



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**Value added tax**

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Brussels, 13 June 2016

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 905 FINAL**

**MINUTES  
106<sup>TH</sup> MEETING  
– 14 MARCH 2016 –**

The Chair welcomed the delegations to the 106<sup>th</sup> meeting of the VAT Committee.

### **Procedural and housekeeping points**

Language regime: it was possible to speak in and listen to FR-DE-EN-ES-IT-PL.

### **Topical issues in the Council**

The Chair briefly mentioned that since the last meeting no Council meetings regarding VAT files had taken place but that the Dutch Presidency had the intention to advance the file regarding vouchers.

### **Other topical issues**

- Explanatory notes on services connected with immovable property: the explanatory notes are now available on the Directorate General's public website in all official languages with the exception of Irish.
- The VAT action plan which will focus on the work to be taken forward over the coming years is scheduled for adoption by the Commission shortly, subject to final confirmation.
- With regard to the MOSS web portal, the quarterly updating of the reports (user guide and Excel table) is foreseen for publication during March. Punctual improvements of the MOSS web portal will be carried out on content and format, with more fundamental changes being considered for the coming months.
- An IT Workshop on the MOSS under the Fiscalis 2020 Programme is going to take place in Madrid from 16-18 March 2016. It will focus on technical errors to be corrected in national applications and on the governance procedure to update the MOSS functional and technical specifications. The Commission will also present the initial findings of the study evaluating the operation of the MOSS during the first half of 2015.
- A joint Fiscalis 2020/Customs 2020 Workshop "Modernising VAT for cross-border e-Commerce – importation of goods" will be taking place in Malmö on 20-22 April 2016. The deadline for registrations was 1 March. The Workshop, intended to feed into the Commission's proposal on e-Commerce proposal, will bring together officials from EU tax and customs administrations as well as some representatives from the OECD, Norway and Australia. A small number of business representatives will give presentations on the first day but will not participate in the other activities of the Workshop.

- With a view to preparing a comprehensive simplification package for small and medium-sized enterprises (SMEs), a study has been launched on which Member States had already been informed during the meeting of the Group on the Future of VAT on 5 February. Member States were invited to provide feedback to the contractor by filling in a questionnaire that had been sent out.

**1. ADOPTION OF THE AGENDA**

(Document taxud.c.1(2016)945425)

The agenda was adopted as proposed. Changes in the order of treatment of some agenda points were agreed.

**2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES**

The Chair stated that the minutes of the 106<sup>th</sup> meeting of 26 October 2015 had been adopted without comments.

As to the sets of guidelines already agreed in written procedure, these were all made available on CIRCABC and had also been made available on the Directorate General's public website. A limited number of written procedures on guidelines from previous meetings are still ongoing.

**3. INFORMATION POINTS**

- 3.1** Origin: Commission  
Reference: Article 218 of the Treaty on the Functioning of the European Union  
Subject: Update on work undertaken by the OECD  
(*exchange of views*)

The Commission services gave a short presentation of recent work at OECD level, having in mind to pass on information especially to those Member States that are not members of the OECD.

The International VAT/GST Guidelines had been adopted in November 2015 at the 3<sup>rd</sup> meeting of the OECD Global Forum on VAT in Paris. In its future work the OECD decided to concentrate on the collection of tax in the country where it is due. In parallel, another working group will focus on administrative cooperation and information exchange.

After the presentation, one delegation took the floor to state the importance of the adopted OECD Guidelines.

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

- 4.1** Origin: Commission  
Subject: Consultation by Belgium pursuant to Article 102 – update on situation  
(Document taxud.c.1(2015)6283661 – Information paper)

The Chair briefly drew the delegations' attention to the Information paper which had been established in order to convey information received from the Belgian authorities about the early termination of a measure that they had consulted on in 2014. In fact, the Belgian authorities had decided not to apply the reduced VAT rate for the supply of electricity for household customers beyond August 2015 instead of until at least December 2015.

