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Indirect Taxation and Tax Administration
Value Added Tax

**Group on the future of VAT
19th meeting – 22 January 2018**

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GROUP ON THE FUTURE OF VAT

GFV N^o 061

Council Directive EU 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods

Article 2, points (1) to (11) – General provisions with effect from 1 January 2021

Need for implementing provisions

1 PURPOSE OF THE DOCUMENT

On 5 December 2017, the Council adopted Council Directive EU 2017/2455 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

Article 2, points (1) to (11) of this Directive amends or adds provisions not directly related to a specific special scheme. These provisions enter into application on 1 January 2021.

The purpose of this working document is to determine whether or not these provisions require detailed measures to be introduced in Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of VAT (hereafter 'VAT IR');

The table in Annex 1 sets out the Commission's view, for discussion with delegations at the meeting of 22 January 2018.

Annex 2 contains a Council Working Document explaining the definitions of distance sales of goods inserted in Article 14(4) of the VAT Directive and the new wording of Article 33 of the VAT Directive defining the place of supply of distance sales of goods.

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	VAT Directive	Impact on VAT IR?
1	<p><i>Article 14(4): definitions of distance sales of goods:</i></p> <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(1) 'intra-Community distance sales of goods' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:</p> <p>(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;</p> <p>(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;</p> <p>(2) 'distance sales of goods imported from third territories or third countries' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:</p> <p>(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;</p> <p>(b) the goods supplied are neither new means of transport nor goods</p>	<p>Point for consideration:</p> <p>It should be examined whether the VAT Committee guidelines relating to the current Article 33 of the VAT Directive (see ANNEX 3) concerning the meaning of 'intervenes <u>indirectly</u> in the transport or dispatch of goods' should be reconsidered and possibly be taken up in the VAT IR.</p>

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	<p>supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.';</p>	
<p>2</p>	<p><i>Article 14a(1): new provision making electronic interfaces deemed suppliers (imports):</i></p> <p>1. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, that taxable person shall be deemed to have received and supplied those goods himself.</p>	<p>Minute statement:</p> <p><i>'As regards, in particular, the provisions relating to electronic interfaces such as a market place, platform, portal or similar means, the following elements should, amongst others, be considered in the implementation rules:</i></p> <ul style="list-style-type: none"> - <i>Definition of the situation in which a taxable person is considered to facilitate sales of goods through the use of an electronic interface</i> - <i>Specific provisions on deeming the dispatch or transport of the goods to be linked to the supply by the electronic interface to the customer where an electronic interface is used to facilitate sales of goods;</i> - <i>Specific provisions on the conditions for determining when the payment is accepted, and the general obligations for electronic interfaces, where an electronic interface is used to facilitate sales of goods and is deemed to have received and supplied the goods himself</i> <p><i>(...)'</i></p> <p><u>Points for discussion:</u></p> <p>1) First indent of the statement: is there a need to define in more detail the meaning of the term 'facilitates' (look at different business models)? E.g. should the sale be concluded on the electronic interface?</p> <p>2) Second indent of the statement: do we need to provide that the dispatch or transport of the goods is deemed to take place following</p>

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		<p>the second supply (the deemed supply by the electronic interface)?</p> <p>3) Third indent of the statement: is there a need to lay down detailed provisions for determining when the payment is accepted? What other general obligations should be imposed on electronic interfaces, other than the record keeping obligations imposed by the new Article 242a of the VAT Directive?</p> <p>4) How to treat the initial supply between the taxable person not established within the Community and the electronic interface? In particular, how can the right of deduction of VAT on the import, acquisition or national supply of goods by the first vendor, preceding the supply by the electronic interface, be exercised? Should provision similar to Article 9a of the VAT IR be laid down?</p>
3	<p><i>Article 14a(2): new provision making electronic interfaces deemed suppliers (intra-EU supplies):</i></p> <p>2. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself.'</p>	<p>See the comments on Article 14a(1).</p>
4	<p><i>Article 33: reformulation of the Article:</i></p> <p>By way of derogation from Article 32:</p> <p>(a) the place of supply of intra-Community distance sales of goods shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends;</p>	<p>No implementing measures needed.</p> <p>Article 14 of the VAT IR should be deleted. This Article implements Article 34 of the VAT Directive which has been deleted.</p> <p>It should be examined whether the VAT Committee guidelines relating to this Article (see ANNEX 4) should be reconsidered and possibly be taken</p>

