden charges or unexpected paperwork when the parcel arrives; *(ii)* The current threshold whereby goods valued at less than EUR 150 are exempt from customs duty will be removed tackling fraud and undervaluation; *(iii)* Simplification of customs duty calculation for the most common low-value goods bought from outside the EU. The *VAT proposal* includes the removal of the EUR 150 threshold for the usage of the IOSS, for the application of the deemed supplier provisions and of the special arrangements.

- Vouchers: under the rules of the Voucher Directive, which have applied since 1 January 2019, the Commission is obliged to draw up an assessment report on the application of these rules. Since that report is supposed to be based on information obtained from the Member States, such information had been collected and processed and the report is currently being prepared.

- List of gold coins for the year 2024: the list of VAT exempt gold coins valid for the year 2024 has been finalised, publication in the Official Journal of the European Union is expected in the coming days and no later than 1 December 2023.

- Travel and tourism package: work is currently paused as priority has been given to other more urgent files.

- Expiration of Commission Decision (EU) 2023/829: upon a request by five Member States, the Commission is currently preparing a Decision to continue the application of the relief from import duties and VAT exemption on importation granted for goods to be distributed or made available free of charge to persons fleeing the military aggression in Ukraine and to persons in need in Ukraine.

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 and good progress has been made on the three work streams. On the *Platform economy*, a lot of progress has been made at technical level and discussions will continue under the Belgian Presidency in 2024. On the *Digital Reporting Obligations*, the principles of the reform are agreed but a number of important technical details are still to be settled. Regarding the *Single VAT Registration*, there is consensus on the whole proposal but the customs-related issues (mandatory IOSS and abolition of the EUR 150 threshold) will be dealt with under the Belgian Presidency together with the Customs reform.

Follow-up of the last VAT Committee meeting: Guidelines

Vouchers in the form of City Cards: the Chair mentioned that due to the heavy workload, the draft guidelines, based on Working paper No 1062 discussed during the 123nd meeting, had not yet been established.

1. ADOPTION OF THE AGENDA

(Document taxud.c.1(2023)11242822)

The agenda was adopted as proposed.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

2.1. Minutes from the 122nd meeting

The Chair mentioned that the minutes from the 122nd meeting held on 20 March 2023 had been agreed in written procedure and had been published on CIRCABC.

2.2. Guidelines from previous meetings

Regarding guidelines from previous meetings, the Chair indicated that since the last meeting on 20 March 2023, the following sets of guidelines had been agreed in written procedure and these were all made available on CIRCABC and on the Directorate-General's public website.

- The unanimous/ almost unanimous guideline on *Vouchers* and the interpretation of Articles 30a, 30b, 73a, 410a and 410b of the VAT Directive;

- The unanimous/ almost unanimous guideline on the *VAT treatment of digital payment services* and the interpretation of Article 135(1)(d) of the VAT Directive;

- The unanimous/ almost unanimous guideline on the *VAT treatment of crypto-assets* and the interpretation of Articles 2(1) and 135(1)(d) and (e) of the VAT Directive;

- The unanimous/ almost unanimous guideline on *SMEs and legal protection*, and the interpretation of the new Articles 284, 284b, 284e and 288a of the VAT Directive and Article 37b of Council Regulation (EU) 904/2010;

- The almost unanimous guideline on *SMEs and fixed establishment,* and the interpretation of the new Article 284(1) of the VAT Directive;

- The unanimous guideline on *SMEs and the interaction with rules on intra-Community acquisitions,* and the interpretation of the new Article 284(3)(b)of the VAT Directive;

- The unanimous guideline on the *Application of the VAT exemption to educational services,* and the interpretation of Articles 132(1)(i) and 132(1)(j) of the VAT Directive;

- The almost unanimous guideline on *CJEU Case C-235/18 Vega International: Fuel cards,* and the interpretation of Article 14(1) and (2)(c) of the VAT Directive.

Finally, the Chair indicated that the draft guideline on the *Permanent address or habitual residence of non-EU travellers* and the interpretation of Articles 146(1) and 147(2) of the VAT Directive will be finalised and published in the coming days.

3. INFORMATION POINTS

3.1 Origin: Commission
Reference: Article 218 of the Treaty on the Functioning of the European Union
Subject: OECD VAT/GST related files – report back from WP9 and TAG meetings

The Commission services gave an overview of ongoing OECD work on VAT-related files in Working Party 9 (WP9) and the Technical Advisory Group (TAG).

In February 2023, there was a meeting of the TAG. The focus was on a discussion on e-invoicing and digital reporting that provided further practical insights into the compliance challenges created by the proliferation of increasingly heterogeneous VAT transactional reporting regimes and the need for further work by WP9 in close co-operation with the Forum on Tax Administration (FTA) in this area with a view to promote international interoperability. Representatives of the regulated crypto industry presented global trends in the crypto economy, including trade in non-fungible tokens (NFTs), highlighting the increasingly important compliance challenges created by the absence of internationally agreed standards for the VAT treatment of activities involving crypto-assets. Finally, the Chair of TAG stressed the strong support from the TAG business community for *(i)* the VAT Digital Toolkits and for the technical assistance work aimed at enhancing the quality and international consistency of VAT regimes directed at digital trade; and for *(ii)* WP9's work to assist tax administration in tackling VAT fraud and non-compliance in digital trade.

On 9-11 May 2023, there was a WP9 meeting for an update on the Work programme for 2023-2024. The programme covered *four strands*, in particular:

i. 'The VAT enforcement work' – a group created at the November 2022 meeting to enhance tax authorities' capacity to tackle VAT fraud and non-compliance, with a particular focus on digital trade. The aim of this work by WP9, supported by a dedicated group of national subject-matter experts (the *Focus Group on VAT Enforcement*) is *(i)* to facilitate intelligence sharing among tax administrations on key risks of VAT fraud and non-compliance in digital trade and *(ii)* to identify efficient strategies to detect and tackle these risks. Three subgroups were set up (*Sub-Group 1* on risk analysis, *Sub-Group 2* on detection and treatment strategies, and *Sub-Group 3* on administrative co-operation) and their preliminary findings were reported to WP9.

ii. 'Monitoring the implementation of the International VAT/GST Guidelines and digital economy developments that can have an impact on VAT policy and administration' – this work currently focuses on the VAT treatment of activities involving crypto-assets. The main aim of the session and the paper presented were to bring WP9 delegates/members and attendees to a level of shared understanding about the basic elements of this complex and growing area of the digital economy so that delegates would feel more comfortable when moving into technical VAT discussions about crypto-assets and non-fungible tokens at a future meeting of WP9 and the TAG.

iii. 'The efficient use of technology to facilitate VAT compliance and administration' – current focus is on e-invoicing and digital reporting requirements to support VAT compliance and administration.

iv. 'Capacity building' work on VAT and digital trade, including the Regional VAT Digital Toolkits, technical assistance initiatives and the extension of the Tax Inspectors Without Border (TIWB) programme to deal with VAT and digital trade.