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

- 5.1** Origin: Commission  
Reference: Article 9a of the VAT Implementing Regulation  
Subject: VAT 2015: Harmonised application of the presumption (follow-up)  
(Document taxud.c.1(2016)921938 – Working paper No 895)

In their short introduction to the Working paper the Commission services explained that it had been drafted in follow-up and as a complement to Working paper No 885, inconclusively discussed in the 105<sup>th</sup> meeting. During that meeting some delegations had requested further arguments for the shift in approach to extend the application of the presumption in Article 9a of the VAT Implementing Regulation and only exclude from its scope providers of payment services.

The new Working paper summarised the main issues reported by stakeholders during 2015 with regard to the application of the presumption in Article 9a across the European Union. From what had been reported it appeared that due to serious divergences in interpretation of that provision by the Member States businesses operating in a cross-border context suffer especially negative consequences.

The Commission services stressed the importance of a harmonised application of the presumption and underlined that the current wording of the Explanatory notes on that point would only be modified if consensus was reached during the discussions. They invited delegations to give their answers on the eight questions with regard to the application of Article 9a listed under point 3.5 of the Working paper arguing that clear positions from Member States were needed in order to decide on the way forward in that matter.

In the ensuing exchange with more than half of the delegations taking the floor it turned out that delegations were about evenly split between those who were in favour of keeping the current wording of the Explanatory notes concerning the application of the presumption in Article 9a and those who preferred to change it.

The Chair concluded that the wording of the Explanatory notes would thus be left unchanged and that his services would prepare VAT Committee guidelines on the basis of the replies received to the eight questions presented in Working paper No 895.

- 5.2** Origin: Commission  
References: Article 58 and Annex II of the VAT Directive  
Article 7 and Annex I of the VAT Implementing Regulation  
Subject: VAT 2015: Scope of the notion of electronically supplied services; minimal human intervention (follow-up)  
(Document taxud.c.1(2016)922288 – Working paper No 896)

The Commission services briefly presented the Working paper established in follow-up to discussions held during the 102<sup>nd</sup> meeting. They reminded delegations that a first set of agreed guidelines regarding the notion of electronically supplied services had resulted from the exchanges in that meeting and that the meaning of "minimal human intervention" had then been further examined in Working paper No 882 in the particular context of the VAT treatment of online gambling services. That Working paper had been the object of discussions in the 105<sup>th</sup> meeting.

Before opening the floor for delegations, the Commission services emphasized that for the assessment of minimal human intervention in particular supplies, only the relationship between the supplier and his individual customers mattered and that activities carried out by independent third parties were to be considered irrelevant.

After the presentation of the Working paper, less than half of the delegations asked for the floor. Most of these delegations shared the Commission services' understanding of the matter, with a few requesting more examples for analysis from other areas than the particular sector of online gambling. One delegation had reservations about the Working paper doubting that the scenarios described corresponded to reality.

The Chair responded that the examples assessed in the Working paper stemmed from the input received from Member States and announced that after the meeting a message to delegations would be sent out requesting the transmission of further examples from other sectors than online gambling, to be accompanied by the delegations' own preliminary analyses. The decision on how to proceed further (to prepare VAT Committee guidelines or a new Working document with additional analysis) will depend on the input received from Member States.

**6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

- 6.1** Origin: Commission  
Reference: Article 398  
Subject: How to deal with questions on the application of EU VAT provisions derived from activities of the EU VAT Forum, in particular regarding cross-border rulings (CBR)  
(Document taxud.c.1(2016)921131 – Working paper No 893)

The Commission services explained the background of why they had established the present Working paper for discussion. The EU VAT Forum brings together on a voluntary basis members of national tax administrations and business representatives for a structured dialogue concerning tax administration issues on VAT in a cross-border environment and a more efficient management of the current VAT system. In June 2013, the EU VAT Forum had decided to set up a pilot project regarding advance rulings on the VAT treatment of complex cross-border transactions (the "CBR"). Taxable persons registered for VAT purposes in one of the Member States participating in the CBR may request such a ruling in order to obtain prior clarity on the VAT aspects of the transactions they envisage carrying out.

