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Indirect Taxation and Tax administration
Value added tax

**VAT Expert Group
18th meeting – 5 February 2018**

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Brussels, 14 February 2018

VAT EXPERT GROUP¹

VEG No 072

SUMMARY MINUTES

**18TH MEETING
– 5 FEBRUARY 2018 –**

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(2018)339426*) was adopted as proposed.

2. NATURE OF THE MEETING

The meeting was not open to the public.

3. LIST OF POINTS DISCUSSED

3.1. VAT E-commerce Directive (VEG No 067-069, General provisions; Non-Union scheme; Union scheme)

The Commission made a presentation on the MOSS changes and the marketplace liability that have been introduced by Council Directive (EU) 2017/2455 and gave an update about the prior and next steps to be taken. The Chair informed the VEG members and observers that there has already been a meeting with Member States (22 January 2018) on the same documents and that there will be another meeting discussing import aspects (import scheme, special arrangements) with Member States (9 February 2018) and with business at the VEG (26 February 2018) separately, as well as a joint Fiscalis Workshop in Malta from 21 to 23 March 2018 with participation from those business most affected by the new rules.

This introduction was followed by questions and remarks from VEG members and observers:

- **Need for list of up to date VAT rates:** As of 2021 the MOSS will be extended to other services than TBE services as well as distance sales of goods which entails that the range of goods and services taxed at different VAT rates broadens considerably. Suppliers have to apply the correct VAT rate to each of these supplies. Member States are supposed to update TIC (Tax Information Communication database) and make VAT rates available in order to help traders to apply the correct VAT rate. TIC is not legally binding and it is not envisaged to change this. Businesses cannot fully rely on this database. It is a starting point but they have to double-check the VAT rates.
- **Marketplace liability (Article 14a of the VAT Directive):** The scope of marketplaces that will become deemed suppliers has to be determined. For this reason, the term "**facilitate**" of Article 14a needs a clear and precise definition.

Representatives were asked for their input:

One representative suggested looking at what is done in the US in this area (Washington State was offered as example) and another emphasised the need for a very clear provision to know if a marketplace is inside or outside the scope of Article 14a. One participant suggested having the same standards/criteria for Article 9a of the VAT Implementing Regulation and Article 14a of the VAT Directive. Another idea that has also been raised in the EU VAT Forum was to define the four

key functions in e-commerce and apply them to determine if a marketplace falls within the scope of Article 14a:

- 1) Introduction/search function for sellers and buyers
- 2) Trust and security
- 3) Payment intermediation
- 4) Fulfilment/execution (delivery of goods)

It was highlighted that business models evolve constantly and that a definition should still be valid in 10 years' time. Double taxation should be avoided and the responsibility that is imposed on marketplaces should be mirrored by proportionality and simplification measures.

The Commission explained the rationale behind the introduction of the marketplace liability which it had not proposed but which had been put forward by Member States. It made clear that the deeming provision was not rebuttable. The Commission pointed out that the outcome of discussions at OECD level can serve as input even though the approach is different. While the OECD looks at the functions of marketplaces and their organisation, at EU level when seeking to implement the rules as adopted by Council the focus should be on the information that marketplaces possess or can obtain quite easily. In this regard, it is essential that the same rules apply in all Member States.

- **Reporting obligations (Article 242a of the VAT Directive):** The Commission explained that a marketplace when it is a deemed supplier has to fulfil the same obligations as any supplier. If the marketplace is not deemed a supplier but facilitates the supply of goods or services made to a non-taxable person within the Community, there are reporting obligations. They have not been specified yet. When discussing this with Member States, some of them wanted to have the same information as that set out in Article 63c of the VAT Implementing Regulation, whereas others considered this going too far. It is important to find the right balance and only ask for the information that tax administration really need to ensure VAT collection.

3.2. Analysis of the impact of the split payment mechanism as an alternative VAT collection method – presentation by Deloitte

Deloitte presented its study on split payment which was followed by a possibility to ask questions. Interventions of participants focussed, amongst others, on the costs for businesses, the role of financial institutions (they cannot act as a splitting agent because of SEPA regulations), the risk of creating barriers to enter the market of other Member States following the introduction of different split payment systems in various Member States. The Commission concluded that the study had confirmed the impression that the cost of compliance of a general introduction of split payment would outweigh its potential benefits.

3.3. VEG No 070 - 071: Meaning of "financial, economic and organisational links" among VAT group members; Transfer Pricing

The Commission gave the floor to the team of VEG members having worked on the production of the two draft papers, who presented them to the rest of the group. In general

both papers were praised by other VEG members, who considered them to be good drafts. Further input from VEG members will be integrated by the team up until the end of February, so that the VEG position papers can be finalised in time for their discussion in the next VAT Committee early April. To that extent, the Commission confirmed that it is envisaged that some VEG members can attend the VAT Committee with a view to present their opinion to Member States.

As regards the content of the papers, a few comments were made. Concerning VAT groups, the pros and cons of a "holistic approach" versus a "formalistic approach" in the application of the links test were discussed. In particular, a holistic approach would assess the existence of a close link between VAT groups globally, while a formalistic approach would assess the existence of financial, economic, and organisational links among VAT group members separately. The Commission invited VEG members to emphasise in their paper why a common approach is necessary, regardless of what should be (holistic or formalistic).

As to transfer pricing adjustments, VEG members agreed that they create a huge amount of uncertainty, because some Member States require VAT adjustments following transfer pricing adjustments (to the VAT taxable amount, but also as regards VAT administrative obligations such as invoicing), while others do not. The main view is that in general transfer pricing is a direct tax concept which should not have VAT implications. The Commission suggested including some specific cases or examples of transfer pricing adjustments having led to VAT implications, to stress the need to adopt a common approach at EU level on this topic.

3.4. Exchange of views on the implementation of the Directive on the treatment of vouchers (EU) 2016/1065

The Commission explained that this point of the agenda was a call for interest to the members of the VEG as regards some possible work in regard to the implementation of Directive (EU) 2016/1065 on the treatment of vouchers (Vouchers Directive). This point was introduced at the request of a VEG observer, according to whom the non-harmonised interpretation and application of the Vouchers Directive (e.g. on what constitutes a "ticket") raises concerns from the perspective of potential cases of double taxation. The VEG members thanked the VEG observer for having raised this issue. However, it was considered a bit premature to open a discussion on this aspect, and the participants would rather prefer to see if any such problems arise in practice only after the implementation in order to see if work is needed. Given the various priorities, VEG members noted the need to focus on more pressing topics where work has already started.

4. NEXT STEPS

The Commission emphasised that written contributions from group members in follow-up to the exchanges held on the different agenda points would be welcome. Representatives were invited to provide these by end of February.

5. NEXT MEETING

The Chair informed the members that the next meeting will be held on 26 February 2018 and will deal with the import one stop shop and the special arrangements introduced by Council Directive (EU) 2017/2455 (import scheme, special arrangements) as well as the Regulation on administrative cooperation and combatting fraud in the field of VAT.

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 entities².

For the discussion on working documents VEG No 067-069 European Express Association was present as an observer together with the following other concerned parties: Allegro, Ebay, E-Commerce Europe, EMOTA, Etsy, Posteurop, Rakuten and the Marketplace Coalition.

For the discussion on working documents VEG No 070-071 the following observers were present: Association for Financial Markets in Europe, European Banking Federation and Insurance Europe.

² <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>