Finally, there is an upcoming meeting of WP9 on 27-29 November 2023, with three main topics *(i)* discussion on the new members BG, HR and RO; *(ii)* update on the different work strands: (a) Crypto assets and non-fungible tokens; (b) Digital continuous transaction reporting; and (c) VAT enforcement group and its sub-groups; *(iii)* Draft ideas for the 2025-2026 Work programme.

After the oral presentation by the Commission services, no delegation asked for the floor and the Chair closed the agenda point.

4. CONSULTATIONS PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

4.1 Origin: Czech Republic
Reference: Article 177
Subject: Partial exclusion of the right of deduction upon acquisition of certain passenger motor vehicles
(Document taxud.c.1(2023)11103587 – Working paper No 1072)

The Commission services presented the Working paper on the consultation submitted by Czechia related to the introduction of partial exclusion of the right of deduction of VAT paid upon the acquisition of certain passenger motor vehicles, based on Article 177 of the VAT Directive which permits such exclusion on certain goods for cyclical economic reasons. The proposed measure establishes a ceiling of CZK 420 000 to the maximum amount of VAT that a business can deduct on the acquisition of certain passenger motor vehicles and any subsequent technical improvements carried out on them, except when these vehicles are used, in general, for the transport of passengers for commercial purposes. The measure would apply for three years as from 1 January 2024 as a means to ease the difficult public budget situation currently faced.

In their analysis, the Commission services concluded that the envisaged measure in principle falls within the scope of the first paragraph of Article 177 but stressed that it should be seen as a one-off measure in the light of the current economic downturn and not suitable for systematic extension. Czechia was nevertheless invited to provide additional clarifications regarding:

(i) the extra revenue expected from this particular measure;
(ii) the content of the package of fiscal measures so as to assess the proposed measure in light of the overall programme;
(iii) the definition of the categories of motor vehicles affected by the measure, in particular those vehicles excluded from the measure, e.g. regarding the status of taxis, VTCs and driving school vehicles;
(iv) the definition of the technical improvements affected by the measure, and if there is a deadline as from which they can be performed without restriction of the right to deduct; and
(v) how the measure will impact cars produced in Czechia and cars produced in other Member States, to ensure that the measure does not favour cars produced in Czechia compared to those produced in other Member States in view of Article 110 of the TFEU.

Before opening the floor to all delegations, the Chair invited the Czech delegation to clarify the matters raised.

After thanking the Commission services, the Czech delegation pointed out that the proposed measure is one of the measures aimed at limiting the budget deficit and explained that the package consists of measures both on the revenue and the expenditure side of the budget. On the expenditure side, they mentioned a reduction of the number of customs and tax offices and national subsidies, whereas on the revenue side what is envisaged is an increase in the corporate income tax from 19% to 21%, increase of excise taxes and abolition of various tax exemptions. Other measures envisaged are systemic adjustments to the labour market. As regards the extra revenue expected, the Czech

delegation indicated that the proposed measure is estimated to bring in 0.3 billion CZK per year. Regarding the third question, the Czech delegation explained that the vehicles had to be bought as a fixed asset/ capital good and stressed that the partial exclusion of the right to deduct does not apply to large vehicles such as trucks and lorries, ambulances or vehicles used for transportation, the exception being cars for driving schools which in their view will not be affected as the measure targets luxury cars. In reply to the fourth question, the Czech delegation stressed that the technical improvements are defined as any improvement beyond normal maintenance. The measure will apply for 3 years only in relation to cars purchased after 1 January 2024 and only to technical improvements carried out on these cars within the three-year period covered by the measure. Regarding the fifth question, they explained that the measure is not discriminatory and will apply regardless of the origin of the cars.

As no delegation asked for the floor, the Chair thanked the Czech delegation and concluded that the VAT Committee took formal note of the consultation.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.1 Origin: Denmark
References: Articles 2(1) and 9(1)
Subject: VAT treatment of sales of skins in the secondary market
(Document taxud.c.1(2023)11101471 – Working paper No 1070)

The Commission services presented the Working paper that had been drafted following a question submitted by Denmark regarding the VAT treatment of sales by private individuals of virtual products called "skin(s)" which function within a video game to customise the characters. In particular, the question is whether the sale of skins can be regarded as supplies of services for consideration by taxable persons acting as such under Articles 2(1)(a) and 9(1) of the VAT Directive.

In their analysis, the Commission services took the view that *(i)* the VAT treatment of sales of in-game virtual assets like skins does not differ from that of any other type of assets; the economic reality should be given priority so that an individual selling skins for consideration regularly over an extended period of time is recognised as a taxable person with the sales falling within the scope of VAT; *(ii)* the young age of the market participants is irrelevant to the assessment of their VAT status; *(iii)* the relevance of the criteria under the VAT Directive to assess the independence of an individual trading skins in a platform, especially when such sales cannot be realised outside of a certain ecosystem, merits further assessment to either confirm them or update them.

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

The Danish delegation thanked the Commission services for the preparation of the paper. On the issue of the players' independence from the game platform, they indicated that their experience concerns sales over a platform other than the platform where the game is hosted and took the view that the average customer will see another player and not the platform itself as the seller of the skins. The Danish delegation was of the opinion that the special scheme for second-hand goods laid down in Title XII, Chapter 4 does not apply to the sale of "used" digital items such as skins as the latter involve digital services and not

tangible goods and inquired whether the Commission services share their view and whether there might be a need to consider an update of the special scheme for second-hand goods or a new special scheme. Finally, they also asked whether cryptoart can be seen as a VAT exempt supply of services made by artists under the provisions laid down in Article 371 of the VAT Directive.