When the EU VAT Forum discussed its first mandate report in October 2015, it had been suggested that in cases where Member States involved in a request for a CBR could not agree on the way forward due to their different interpretations of the applicable EU VAT provisions the question could be referred to the VAT Committee. A recent case in point of such a divergence of opinion between two Member States concerned the provision of training services between two companies of a group of companies, registered for VAT in the two Member States concerned.

The Commission services further pointed out that due to its specific nature as an advisory committee it was evident that the VAT Committee could not take legally binding decisions and it could not assume the role of arbitrator in individual contentious cases between businesses and Member States either. The only imaginable scenario could be that a Member State concerned takes such a contentious issue as a starting point to develop a question of a more general nature regarding the application of EU VAT provisions and of interest to all delegations for submission to the VAT Committee.

In the ensuing discussions less than half of the delegations asked for the floor. There was consensus that the VAT Committee should concentrate on issues of general application of the EU VAT provisions according to its mandate and should abstain from dealing with factual cases. It was remarked that due to its nature as an advisory body the VAT Committee cannot give binding opinions and therefore no legal certainty could be achieved in any event in contentious cases. Duplication of work with other groups had to be avoided, not least because of already full meeting agendas.

The Chair concluded that he fully concurred with the general view expressed by delegations that specific cases should not be discussed but showed some openness to deal with more general issues arising from specific cases. He repeated that neither the VAT Committee nor for that matter the Commission, in its role as secretariat,

could act as arbitrator and made it clear that the agenda of the VAT Committee should not be determined by other bodies such as the EU VAT Forum.

- 6.2** Origin: Commission  
Reference: Article 146(1)(a) and (b)  
Subject: VAT treatment of export of goods after transformation work in another Member State  
(Document taxud.c.1(2016)921278 – Working paper No 894)  
(*exchange of views*)

The Commission services described the scenario as presented in the Working paper and asked the opinion of the delegations whether Article 146(1) of the VAT Directive allows for the exemption for exportation if goods supplied to a customer outside the EU have first been sent to another Member State for transformation purposes and are then exported as finished products directly from that Member State to the customer. Discussions on that issue in the EU VAT Forum and one of its sub-groups had proven inconclusive and it was found that the exact same scenario had neither previously been assessed in the VAT Committee nor had it ever been dealt with by the Court of Justice of the European Union. However, as the scenario described is to be regarded as a rather common transaction scenario it would be useful to obtain the delegations' view on it and on possible simplification measures.

More than half of the delegations intervened. Exchanges showed that the majority preferred caution and for reasons of control were of the view that the goods supplied and the goods that leave the EU had to be identical. It was pointed out that there should be an alignment with customs procedures. One delegation stated that it is essential to know who orders the transformation work: the supplier or the customer in the third country. Simplification would only appear to be relevant in the latter case. A few delegations declared being in favour of the simplification measures as outlined in the Working paper for the sake of reducing administrative burden for businesses and making them more competitive. In that context Article 131 of the VAT Directive was mentioned as a mitigation measure against abuses.

The Chair concluded that delegations were divided and discussions had shown that Member States followed different approaches. His services would reflect on the appropriate follow-up to be given to the issue.

- 6.3** Origin: Commission  
References: Articles 143(1)(f), (fa), (g), (h), (i) and 151  
Subject: VAT exemptions on acquisitions made under diplomatic and consular arrangements, by the European Institutions, by international organisations and by armed forces  
(Document taxud.c.1(2016)923028 – Working paper No 897)

The Commission services explained that the Working paper had been drawn up mainly in order to provide a comprehensive overview on the application of the exemptions provided for under Articles 143 and 151 of the VAT Directive that had already been the object of numerous exchanges in the VAT Committee. Before opening the floor for discussions they summarised the document's broad lines and drew delegations' attention to the three questions addressed to them at the end under point 4.

