



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
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Indirect Taxation and Tax administration
Value added tax

**VAT Expert Group
21st meeting – 11 February 2019**

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VAT EXPERT GROUP¹

VEG No 078

SUMMARY MINUTES

**21ST MEETING
– 11 FEBRUARY 2019 –**

¹ Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

1. APPROVAL OF THE AGENDA

The agenda (document taxud.c.1(2019)688197) was adopted as proposed.

2. NATURE OF THE MEETING

The meeting was not open to the public, but was extended to representatives of business sectors most affected by the VAT e-commerce package (electronic interfaces, postal operators and carriers²).

3. LIST OF POINTS DISCUSSED

The Commission informed the participants that the aim of the meeting was:

- a) to provide an overview of the state of play of the implementation of the e-commerce package, in particular following the adoption of the two Commission's proposals in December 2018 and to hear reactions from the experts and representatives of business on these proposals and
- b) to take stock on issues which would require further clarifications in the explanatory notes.

The following issues were discussed:

3.1. VAT e-commerce package 2

The Commission made a presentation on the two Commission proposals adopted in December 2018: COM(2018) 819 amending Directive 2006/112/EC (VAT Directive) and COM(2018) 821 amending Council Implementing Regulation 282/2011. The Commission explained the provisions for the application of Article 14a of the VAT Directive and the other changes made to the Directive and the Implementing Regulation to support the agreed principles of the e-commerce and to clarify them. The Commission also made general comments regarding the on-going discussions in the Council on the two proposals.

3.2. Commission Implementing Regulation and IT developments

The Commission made a presentation outlining the necessary changes introduced in the Commission Implementing Regulation replacing Regulation (EU) 815/2012 regarding in particular the registration information in the extended OSS, the database for the exchange of IOSS identification numbers and VAT returns. The Commission shortly explained the process leading to the adoption.

Subsequently the Commission provided an overview and state of play of IT developments including the different business cases that should support the functioning of the OSS and IOSS as of 1/1/2021.

² Allegro, EBay, EMOTA, Alibaba, Etsy, Google, Rakuten, The Marketplace Coalition, PostEurop, Facebook, Clecat and EEA.

Some participants enquired about the possible testing phase before the implementation date. The Commission clarified that the testing phase between economic operators and the national OSS application of the Member States will need to be planned and take place at the Member States' level.

3.3. Customs related aspects of e-commerce

The Commission gave a presentation on the state of play of customs related aspects of e-commerce focusing on the customs declaration with a super reduced dataset, the monthly VAT reporting and the definition of intrinsic value.

Some participants expressed their concerns regarding the determination of the value of the packages, i.e. when the value of the package should be considered above or below 150 EUR, when grouped in a single consignment. The Commission responded that such types of clarifications would be included in the explanatory notes.

3.4. Key points raised by stakeholders

A business representative gave a presentation outlining the main concerns of stakeholders, questions and issues identified for which clarifications in explanatory notes would be required. During the presentation, the participants made additional comments and explanations on the issues of the presentation.

The most important issues discussed were the following:

- **Application and functioning of the deemed supplier provision:** participants considered that the scope of the term 'facilitates the supply' was not clear. In particular, participants considered that it was not clear: whether all the conditions of Article 5b of the Implementing Regulation are to be fulfilled, who should be considered the deemed supplier when several marketplaces intervene in the supply and whether marketplaces can be considered a deemed supplier for only part of their business. The Commission clarified that the conditions of Article 5b are cumulative and only in case when the electronic interface (EI) does not carry out any of the three activities stipulated in that Article it does not fall within its scope. If the EI carries one of the activities, it will fall within the scope of Article 5b and thus 14a of the VAT Directive. The Commission also pointed out that examples of situations in which the taxable person should not be considered as facilitating the supply are included in paragraph 3 of Article 5b. The Commission agreed that further clarifications and real-life examples are needed in the explanatory notes.
- **Good faith clause:** marketplaces raised concerns that Member States can have diverging views on the necessary burden of proof and pointed out that clear guidelines are needed on what proof would be acceptable.
- **B2C presumption:** some marketplaces pointed out that this provision would oblige them to enquire about the status of the seller and customer since they normally do not have such information. Some participants raised the issue of possible cases of refunds of wrongly charged VAT or deduction of VAT in case the status of the seller or customer was not correctly assessed at the moment of the transaction. Some pointed out that EU definitions or guidelines on the B2C and

C2C transactions should be prepared, as Member States' rules are not harmonised in this respect. The Commission responded that such definition or guidelines would not be possible and will aim to include practical examples and clarifications in the explanatory notes.

- **Record keeping obligation:** Marketplaces pointed out that the term 'if available' is not clear and should be further clarified in the explanatory notes. Marketplaces clarified that the unique transaction number is normally always available. Some participants suggested that when marketplaces are requested to provide information based on Article 242a of the VAT Directive, they should be allowed to submit this in a standardised format, similar to the SAF (standard audit file) currently used in the MOSS. The Commission responded that SAF is available in MOSS but not for information requested to marketplaces that facilitate the supply and that are required to provide the information laid down in Article 242a of the VAT Directive and it further indicated that this issue could indeed be looked into.
- **IOSS and special arrangements:** Some participants asked clarifications regarding the IOSS and special arrangements, in particular the consequences of providing non-correct IOSS identification number and the possibilities of refund of import VAT to the customer. The Commission clarified that in case a wrong IOSS number is provided, import VAT will be charged at the moment of presenting the goods to customs. Postal operators raised concerns about the burden, the increased number of returns and significant costs of storage in case IOSS is not used.
- **Other issues discussed were:** the issue of interaction between Article 203 and Article 14a of the VAT Directive, rules regarding bad debt relief, the exemption for SMEs and the application of 10 000 EUR threshold in case of deemed supplier provisions.

4. NEXT STEPS

The Commission thanked the participants for the contributions and the presentation. The Commission will focus further on the adoption of the proposals in the Council. A meeting with Member States (GFV) will take place in March to discuss the practical examples and to complete the list of issues to be further clarified in the Explanatory notes. The stakeholders will be included in the further work and the Commission announced the possibility to organise another Fiscalis Seminar similar to the Malta seminar at a later stage.

5. NEXT MEETING

The participants asked to be kept updated and to remain actively involved in the next steps (including the explanatory notes).

6. LIST OF PARTICIPANTS

Commission services and the members of the VAT Expert Group as published in the Register of Commission Expert Groups and other similar entities³ as well as the following business representatives: Allegro, EBay, Alibaba, Google, Etsy, Rakuten, The Marketplace Coalition, Facebook, EMOTA, PostEurop, Clecat and EEA.

³ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>