In reply, the Commission services stated that the special scheme for second-hand goods covers only goods, reminding that it dates back to the nineties when skins did not exist and referring also to a reply given by the Commission to a question from a Member of the European Parliament (P-000377/2023). They added that if ever there is a need for a review of the special scheme for second-hand goods, this would have to be examined in the appropriate forum as such does not fall within the remit of the VAT Committee. On the issue of cryptoart, they indicated that it is a difficult question given the link to a standstill derogation which is transitional in nature and specific to an individual Member State. Finally, whether the scope of a standstill derogation might be extended because of the technological evolution is questionable given that this was not what happened in relation to rates.

The Danish delegation stressed that, in their view, an extension of the current special scheme for second-hand goods could be a solution and that a new special scheme is not necessarily needed but agreed that such a discussion is not for the VAT Committee, with the latter however serving to provide input for it. The Commission services confirmed that indeed issues raised by the VAT Committee can on occasion feed into reflections on the future.

Seven delegations took the floor in the discussion that followed, all thanking the Commission services for the paper and the Danish delegation for asking the question.

One delegation agreed with the analysis in the paper, indicating that the VAT treatment of the sales of skins should be assessed on a case-by-case basis and based on the current rules of taxation. This delegation agreed that the initial sale of skins is to be regarded as electronically supplied services but had doubts regarding the resale of skins by players. In particular, to the extent that resales of skins by individuals are not automated as required by Article 7 of the VAT Implementing Regulation, in the opinion of this delegation such sales should not be considered electronically supplied services. In relation to cryptoart, this delegation stated they had already some experience and agreed with the Danish delegation that cryptoart cannot be considered works of art within the meaning of Annex IX of the VAT Directive, explained that the provision of Article 371 of the VAT Directive is not applied in their legislation but stressed that where cryptoart is generated by algorithms, it cannot be considered art and should therefore not be exempt under that provision. Regarding the royalties received during subsequent sales of cryptoart, this delegation took the view that the legal relationship between the seller and the client and the ensuing VAT treatment are to be assessed on a case-by-case basis but wondered whether the royalty should be outside the scope of VAT in view of the CJEU's judgment in case C-51/18 *Commission v Austria*.

Another delegation generally agreed with the analysis in the paper and inquired whether in case the player is not independent of the platform the economic activity should instead be deemed to be carried out by the platform. This delegation shared the views expressed by the previous delegation that to the extent that the resales of skins by individuals are not automated such sales should not be considered electronically supplied services. Their

treatment as electronically supplied services would also lead to difficulties in determining the place of consumption and suggested for a provision to be added to Article 58 of the VAT Directive stipulating that where no information is available as to the place of the customer, the place of supply is to be shifted to the place where the supplier has established his business to ensure that there is no double non-taxation. On this latter point, one other delegation intervened explaining that they have in their national legislation a provision stipulating that where the supplier does not know the identity of the customer or where the customer is established, the place of supply will be where the supplier is.

Another delegation agreed with the Danish delegation that the possibility of using the margin scheme for second-hand goods may have to be considered as otherwise there is a risk that resales will be moved in the black market. That delegation took the view that a case-by-case analysis is needed drawing on the existing rules on taxable persons and economic activity. As regards the reference to the observation of the Advocate General in case C-434/15 *Uber Systems Spain*, in the view of this delegation there is no reason to align with the Uber platform as in the present case the individual player has full control and decides the conditions of the sale (price, etc.) which is not the case in relation to the Uber platform.

Another delegation also shared the view that the VAT treatment should be assessed on a case-by-case basis and the general rules should be applicable. On the independence, this delegation voiced some doubts. In their opinion, even when the platform could freeze assets of the player, the latter bears the economic risks and should therefore be seen as independent. This delegation stated that Article 9a of the VAT Implementing Regulation could apply. On the questions raised by the Danish delegation, this delegation agreed that the sales of skins are supplies of services for consideration to which the special scheme for second-hand goods is not applicable, admitted that they had not reflected on a new special scheme for second-hand supplies of services and considered that the exemption under Article 371 of the VAT Directive cannot apply as cryptoart is possibly to be seen as '*assignments of … other similar rights, ..,*' and excluded by way of point 2(a) of Part B of Annex X .

Finally, a delegation stated that whilst they had to deal with some cases on this issue, their practice is evolving and thus had no definitive views. Nevertheless, this delegation generally agreed with the analysis in the paper and pointed to the need for a case-by-case assessment. The analysis was also supported by another delegation which found the issue interesting and was open for future discussions.

In reply to the comments made, the Commission services indicated that whether the resale of skins could be considered electronically supplied services will have to be analysed further, as it indeed depends on what the player is doing but a case-by-case assessment is in any event necessary. On the issue of independence, if the gamer is not independent, then the discussion would be on the platform as a supplier. Finally, they took note of the point made regarding the comparison with Uber. On the applicability of Article 9a of the VAT Implementing Regulation, a definitive reply could not be provided as it will depend on the particular circumstances.

In conclusion, the Chair noted that three types of issues were raised: *(i)* the VAT treatment of the sale of skins which was the subject of the Working paper and for which the Commission services would attempt to prepare draft guidelines; *(ii)* the VAT treatment of cryptoart which was not covered by the paper and for which the Chair invited delegations

to submit their requests accompanied by their own analysis; *(iii)* possible reflection on the future evolution of the EU legal framework for which the Chair suggested that the topic be put for discussion in a future meeting of the Group on the Future of VAT.

6. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

6.1 Origin: Slovakia
References: Title XII, Chapters 1 and 6
Subject: The special scheme for small enterprises (SME): interaction with the One-Stop-Shop (OSS) Union scheme and the Import One-Stop-Shop (IOSS) scheme
(Document taxud.c.1(2023)10130237 – Working paper No 1069)

The Commission services first briefly presented the Working paper and then the detailed presentation dealing with a question raised by Slovakia on the interaction of the SME scheme with the One-Stop-Shop ('OSS') Union scheme and with the import One-Stop-Shop (IOSS) scheme, and on the VAT consequences of such interaction.