More than half of the delegations asked for the floor to make known their views. One delegation made a scrutiny reservation on the Working paper. Nearly all the delegations that took the floor disagreed with the Commission services' view expressed under point 3.1.4 of the Working paper that the term "members" of international bodies as used in Article 151(1)(b) of the VAT Directive refers to the entities that make up such bodies and not to their individual staff members. With the exception of one delegation, the few delegations that replied to the first question under point 4 of the Working paper related to NATO forces concurred with the Commission services' view. With regard to the second question under point 4 that Article 164 of the VAT Directive cannot be applied in conjunction with Article 151, the few delegations responding all agreed. Most delegations replying to the third question concerning the preparation of an electronic form of the VAT exemption certificate welcomed such an initiative while a few delegations however strictly opposed it.

The Chair announced to reflect on the comments made but did not commit to any further follow-up.

- 6.4** Origin: Poland  
Reference: Article 132(1)(b)  
Subject: VAT treatment of services provided under bone marrow transplantation procedure  
(Document taxud.c.1(2016)680818 – Working paper No 891)

In their introduction to the agenda point, the Commission services explained the four questions submitted by the Polish authorities and the conclusions the Commission services had arrived at in their own assessment.

With regard to the first question, contrary to the Polish authorities' opinion, the Commission services took the view that only final testing services to confirm a donor's compatibility which are linked to an individual and specific transplantation could be considered "closely related activities" pursuant to Article 132(1)(b) of the VAT Directive. This is in line with the position of the Court of Justice of the European Union, which has consistently held that exemptions had to be interpreted strictly.

In response to the second question, the Commission services stated that the exemption under Article 132(1)(b) could also be applicable if testing services are performed by sub-contractors who re-invoice them forward. However, in such cases these intermediaries under contractual obligation have to meet the requirements set out in Article 132(1)(b). In addition, the testing services, as already argued for the first question, have to be final testing services whose aim is to confirm compatibility linked to an individual and specific transplantation.

The third question is whether the testing services would still be exempt if the intermediary, as part of his remuneration, invoices additional costs associated with establishing and maintaining the infrastructure enabling the transplantation. According to the Commission services, the correct answer depends on the contractual relationship between the involved parties as well as on the supplies that the intermediary has to carry out according to the contract. If he has to supply "testing services", then any general costs which are directly attributable to the



particular tests and added in the calculation of the consideration could be considered an integral part of that supply and thus be exempt, if the "testing services" qualify for exemption.

The last question examined deals with how to determine the status of a non-EU provider of taxable medical or closely related services to an entity established in the EU. The Commission services hold that, in such a scenario, the assessment of a third country service provider has to be made with reference to the VAT Directive. Therefore, in the case at hand, it would have to be established whether the service provider is a body falling under Article 132(1)(b) or a body to which the Member State concerned has extended the exemption according to Article 133, and whether that body is performing medical care or closely related activities.

More than half of the delegations participated in the ensuing discussions which revolved around the qualification of testing services and whether a narrow or broader interpretation of the provision of Article 132(1)(b) is justified. A number of delegations took the view that the bone marrow transplantation procedure has a particular character in that each stage is an indispensable element of the procedure, since bone marrow can only be collected after all the previous stages are completed. It was suggested that in such cases, namely where the curative treatment requires a chain of procedures including initial testing services, the latter should be considered as closely related activities. In this context, a few delegations remarked on the considerable evolution of sciences since the adoption of the Sixth VAT Directive in 1977 and stated that some of the provisions in force posed problems.

The Chair stated that opinions were clearly divided and therefore no conclusions could be drawn. He added that the possibility of a future amendment of the VAT Directive had to be reflected on.

- 6.5** Origin: Poland  
Reference: Article 16  
Subject: Disposal by a taxable person of goods free of charge to another taxable person  
(Document taxud.c.1(2016)934742 – Working paper No 899)

The Commission services presented the Working paper that had been drafted upon a request from the Polish authorities to clarify how to interpret the first paragraph of Article 16 of the VAT Directive correctly. They explained that the Polish authorities' main question is whether a taxable person who disposes goods forming part of his business assets free of charge to another taxable person has to issue an invoice which includes the indication of the VAT amount payable and whether the "VAT amount payable" referred to in Article 226 point (10) of the VAT Directive applies exclusively to the VAT amount to be paid by the acquirer to the supplier. If, indeed, an invoice needs to be issued and the taxable person disposing of the goods has to indicate the VAT amount on that invoice, the Polish authorities further ask whether the recipient of those goods then has a right of deduction (although no VAT had been paid by him) and what should be done in cases where the goods subject to the disposal free of charge are covered by the reverse charge mechanism.