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	<p>(b) the place of supply of distance sales of goods imported from third territories or third countries into a Member State other than that in which dispatch or transport of the goods to the customer ends, shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends;</p> <p>(c) the place of supply of distance sales of goods imported from third territories or third countries into the Member State in which dispatch or transport of the goods to the customer ends shall be deemed to be in that Member State, provided that VAT on those goods is to be declared under the special scheme of Section 4 of Chapter 6 of Title XII.;</p>	up in the VAT IR.
5	<p><i>New Chapter 3a and Article 59c: combined threshold (TBE services and intra-EU supplies of goods):</i></p> <p>Article 59c replaces paragraphs 2 to 6 of Article 58 as from 1 January 2021 in order to extend the EUR 10 000 threshold for intra-EU supplies of telecommunications, radio and television broadcasting services and electronically supplied services to intra-Community distance sales of goods.</p>	No implementing measures needed.
6	<p><i>Article 66a: chargeable event and chargeability of VAT where an electronic interface is deemed supplier:</i></p> <p>By way of derogation from Articles 63, 64 and 65, in respect of supplies of goods for which VAT is payable by the person facilitating the supply pursuant to Article 14a, the chargeable event shall occur and VAT shall become chargeable at the time when the payment has been accepted.</p>	No implementing measures needed.
7	Article 143(1), point (ca):	This provision related to the Import scheme and is treated in the working document covering the Import scheme that will be discussed at the

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	<p>Member States shall exempt the following transactions:</p> <p>(...)</p> <p>(ca) the importation of goods where the VAT is to be declared under the special scheme in Chapter 6, Section 4, of Title XII and where, at the latest upon lodging of the import declaration, the individual VAT identification number for the application of the special scheme of the supplier or of the intermediary acting on his behalf allocated under Article 369q has been provided to the competent customs office in the Member State of importation;</p>	<p>meeting of 9 February 2018.</p>
8	<p><i>Article 220(1), point (2): removal of the obligation to issue an invoice for intra-EU distance sales of goods when the Union scheme is used:</i></p> <p>supplies of goods as referred to in Article 33 except where a taxable person is making use of the special scheme in Section 3 of Chapter 6 of Title XII;</p>	<p>No implementing measures needed.</p>
9	<p><i>Article 242a: record keeping obligations for taxable persons facilitating supplies of goods or services through electronic interfaces:</i></p> <p>1. Where a taxable person facilitates, through the use of an electronic interface such as a market place, platform, portal or similar means, the supply of goods or services to a non-taxable person within the Community in accordance with the provisions of Title V, the taxable person who facilitates the supply shall be obliged to keep records of those supplies. Those records shall be sufficiently detailed to enable the tax authorities of the Member States where those supplies are taxable to verify that VAT has been accounted for correctly.</p> <p>2. The records referred to in paragraph 1 must be made available</p>	<p>Minute statement:</p> <p><i>'As regards, in particular, the provisions relating to electronic interfaces such as a market place, platform, portal or similar means, the following elements should, amongst others, be considered in the implementation rules:</i></p> <p>(...)</p> <p><i>- The type of information to be kept in the records of taxable persons facilitating supplies of goods and services to non-taxable persons in the Community through the use of an electronic interface, taking account of what information is available to such taxable persons, is relevant to</i></p>

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<p>electronically on request to the Member States concerned.</p> <p>Those records must be kept for a period of ten years from the end of the year during which the transaction was carried out.';</p>	<p><i>tax administrations and is proportionate to the purpose of the provision, as well as taking into account the need to comply with the General Data Protection Regulation (EU) 2016/679. '</i></p> <p><u>Points for discussion:</u></p> <p>1) As regards the type of information: would the list of data laid down in Article 63c in relation to supply of goods of the VAT IR be sufficient (to the extent that this information is available to the electronic interface)?</p>
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**EXPLANATION OF THE DEFINITIONS OF 'DISTANCE SALES OF GOODS' IN ARTICLE 14(4)
AND THE PLACE OF SUPPLY RULES OF THESE SALES IN ARTICLE 33 AS PROPOSED IN THE
10TH COMPROMISE ON THE VAT E-COMMERCE PACKAGE**

2 ARTICLE 14(4) – DEFINITIONS OF DISTANCE SALES

Following discussions at the WPTQ meetings of 5 October, the definitions of **intra-Community distance sales of goods** and **distance sales of goods from third territories or third countries** have been moved from the specific provisions on the special schemes to the general provisions of the Directive, in particular to Article 14 on supplies of goods (new paragraph 4). This approach allows defining more clearly the place of supply of distance sales in Article 33. It also avoids circular references between Article 33 and the definitions of distance sales.