In their presentation, the Commission services explained that the SME, the OSS and the IOSS are autonomous schemes, with different purposes and scope of application. While the SME scheme grants a VAT exemption on the supplies of goods and services carried out by small businesses in both the B2B and B2C context, the OSS/IOSS special schemes provide a simplification to taxable persons to declare and pay VAT on certain transactions carried out in different Member States. The OSS Union scheme only applies to B2C (i) intra-Community distance sales of goods, (ii) cross-border supplies of services, and (iii) domestic supplies of goods facilitated by electronic interfaces as deemed suppliers, whereas the IOSS scheme applies to B2C distance sales of imported goods not exceeding EUR 150. In some cases, however, a small business carrying out sales to final consumers could fall within the scope of application of both the SME scheme and the OSS Union scheme.

Regarding the interaction between the existing SME scheme and the OSS Union scheme, the Commission services explained that the cohabitation is currently possible and will remain so under the new rules applicable from 1 January 2025. Therefore, a taxable person who meets the requirements could apply the SME scheme in its Member State of establishment with access being opened for exemption in other Member States from 1 January 2025, and at the same time be registered for the OSS Union scheme to declare its cross-border supplies in the Member States where it does not avail itself of the SME scheme. The Commission services also clarified that in the absence of cross-border supplies in the scope of the Union OSS, other than those exempted under the SME scheme, the SME has no need to register for the Union OSS.

Regarding the interaction between the SME scheme and IOSS scheme, the Commission services explained that the two special schemes are mutually exclusive and will remain so also from 1 January 2025. As explained in the OSS guide, a taxable person using the SME scheme must opt out of that scheme to be able to use the IOSS and will need a VAT identification number of the Member State in which it is established to register in the import scheme, the reason being to avoid the risk of non-taxation of import transactions.

Before opening the floor to all delegations, the Chair gave the floor to the Slovakian delegation.

The Slovakian delegation thanked the Commission services for the preparation of the Working paper which clarified their doubts on the interaction of the three special schemes and fully agreed with the analysis and the conclusions provided in the paper and in the presentation. Concerning the interaction of the SME scheme with the IOSS, they indicated being aware of the OSS Guide saying that the two schemes are mutually exclusive, but they lacked a clear legal basis for this and stated they are pleased that this point will be clarified through VAT in the Digital Age ('ViDA').

The Chair thanked the Slovakian delegation and opened the floor to the other delegations.

Five other delegations intervened in the discussion. They all thanked the Commission services for the Woking paper and the presentation, and the Slovak delegation for raising the question. All these delegations agreed with the conclusions that the SME and the OSS schemes could be applied simultaneously whereas the SME and the IOSS schemes are mutually exclusive. These delegations were however concerned by the lack of a clear legal basis for excluding taxable persons registered under the SME scheme from the IOSS scheme.

One delegation had doubts as to whether there is a mistake in one of the examples in the presentation on the coexistence of the SME and the OSS schemes. The problem in their view arises in situations where a taxable person registered under the SME scheme as from 1 January 2025 is active in several Member States and where for its distance sales and cross-border supplies of services that taxable person chooses to have the place of taxation in its own Member State of establishment as below the place-of-supply threshold of EUR 10 000. In their view, the OSS and SME schemes are not compatible in such a situation and asked for clarifications in this respect. On this latter point, another delegation also agreed that clarification is needed in view of the consequences when the new rules of the SME scheme start to apply as from 1 January 2025. This latter delegation pointed out that ViDA already includes a legal basis for the exclusion of SMEs from the IOSS but in their view it is not clear enough that what is excluded are transactions carried out by exempt SME and not the SME as such but this is an issue that should be addressed in the Council.

One delegation stressed the need to have a uniform solution to ensure that, in the period before the entry into force of the VIDA proposal, the new SME scheme and the IOSS could not be applied simultaneously as otherwise this could lead to untaxed importation. In the lack of a clear legal basis to exclude taxable persons registered under the SME scheme from the application of the IOSS scheme and given that it will take some time before ViDA enters into force, in order to avoid the non-taxation of importation this delegation suggested that a legal solution could be to make use of Article 283(2) of the VAT Directive which allows Member States to exclude certain transactions from the scope of the SME scheme. This delegation nevertheless recognised that such a solution would imply that an exempt small enterprise will have to declare and pay VAT on import distance sales in the IOSS which could pose the question why exempt taxable persons should be obliged to pay VAT and apply IOSS whose application is only optional. This delegation asked for clarification on a number of issues regarding the consequences of the SME and the IOSS schemes being mutually exclusive where a small enterprise currently

registered in the IOSS opts, as from 1 January 2025, for registration under the SME scheme. In particular, they inquired *(i)* whether an SME opting for registration under the SME scheme would first have to deregister form the IOSS as to avoid being denied such a registration or alternatively that a deregistration from the IOSS would be carried out at the time the taxable person is identified with an individual EX identification number under the SME scheme; and *(ii)* how to treat distance sales carried out after deregistration from the IOSS for which the importation took place before deregistration.

Another delegation drew the attention to the consequences of the exclusion from the IOSS of a small enterprise registered under the SME scheme on the person liable for VAT on importation, given that small enterprises registered under the SME scheme can buy goods from outside the EU and sell them without VAT in the EU. In this regard, this delegation stated that there may be a need to designate the small exempt enterprise which is excluded from the IOSS as the person liable to pay VAT on importation to ensure that imports are taxed. Another delegation mentioned that the interaction between the IOSS and the SME schemes needs to be examined further. One other delegation underlined that while the IOSS and SME schemes should justifiably be mutually exclusive, there was a need to explore other solutions, e.g. that distance sales of goods which were declared and reported under the IOSS should be excluded from the exemption under the SME scheme as IOSS carries important simplification for SMEs.

The Chair took note of the points made by the delegations and underlined, in reply to some of their comments, that discussions are currently taking place in Council in the context of the single VAT registration and should remain for the Council whereas the present discussion in the VAT Committee serves to provide clarifications already now on the interaction between the three special schemes.