In their own analysis the Commission services arrived at two possible approaches for a solution of the issues raised by Poland as outlined in detail in the Working

paper. When opening the floor for discussions they invited delegations to state which of the two solutions they favour.

More than half of the delegations stated their views. There was consensus for the second approach presented in the Working paper. One delegation declared that in their national VAT legislation they already had provisions for the kind of self-supply as described which coincided with that second approach. Another delegation informed that in its Member State deduction is allowed to the recipient of the goods although no issue of an invoice is required. This was a pragmatic solution only applicable in case the recipient sells the goods on with VAT and did not seem in line with the views expressed by other delegations.

Concluding, the Chair announced the preparation of guidelines on the issue.

- 6.6** Origin: Commission  
References: Articles 131, 138 and 273  
Subject: Proof of evidence of intra-Community supplies – the point of view of the VAT Expert Group  
(Document taxud.c.1(2016)933932 – Working paper No 898)

The Chair introduced the agenda point by explaining that the invitation of a member of the VAT Expert Group (VEG) for a presentation had the objective to give delegations the opportunity to listen to views presented from a different angle in order to possibly widen the understanding of the implications for business when confronted with providing proof for their transactions in different Member States. He stressed that it did not mean that the Commission services endorsed the VEG's document and its conclusions.

He further remarked that after the VEG member's presentation delegations were free to ask the experts present questions for any further clarifications. Thereafter, exchanges on the issues raised by the VEG member would resume as normal without the presence of external persons.

After the expert's presentation, there were no questions addressed by delegations to the VEG members. When the VEG members had left the room, several delegations asked for the floor. Exchanges showed that delegations were split between those who could agree that evidence should be based on commercial documentation and those who did not consider such evidence sufficient and adequate.

The Chair emphasized the importance for business of legal certainty and the facilitation that only standardisation could bring. He stated that a serious in-depth reflection on the issue was much needed as the present legal system with provisions introduced about 40 years ago when there were still customs controls in place and no single market existed had become untenable. He further announced that as soon as the Court of Justice of the European Union had decided in case C-24/15 *Plöckl* his services would revert to the VAT Committee with a Working paper that will be drawn up in response to a request by the German authorities on the relevance of the VAT identification number for intra-Community transactions that is currently put on hold because of the impact that the decision to be taken by the Court in that case will have on the analysis to be made.

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

- 7.1** Origin: Commission  
References: Articles 2(1), 135(1)(e) and (d)  
Subject: CJEU Case C-264/14 *Hedqvist*: Bitcoin  
(Document taxud.c.1(2016)689595 – Working paper No 892)

When introducing the Working paper, the Commission services remarked that after long exchanges on the issue of Bitcoin and other digital currencies in the 101<sup>st</sup> and 104<sup>th</sup> meetings and the recent ruling by the Court of Justice of the European Union in case C-264/14 *Hedqvist* they hoped that the new Working paper would dispel last doubts on outstanding issues so that the agreement on guidelines could be attempted as a concluding step. With regard to the open discussion to follow, they suggested not going through the whole Working paper but focusing instead on the overview table, presented under point 5.3 of the document, which summarised the different activities in relation with Bitcoin and their possible VAT treatments.

Several delegations participated in the ensuing exchange, but due to time constraints a thorough discussion of the issues presented in the Working paper was not possible. One delegation remarked that the questions of the taxable amount of Bitcoin and of its open market value were missing from the table. Another delegation held the view that exchange platforms do not provide intermediation services but rather give access to a digital interface. Two delegations stated that in their opinion mining services are not taxable, with one of them explaining that miners do not know the recipients of their services. One delegation requested to expand the analysis of digital currencies and encompass also block chain technology in order to obtain a broader view of the issues. Another delegation mentioned not to have any experience with Bitcoin.