Whilst this approach appeared to be generally supported by Member States at the WPTQ meeting of 12 October, a number of observations were made relating to the following:

- (a) Two delegations suggested moving these definitions to Article 33. Article 14 would however seem to be more appropriate. That Article defines supplies of goods and it would therefore be more logical to insert definitions of certain types of supplies therein. Article 33 rather defines the place of supply of these supplies;
- (b) The need to consistently use the term 'customer'. Hence, the term 'consumer' in Article 14(4), point (a) has been replaced by 'customer' in the new compromise text;
- (c) The reason for inserting the conditions (a) and (b) in the definition of **distance sales of goods imported from third territories or third countries**. In this respect, it should be observed that these conditions also apply for the application of the current Article 33(2) of the VAT Directive, through the implicit reference in that provision to Article 33(1) (*'Where the goods supplied are dispatched or transported from a third territory or a third country (...)'*). These conditions remain relevant in the proposed definition of **distance sales of goods imported from third territories or third countries** in order to ensure the respect of the principle of taxation in the Member State of destination, in particular for goods of a value exceeding EUR 150.

3 ARTICLE 33 – PLACE OF SUPPLY OF DISTANCE SALES OF GOODS

3.1 Article 33, point (a)

Article 33, point (a) defines the place of supply of **intra-Community distance sales of goods** as defined in Article 14(4), point (1) as being the place where the dispatch or transport of the goods to the customer ends. The rule corresponds to the place of supply rule in the current Article 33(1).

Article 369b provides that Member States shall permit any taxable person carrying out intra-Community distance sales of goods to use the **special scheme of Section 3** of Chapter 6 of Title XII.

3.2 Article 33, point (b)

Article 33, point (b) defines the place of supply of **distance sales of goods imported from third territories or third countries** as defined in Article 14(4), point (2) as being the place where the dispatch or transport of the goods to the customer ends in the situation where that place is in a Member State other than the Member State of importation.

The rule corresponds to the place of supply rule in the current Article 33(2) and applies irrespective of the value of the consignment (whether or not exceeding EUR 150). For goods of a value not exceeding EUR 150, it applies irrespective of whether the Import One Stop Shop (IOSS) is used.

At the meeting of the WPTQ of 12 October, a number of observations were made relating to the following:

- (a) Paragraphs 33, point (b) and 33, point (c) overlap in the situation where the value of the goods does not exceed EUR 150, the IOSS is used and the place where the dispatch or transport of the goods to the customer ends is in a Member State other than the Member State of importation. To avoid this, Article 33, point (c) has been amended as follows in the new compromise text, removing from its scope the situation already covered by 33, point (b):

*'~~c3.~~ The place of supply of distance sales of goods imported from third territories or third countries **into the Member State in which dispatch or transport of the goods to the customer ends** shall be deemed to be **in that Member State**~~the place where the dispatch or transport of the goods to the customer ends,~~ provided that VAT on those goods is to be declared under the special scheme of Section 4 of Chapter 6 of Title XII.'*

- (b) The reason for adding the sentence *'In that situation, the goods shall be regarded as having been dispatched or transported from the Member State of importation.'* That sentence is also included in the text of the current Article 33, point (b), to make it clear that this situation should be treated as intra-Community distance sales of goods. But as it is considered to be redundant by many delegations (as it does not affect the designation of the place of supply), it has been removed in the new compromise text.
- (c) Some delegation wondered if it would be possible to use the special scheme of Section 3 of Chapter 6 of Title XII (for intra-Community distance sales) where, in the case of distance sales of goods imported from third countries or third territories, the dispatch or transport of the goods to the customer ends in a Member State other than the Member State of importation. Article 369b of the compromise text does not allow this, as by definition the supply in question is still a distance sale of goods *imported* from third territories or third countries. Allowing for the use of the Union OSS would not be simpler for the supplier and instead customs transit procedures can anyhow be used until the Member State of destination. Using the intra-EU OSS in that situation would bring along the need to register for VAT in the Member State of importation, to pay and deduct import VAT there and to register for the intra-EU OSS to fulfil their obligations in the Member State of destination.