Addressing some of the issues raised by delegations, the Commission services explained that indeed if use is made of the place-of-supply threshold of EUR 10 000 then it will apply for the distance sales carried out also in Member States other than that where the taxable person is established (and such transactions will be reported in the turnover of the SME in its Member State of establishment), but not for transactions for which the taxable person has stocks held in other Member States, in line with guidelines[1] already agreed by the VAT Committee and the way Article 59c of the VAT Directive was amended. They agreed that guidelines to clarify the subject at stake are necessary. On the timing aspect related to the deregistration from IOSS in relation to the interaction with the SME scheme, the Commission services clarified that in case of such deregistration the identification number remains valid for at least 1 month to allow transactions already started to be finalised, and added that the timing aspect for the deregistration from the IOSS has to be defined in the specifications as indeed the Member State of establishment should verify that the small enterprise requesting registration under the SME scheme is not registered for IOSS and vice versa.

In conclusion, the Chair stated that the Commission services will prepare draft guidelines on the subject.

[1] Guidelines resulting from the 118th meeting of 19 April 2021 – Document D – taxud.c.1(2021)8354974 –Working paper No 1021 (p. 273).

6.2 Origin: Commission
References: New Articles 284, 284a-284e, 288, 288am 292a-292d of the VAT Directive
Articles 17(1)(a) and (2), 21(2b), 31(2a), 32(1) and 37a-37b of the VAT Administrative Cooperation Regulation
Subject: The SME scheme updated as of 1 January 2025
(Document taxud.c.1(2023)11242551 – Working paper No 1073)

The Commission services presented the Working paper stressing that it is a long and comprehensive document on the functioning of the new SME scheme that will come into place on 1 January 2025. It was prepared in view of addressing any outstanding issues that need clarification, some of which had been raised by Member States during the online national visits carried out in the context of the work on putting in place the IT systems for the operation of the updated scheme. They explained that the paper provides the views of the Commission services on a range of issues and is structured in four parts: part 1 *General points*; part 2 *Entry into the SME scheme*, part 3 *Application of the SME scheme*; and part 4 *Leaving the SME scheme*. The Commission services also outlined the issues listed at the end of the paper where agreement and common grounds should best be found. These issues relate to: *(i)* the situation of non-EU businesses; *(ii)* the application of more than one threshold; *(iii)* obligations, in particular in relation to the amounts to be taken into account in the calculation of the turnover and when reporting; corrections to prior notification and quarterly reports; invoicing; non-compliance with reporting obligations; *(iv)* pinpointing the moment the Union annual turnover is exceeded; *(v)* handling issues with the EX individual identification number.

Almost half of the delegations took the floor in the ensuing discussion. They all thanked the Commission services for the comprehensive paper. Regarding the various issues raised in the paper, the discussion went as follows:

(i) Situation of non-EU businesses

In the opinion of the Commission services, only taxable persons established within the EU will be eligible for the application of the new SME scheme (and on this they recalled that the VAT Committee already agreed a guideline resulting from the discussions at the 121st meeting[2]) while taxable persons established outside the EU should not be. Having a fixed establishment in a Member State cannot be taken to mean that a taxable person established outside the EU is seen as established in that Member State.

Nine delegations provided their views on this issue. Seven delegations agreed with the views of the Commission services whereas two delegations expressed their disagreement. One of these delegations suggested that Article 10 of the VAT Implementing Regulation should better be amended in relation to the SME scheme as it currently only relates to Articles 44 and 45 of the VAT Directive.

Of the two delegations that disagreed, one delegation was however open to the line taken. The other delegation argued that since the terms 'established' and 'Member State of establishment' are not defined in the VAT Directive, the exclusion of non-EU businesses from the new SME scheme cannot be justified based on Article 284. That delegation also

[2] Guidelines resulting from the 121st meeting of 21 October 2022 – Document B – taxud.c.1(2023)5257065 –Working paper No 1056 (p. 286).

explained that currently any foreign company with a fixed establishment in their territory can use the exemption under the existing SME scheme and were thus concerned that such companies could be denied exemption in the future.

(ii) Application of more than one threshold

The Commission services stressed that if more than one threshold is applied all these thresholds will qualify as sectoral thresholds and will impact on the data to be put in the prior notification and the quarterly report respectively. In addition, it must be ensured that a taxable person eligible to benefit from more than one sectoral threshold can only use one of those thresholds. They also underlined that the criteria used for distinction between such thresholds must be objective, enabling for a distinction to be made based on the type of supplies made (objective) but not the nature of the supplier (subjective).

Five delegations intervened on this issue.

Two delegations agreed with the Commission services' opinion, one of which also indicated that they apply only one threshold. Another delegation expressed a preference for the issue to be clarified.

Two delegations disagreed with the Commission services' views. One of these delegations explained that to provide equal treatment of different taxable persons they currently apply different thresholds – one for supplies of goods and one for services – which was justified from an economic perspective as the two sectors are characterised by different profit margins: the profit margin is lower for supplies of goods which explains the need for a higher threshold for goods and a lower threshold for services due to the higher profit margin in the sector of services. They indicated that if a taxable person carries out only supplies of goods, only the threshold for goods will apply and the same holds for services. If a taxable person supplies both goods and services, the threshold for services will apply if its turnover exceeds the threshold for services. If the turnover of its supplies of services is below this threshold, then the threshold for goods will apply. The other delegation which disagreed with the analysis of the Commission services stressed that in their view a distinction should be made between a general threshold and sectoral thresholds so that a taxable person should be able to take advantage of both the general threshold and the sectoral threshold.

(iii) Amounts to be taken into account in the annual turnover and when reporting, corrections to prior notification and quarterly reports, invoicing rules, non-compliance with reporting obligations

Regarding the amounts to be taken into account when calculating the annual turnover and to be reported, the Commission services stressed the importance to clarify which amounts must be included when calculating the annual turnover of a taxable person as only these amounts will count towards the value of the supplies to be reported. These are the amounts listed in the new Article 288 of the VAT Directive and include: *(a)* supplies to be taxed if not made under the SME scheme; *(b)* zero rated transactions (Article 98(2) or Article 105a); *(c)* exempt export transactions and transactions treated as exports (Articles 146 to 149 and Articles 151, 152 and 153); *(d)* exempt intra-EU supplies (Article 138); *(e)* real estate transactions and exempt financial transactions

(Article 135(1)(b) to (g)) and insurance and reinsurance services unless ancillary. Not supposed to be included are thus supplies exempt under Articles 132, 135 and 136.