The Chair concluded that judging from the feedback it appeared premature to wrap up the matter and announced to revert to it, possibly at the next meeting.

- 7.2** Origin: Commission  
Subject: Recent judgments of the Court of Justice of the European Union  
(Document taxud.c.1(2016)934939 – Information paper)

Delegations took note of the Information paper. No delegation took the floor to request the treatment of a listed judgment.

**8. ANY OTHER BUSINESS**

- \* **8.1** Origin: Commission  
Reference: Article 398  
Subject: List of communications required from Member States  
(Document taxud.c.1(2016)687419 – Information paper)

The Chair asked delegations to take good note of the document that had been drafted to provide an overview with some basic explanations of the different consultation,

information, notification, reporting and communication obligations, as well as some advice on the procedure to follow in meeting with those obligations.

- 8.2** Origin: Commission  
Subject: Informing the VAT Committee of options exercised under  
Articles 80, 167a, 199 and 199a of Directive 2006/112/EC  
(Document taxud.c.1(2016)945392 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding recently notified options.

## **Conclusion**

The Chair closed the meeting by thanking all delegations for their participation, the interpreters for their much appreciated contribution to the meeting and the colleagues for the preparation of the documents.

It was announced that the next meeting was expected to take place in the first half of July 2016.

ANNEX

**LIST OF PARTICIPANTS - LISTE DES PARTICIPANTS - TEILNEHMERLISTE**

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<b>BELGIQUE/BELGIË/BELGIUM</b>	Ministry of Finance
<b>БЪЛГАРИЯ/BULGARIA</b>	Ministry of Finance NRA Permanent Representation
<b>ČESKÁ REPUBLIKA/CZECH REPUBLIC</b>	Ministry of Finance Permanent Representation
<b>DANMARK/DENMARK</b>	Ministry of Taxation Customs and Tax Administration
<b>DEUTSCHLAND/GERMANY</b>	BMF Länderbeobachter (Bundesrat)
<b>EESTI/ESTONIA</b>	Permanent Representation
<b>ÉIRE/IRELAND</b>	Revenue Commissioners
<b>ΕΛΛΑΔΑ/GREECE</b>	Permanent Representation
<b>ESPAÑA/SPAIN</b>	Ministry of Finance Permanent Representation
<b>FRANCE</b>	Ministry of Finance
<b>HRVATSKA/CROATIA</b>	Ministry of Finance Permanent Representation
<b>ITALIA/ITALY</b>	Agenzia delle Entrate Dipartimento Finanze
<b>ΚΥΠΡΟΣ/CYPRUS</b>	Tax Department
<b>LATVIJA/LATVIA</b>	Ministry of Finance State Revenue Service
<b>LIETUVA/LITHUANIA</b>	Ministry of Finance Permanent Representation
<b>LUXEMBOURG</b>	Ministry of Finance
<b>MAGYARORSZÁG/HUNGARY</b>	Ministry for National Economy
<b>MALTA</b>	VAT Department

<b>NEDERLAND/NETHERLANDS</b>	Ministry of Finance
<b>ÖSTERREICH/AUSTRIA</b>	Ministry of Finance
<b>POLSKA/POLAND</b>	Ministry of Finance Permanent Representation
<b>PORTUGAL</b>	Ministry of Finance
<b>ROMÂNIA/ROMANIA</b>	Ministry of Finance
<b>SLOVENIJA/SLOVENIA</b>	Ministry of Finance Permanent Representation
<b>SLOVENSKO/SLOVAKIA</b>	Ministry of Finance Permanent Representation
<b>SUOMI/FINLAND</b>	Ministry of Finance Tax Administration
<b>SVERIGE/SWEDEN</b>	Ministry of Finance Tax Agency
<b>UNITED KINGDOM</b>	HMRC
<b>EUROPEAN COMMISSION</b>	