3.3 Article 33, point (c)

Article 33, point (c) defines the place of supply of **distance sales of goods imported from third territories or third countries** defined in Article 14(4), point (2) as being the place where the dispatch or transport of the goods ends, in all situations where the IOSS is used:

- It applies for all goods that are imported using the IOSS where the place where the dispatch or transport to the customer ends is in the Member State of importation; and
- for all goods that are imported using the IOSS where the place where the dispatch or transport to the customer ends is in a Member State other than the one of importation.

As explained in section 2.2., point (a), above, the situation covered by the second indent overlaps with Article 33, point (b). To avoid this overlap, Article 33, point (c) is proposed to be amended as explained above.

GUIDELINES RESULTING FROM THE 104th MEETING of 4-5 June 2015
DOCUMENT C – taxud.c.1(2015)4820441 – 876

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.2 Origin: United Kingdom and Belgium
References: Articles 32, 33 and 34
Subject: Distance selling
(Document taxud.c.1(2015)2158321 – Working paper No 855)

1. The VAT Committee **almost unanimously** agrees that, for the purposes of Article 33 of the VAT Directive, goods shall be considered to have been “dispatched or transported by or on behalf of the supplier” in any cases where the supplier intervenes directly or indirectly in the transport or dispatch of the goods.
2. The VAT Committee **unanimously** agrees that the supplier shall be regarded as having intervened indirectly in the transport or dispatch of the goods in any of the following cases:
 - i) where the transport or dispatch of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
 - ii) where the dispatch or transport of the goods is provided by a third party but the supplier bears totally or partially the responsibility for the delivery of the goods to the customer;
 - iii) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party that will arrange the dispatch or transport of the goods.

The VAT Committee further agrees **almost unanimously** that in other cases of intervention, in particular where the supplier actively promotes the delivery services of a third party to the customer, puts the customer and the third party in contact and provides to the third party the information needed for the delivery of the goods, he shall likewise be regarded as having intervened indirectly in the transport or dispatch of the goods.

3. The VAT Committee agrees **unanimously** that, for the purposes of Article 33 of the VAT Directive, goods shall not be considered to have been “dispatched or transported by or on behalf of the supplier” where the customer transports the goods himself.

The VAT Committee agrees **almost unanimously** that the goods shall also not be considered to have been “dispatched or transported by or on behalf of the supplier” where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly in providing or helping organising the dispatch or transport of those goods.

GUIDELINES RESULTING FROM THE 100TH MEETING of 24-25 February 2014
DOCUMENT B – taxud.c.1(2014)1870542 – 798

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.5 Origin: Commission**
References: Articles 30, 33 and 143(1)(b) of the VAT Directive
Article 23 of Directive 2009/132/EC
Subject: Small consignment exemptions provided for under the VAT Directive
(Document taxud.c.1(2014)205292 – Working paper No 787)

The VAT Committee **almost unanimously** is of the view that pursuant to Article 33(2) of the VAT Directive two separate taxable events shall occur when goods in commercial consignments are sold and sent from a third territory or a third country to private persons in cases where such goods are imported by the supplier into a different Member State than that of their final destination and then transported or dispatched to the Member State of their destination.

The VAT Committee with **a large majority** agrees that, for the purposes of applying Article 33(2) of the VAT Directive, in the case of mail order goods dispatched or transported from a third territory or a third country to a private person, those goods shall be deemed as having been imported from a VAT perspective by the supplier irrespective of the contractual terms to which the private person may have subscribed.

The VAT Committee also agrees **almost unanimously** that the first taxable event shall be the importation of goods pursuant to Article 30 of the VAT Directive, which may benefit from the exemption on small consignments provided that the conditions laid down in Title IV of Council Directive 2009/132/EC are met.

Further, the VAT Committee agrees **almost unanimously** that the second taxable event shall be the supply of such goods from the Member State of importation to the Member State of their destination, based on Article 33(2) of the VAT Directive.

The VAT Committee is finally of the **almost unanimous** view that the exemption provided for in Article 23 of Directive 2009/132/EC for the importation of small consignments cannot be extended to apply to the second taxable event, i.e. the supply of goods within the EU.