Several delegations stressed that clarification on this point is necessary and confirmed the need for a common understanding. One of these delegations asked for clarification on how the turnover and the thresholds are to be calculated, whether they are VAT exclusive and for examples to illustrate when the thresholds are considered exceeded as in their view the legal provisions are not very clear. Another delegation inquired about the treatment of transactions excluded from the calculation of turnovers and whether taxable persons should report such transactions via a regular VAT return and to which Member State.

Three delegations asked for further clarification with more examples as to whether transfers of own goods must be included in the calculation of turnovers and when reporting. One delegation took the view that transfers of own goods, both within the EU and outside the EU, should not be included in the Union turnover as they are not turnover. This delegation gave the example of a taxable person which has low or even no turnover in a given period but has goods in a warehouse of another business, with the latter transferring the goods of which transfer the exempt taxable person might not even be aware. Another delegation was of the opinion that when the SME scheme is applied transfer of own goods should be exempt both in the Member State of departure and in the Member State of arrival of the goods.

As regards situations where a taxable person needs to correct values already reported in the prior notification and/ or quarterly reports, the Commission services suggest that, in the absence of an explicit legal provision on this issue, for any such a correction to be made, the taxable person should resubmit the original report in the same way as for the Union OSS scheme.

Seven delegations took the floor to express their views on the issue, all of them agreeing to the principle that corrections should be possible. In particular:

One delegation took the view that for corrections of plain material errors, a resubmission of the original report would be the best option, as suggested by the Commission services. However, for other corrections linked to the economic activity of the taxable person, such as regarding discounts or returns of goods, this delegation found it more practical for these corrections to be included in a subsequent report.

Another delegation also agreed that where corrections are to be made, the quarterly report should be resubmitted.

One delegation agreed with the solution proposed by the Commission services, indicating that lacking an explicit legal basis, the most suitable way to proceed is to follow what exists for the Union OSS scheme. They found it acceptable for the original prior notification to be resubmitted but underlined that the period within which such a correction could be made is not clear and expressed concerns in case Member States' national rules would differ on this point. Finally, that delegation had a question in relation to corrections that need to be made for supplies carried out in the period after the prior notification is submitted until the taxable person is registered under the SME scheme.

Another delegation agreed that corrections in the initial report should be done by resubmitting the report.

Three other delegations agreed that correcting a prior notification and a quarterly report should be possible but stressed that these should be explicitly settled in a legal provision in the VAT Directive like for the OSS.

As regards invoicing, the Commission services recalled that a taxable person availing itself of the cross-border exemption in a Member State other than where it is established could be captured by other obligations, such as invoicing, imposed by that Member State. And contrary to what is the case for supplies made under the Union OSS scheme, there is no scope for supplies made in a Member State other than that where it is established to be subject to the invoicing rules of the latter.

One delegation could not see how a taxable person without a VAT identification number could be obliged to issue invoices.

Regarding the non-compliance with reporting obligations, the Commission services recalled that a failure to adhere to reporting obligations could have repercussions for the taxable person. Given the impact that the imposition of further obligations will have on taxable persons whose transgression may be insignificant (if the report for a calendar quarter submitted to the Member State of establishment is a couple of days late) and/or infrequent (where late submission is not repetitive), they stressed the need to agree what should be seen as the lowest bar for a Member State to decide to impose such obligations, also keeping in mind the need to respect the proportionality principle.

One delegation stressed the importance of agreeing on a minimum number of days for tolerance in case of late submission of quarterly reports. Another delegation inquired what other obligations could be imposed and requested that this be further clarified.

(iv) Pinpointing moment that the Union annual turnover threshold is seen as exceeded

The Commission services recalled that once the Union annual turnover threshold is exceeded the cross-border exemption ceases to apply 'as of that time', the question being when exactly that time. They suggest that 'that time' is at the end of the day (24h00 CET) at which point taxation kicks in.

Seven delegations expressed their views on this point.

Four delegations could not agree and took the view that exemption should cease to apply from the moment the threshold is exceeded so that the supply with which the threshold is exceeded as well as all supplies made after that could no longer fall under the SME scheme. Two of these delegations also advocated the need for a harmonised approach in this respect. One delegation referred to the practice in respect of other thresholds in the VAT Directive, e.g. as for the EUR 10 000 threshold for intra-Community acquisitions or the EUR 10 000 threshold for distance selling of goods and TBE services.

One delegation stressed that while they could in legal terms agree with the previous delegations that the transaction with which the threshold is exceeded should be out of the exemption, they nevertheless underlined the difficulty to pinpoint this transaction, especially when multiple transactions are carried out on the same day for small amounts. This delegation was open to a practical solution such as the 'end of the day' suggested by the Commission services, or from the month following the month in which the threshold

was exceeded. As to exclusion with the transaction exceeding the threshold, they questioned what would be the result if the threshold is exceeded with one transaction but some days later that transaction is cancelled, and the taxable person finds itself again under the threshold. In their view, the most practical approach would be to disregard the cancellation, but they were open to discussions and would welcome a harmonised approach. They also inquired whether the moment of the chargeable event or the chargeability of the VAT is to be taken into account as this may influence the threshold and the moment it is exceeded.

Another delegation considered the best approach to be where the exemption will cease to apply after the transaction with which the threshold is exceeded.

In addition, the Commission services suggested to assimilate the case of bankruptcy with that where the Union annual turnover threshold is exceeded. If agreed, the taxable person would then be seen as required to inform its Member State of establishment and submit a final report within 15 working days of the bankruptcy.

Only one delegation took the floor and questioned the basis for such an approach and were thus not in favour of such interpretation, expressing a wish to see further elaboration on this issue.

(v) Handling issues with the individual 'EX' identification number

The Commission services explained that although the issue with the deactivation of the individual EX identification number (partly in respect of some Member States or fully) is for Member States to decide, two issues have been raised by some delegations, in particular: *(i)* when a Member State can presume that a small enterprise has ceased its activities when the latter has not informed its Member State of establishment and *(ii)* whether upon re-entry to the SME scheme after a period of quarantine to reuse the initial EX identification number issued or issue a new one.

Six delegations expressed their views on this point. Five delegations expressed support for the reuse of the initial EX identification number whilst one delegation stressed that this matter belongs to the competence of the Member States.

Finally, some delegations expressed their views on other issues mentioned in the paper, namely:

Deductions

One delegation was concerned about potential complications when the SME falls under the normal regime in its Member State of establishment but will apply the SME scheme in other Member States, especially with regard to capital goods, general costs and inputs incurred in the Member State of establishment which are also used for exempt supplies in other Member States and for which a pro-rata should be determined. In their view, this opens possibilities for abuse, also when goods will be moved from one Member State with right to deduct to another where the SME scheme will be applicable. In this regard, this delegation stressed that the rules on transfer will be important as to ensure that there will be at least some corrections to prevent abuse. Finally, this delegation would welcome any clarification in the future coming from the Commission services on issues arising when a taxable person applies both the normal regime and the exemption under the SME scheme.

Data to be included in the prior notification

One delegation insisted on the need for a taxable person to include in the prior notification all its valid and invalid VAT identification numbers. This delegation stressed that such information is important to all Member States for the application of the exemptions but also in relation to refunds. They pointed to Article 284a of the VAT Directive which refers to 'at least' so that the Member State of establishment can require additional information to what is laid down in the above mentioned provision. Finally, this delegation also took the view that the fact that a taxable person has a VAT identification number for other purposes in the Member State of exemption cannot hinder the application of the SME exemption in that Member State.

Duration of the process to gain access to the cross-border SME exemption

One delegation stated that they could agree with the first alternative suggested by the Commission services, namely that the Member State of establishment could inform the taxable person of its individual EX identification number as soon as it hears back from one of those Member States where the taxable person wants to avail itself of the cross-border exemption and then update that individual EX identification number as other Member States come back with confirmation. However, this delegation expressed doubts regarding the second alternative – that the Member State of establishment could also decide to hold off until all Member States have reacted – absent a basis both in the legal text and in the functional specifications for such a conclusion. They also emphasised the importance of having a unifrom approach across all Member States.

Four delegations on the other hand expressed concerns and thus disagreed with an approach where the lack of response from the Member State of exemption within the prescribed 15 working days, taking into account public holidays on the side of that Member State, is taken as (silent) confirmation that the conditions for exemption are met. One of these delegations underlined that such an approach could lead to a registration for exemption in a Member State where the taxable person is not eligible for exemption as the national exemption threshold is in fact exceeded. Another of these delegations also found it problematic that deadlines are expressed in working days, especially where public holidays will see a pending response from the Member State of exemption translated into a 'silent approval'.

Legal protection

One delegation requested more explanation with practical examples on how to handle various situations to be included in Explanatory Notes.

Reporting

One delegation inquired when and in which report supplies carried out between the date of the prior notification and the date the individual EX identification number is given are to be reported.

In addressing the issues raised by delegations, the Commission services noted the comments made and explained that they would attempt to include clarifications in guidelines to be drawn up. Regarding the issue of non-EU businesses, the Commission

services pointed out that currently Member States can have different takes as the SME scheme is territorial and has no cross-border impact which will however change from 1 January 2025. As there can be only one Member State of establishment, the issue on how to handle a non-EU business with multiple fixed establishments in several Member States will arise, therefore the importance to reach a common understanding. On the issue of multiple thresholds, they referred to discussions in the Council during which it had been agreed that where a Member State applies varying thresholds, a taxable person can benefit only from one threshold and cannot combine multiple thresholds even if the combincation would be below EUR 85 000. On the point whether for the last transaction with which the threshold is exeeded it is the moment of the chargeable event or the chargeability of the tax that should be considered, the Commission services stressed that they will look further into the issue. Regarding the transfer of own goods, the Commission services indicated that they would reflect further as it is not straightforward. Finally, the Commisison services also confirmed that turnovers as well as thresholds are VAT exclusive.

In conclusion, the Chair stated that the Commission services will prepare draft guidelines on the subject.

6.3 Origin: Slovakia
References: Title XII, Chapter 1
Subject: The special scheme for small enterprises: interaction with the standard VAT regime on the application of the VAT exemption for intra-Community supplies of goods in case of late VAT registration
(Document taxud.c.1(2023)11150754 – Working paper No 1071)

The Commission services presented the Working paper that had been prepared following a question by Slovakia on the interaction between the rules of the new SME scheme and the general VAT rules, in particular the VAT treatment of intra-Community supplies of goods in the case of late registration of a taxable person who has exceeded the domestic threshold for exemption under the SME scheme in a Member State that does not apply any transitional period under the new Article 288a of the VAT Directive and thus is excluded from the SME scheme already at the moment the threshold is exceeded.

The scenario brought up by Slovakia relates to a taxable person X covered by the SME scheme who makes VAT exempt supplies of goods from Member State A to a business customer Y located in Member State B. The annual turnover of that taxable person exceeds the domestic threshold in Member State A in December 2025, but it does not inform the tax authorities and does not get a VAT number and submit recapitulative statements. Instead, it continues to apply the VAT exemption under the SME scheme to its supplies of goods made to taxable person Y. The question is how to treat this situation where X does not meet the requirements to VAT exempt the supply of goods under the SME scheme because its annual turnover in Member State A exceeds the domestic threshold. It does not meet the requirements to apply the VAT exemption under Article 138 of the VAT Directive either as it is not VAT registered in Member State A and not able to file VAT returns and recapitulative statements at the moment of the supply.

In their presentation, the Commission services explained that their analysis focus on two alternatives:

(1) Alternative 1: The tax authorities in Member State A allocate a VAT identification number to taxable person X retroactively and request taxable person X to file late VAT returns, recapitulative statements and to correct the invoices issued to its customers. The question is whether X would be allowed to apply the VAT exemption for intra-Community supplies of goods given that paragraph 1a of Article 138 conditions the application of the VAT exemption to the submission of recapitulative statements. Since paragraph 1a of Article 138 also gives the possibility for Member States to apply the VAT exemption for intra-Community supplies of goods provided that "*the supplier can duly justify his shortcoming to the satisfaction of the competent authorities*", the tax authorities have the possibility to either:

- *refuse the application of the VAT exemption for intra-Community supplies of goods*. In this case X would have to treat the supply of goods as non-exempt, pay VAT in Member State A and would also be entitled to deduct input VAT in its late VAT returns. This scenario would not necessarily impact recipient Y as it is unclear whether Y could be obliged to pay VAT to X under such circumstances.

- *or allow the application of the VAT exemption for intra-Community supplies of goods* if the justification given by X on the reason for the non-submission of the recapitulative statement is seen as satisfactory. In this case, X would not have to pay VAT for these supplies, but it could still be entitled to deduct input VAT as the exemption for intra-Community supplies of goods opens the right to deduct VAT. This scenario could potentially have an impact on recipient Y if it would be faced with a demand from Member State B to pay VAT on its intra-Community acquisition of goods. To the extent that as a taxable person recipient Y has a full right of deduction, the impact should however be limited.

(2) Alternative 2: The tax authorities in Member State A allocate a VAT identification number to taxable person X from the moment of the findings (so not retroactively). Under this scenario, there is no possibility to correct invoices, to file late VAT returns or recapitulative statements. In the view of the Commission services, this alternative would not be in line with the decision of Member State A to not apply any transitional period under the new Article 288a of the VAT Directive and to request taxable person X to be compliant with the VAT rules under the standard VAT regime as from the moment its annual turnover exceeds the national threshold of the SME scheme. For this reason, it was doubtful whether alternative 2 makes sense in the case at hand.

Regarding the possible impacts that the regularisation of taxable person X may have on taxable person Y, the Commission services referred to Article 16 of the VAT Implementing Regulation, based on which the tax authorities of the Member State in which the dispatch or transport of the goods ends can exercise their power of taxation irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began.

In their conclusions, the Commission services stressed that the scenario described by Slovakia could also happen under the existing SME rules and stressed the importance of agreeing on how best to address such a situation which is particularly complex, both

because it touches on the interaction between the SME scheme and the standard VAT regime but also given that it involves two (or potentially more) Member States.

Before giving the floor to other delegations, the Chair invited the Slovak delegation to share their view on the analysis in the Working paper.

The Slovak delegation thanked the Commission services for the preparation of the Working paper and agreed with the analysis as they see the logic of alternative 1 which seems to be their preferred alternative even though the retroactive issuing of a VAT number appears a bit controversial. They found it difficult to say which of the two variations they prefer as, depending on the circumstances, there could be situations where the first variation could be applied and others where use could be made of the second variation. The Slovak delegation also found it problematic to determine the taxable base retroactively. They expressed certain doubts as to whether the impact on the customer is limited in case application of the exemption for intra-Community supply in accordance with Article 138 of the VAT Directive would be allowed retroactively. In their view, there could also be situations where the customer has no right to deduct. They also questioned the reference in the paper to the transitional period which, in their view, is not so important for their example (where the taxable person exceeds the domestic threshold in December) as the consequences are the same and the taxable person should have been VAT identified. Finally, they expressed their wish to have a guideline on the issue or clarify it in the future Explanatory Notes.

Five other delegations took the floor in the discussion that followed.

One delegation had issues with the analysis related to the differentiation between Member States that issue VAT identification numbers retroactively and those who do not have such practice. In that regard, this delegation explained that from a technical IT perspective they do not issue VAT identification numbers retroactively which however does not per se prevent the application of Article 138(1a) of the VAT Directive. This delegation explained that they allow a correction using the solution under the first alternative.

Another delegation agreed in substance with the first alternative but added a few clarifications. They explained that if the annual turnover of a taxable person exceeds the domestic threshold and the respective conditions laid down in Article 138 of the VAT Directive have not yet been fulfilled, the supply must be taxed. In this situation, the taxable person must first declare the omitted VAT by filing a rectifying VAT return and once identified by a VAT number, the taxable person must cancel the initial invoices, issue rectifying invoices with the information specified in Article 138 and file a recapitulative statement, informing thus the customer and its Member State of a taxable intra-Community acquisition. Finally, that delegation took the view that the tolerance regarding the recapitulative statement provided for in Article 138(1a) of the VAT Directive should not apply in the present situation.

Another delegation also expressed a preference for the first alternative but stated that the customer has every right not to pay the VAT as the agreement at the time of the purchase was to buy without VAT. In their view, the burden should not be on the customer as the late registration was not its fault.

Another delegation also agreed with the first alternative but pointed out that they will have to examine this further as from an IT perspective as they are unsure whether it would be possible to apply retroactively the exemption of Article 138 of the VAT Directive.

Finally, one delegation stated they need to examine the paper in more detail and will send comments in writing.

In conclusion, the Chair thanked delegations for their contributions and indicated that the Commission services will probably prepare guidelines.

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

7.1 Origin: Commission
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union
(Document taxud.c.1(2023)11102670 – 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 (27 rulings covering the period from 18 February 2023 up until 16 October 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.

8. ANY OTHER BUSINESS

8.1 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)11202766 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding a recently notified option exercised under Article 199a(1) of the VAT Directive, thanked the delegation concerned and invited all delegations to notify in due time whenever necessary.

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

8.2 Origin: Commission
Reference: Article 105a(5)
Subject: Informing the VAT Committee of options exercised under the fourth subparagraph Article 105a(1), the third subparagraph of Article 105a(3) and Article 105b of Directive 2006/112/EC
(Document taxud.c.1(2023)11235998 – Information paper)

The Chair indicated that the Information paper contains the notifications received from three delegations under Article 105a(5) of the VAT Directive regarding the main provisions of national law they had adopted by 7 October 2023 in order to apply VAT rate derogations falling under Articles 105a(1) and (3) and 105b applied by other Member States. He thanked the delegations concerned and reminded all delegations which had adopted reduced rates on the basis of Article 105a(1), the third subparagraph of Article 105a(3) and Article 105b, of their obligation under Article 105a(5) to notify the VAT Committee and to do so in due time. This in view of the obligation for the Commission to present, by 1 July 2025, a report on the basis of the information provided by the Member States.

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

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