

**taxud.c.1(2018)4850920 – Group on the Future of VAT
GFV N° 073 REV 2**

COMMENTS OF GERMANY ON SEVERAL IMPLEMENTATION PROVISIONS

Nr	MS	Article	Comment	TAXUD position	TAXUD comment
1.	DE	Art. 33 (b) VAT Directive	There might be a risk of double taxation if import VAT is due in the MS of importation and VAT is due in the MS of destination.	Implemented	<p>Usually, goods are put into transit in the MS of importation and VAT is paid in the MS of destination.</p> <p>If the supplier is liable to pay import VAT, he can deduct it. If he pays import VAT in the MS of importation, he will have to register there and then claim it back as input VAT (see charts in Annex 3 to GFV077).</p>
2.	DE	Art. 47j (2) Regulation 904/2010	<p>a. Can an MSI refuse a request from an MSC to carry out an administrative enquiry? If yes, what are the conditions that have to be met to refuse such a request?</p> <p>The relation of Article 47j (2) to the new Article 7 (4a) is not clear. The current Article 47j (2) does not refer to Article 7 (4a). Therefore it is not clear if Article 7 (4a) is applicable. For clarification purposes, a reference to Article 7 (4a) should be added in Article 47j (2).</p>		<p>a. An MSI can refuse such a request. However in Art. 7(4) cases the request can only be refused for specific reasons.</p> <p>If no agreement is reached, the MSC can take any action in accordance with its national legislation.</p> <p>It does not seem to be necessary to include a reference to Article 7 (4a) in Article 47j, because Article 7 (4a) will be applicable without being explicitly mentioned in Article 47j.</p>

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			<p>b. Which obligations does the MSI have if an agreement on the administrative enquiry is reached? Some obligations, like the leading part of the MSI, granting MSC authorities access to premises and documents are already mentioned in the Regulation.</p> <p>Please clarify which Article prevails: Article 47j or the other provisions of this Regulation regarding administrative enquiries?</p> <p>c. How can an MSC insist on an administrative enquiry to be carried out? Art. 47j (2) refers to an agreement. The request of an MSC cannot be refused if no refusal reason of Art. 7 (4) second subparagraph is fulfilled.</p>		<p>b. If the need for an administrative enquiry is agreed, the MSI shall inform the other MS (Art. 47j (2)).</p> <p>Art. 47a – 47l are provisions concerning the special schemes. They prevail in case a special scheme is used. However, the other provisions have to be taken into consideration as well where nothing is foreseen by the special provisions of Art. 47a - 47l.</p> <p>c. According to Art. 7 (4a), (at least) two MSCs can "overrule" an MSI except for the reasons provided for in Art. 54 (1) (b), (2), (3) and (4), ie national laws/practices do not authorise MSI to carry out an enquiry or such an enquiry would lead to the disclosure of a commercial, industrial or professional secret.</p>

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3.	DE	IOSS VAT number	A taxable person/intermediary who registers for the IOSS can indicate a VAT identification number. It should be laid down that the MSI has to check the correctness and validity of this number.	Implemented	These checks should be part of the IOSS registration procedures carried out by MSIs. This is laid down under Article 22 of Regulation 904/2010 as recently modified.
4.	DE	IOSS Establishment/ Fixed establishment	If a taxable person/intermediary registers for the IOSS, the MSI has to check that all conditions are met. How can an MSI check if the taxable person/intermediary has established his business or has a fixed establishment in another MS without having to resort to a request for mutual assistance?	Implemented	The taxable person/intermediary has to provide the country/MS in which he has his place of business as well as the individual VAT identification number(s) or tax reference number(s) in which he has a fixed establishment in the information details when registering for a special scheme (see Annex 1 of the COM IR, GFV 073).
5.	DE	IOSS IOSS number Art. 369q VAT Directive	Can a taxable person have more than one IOSS number? If a taxable person wants to make use of the IOSS, registers and is allocated an IOSS number pursuant to Art. 369q (1) and at a later stage appoints an intermediary, is the intermediary allocated another IOSS number pursuant to Art. 369q (3)?		No, this is not possible. No, the number allocated to the taxable person can in this case be used by the intermediary. The latter will not be attributed a new number if the MSI is the same. However, a taxable person cannot register directly in IOSS and at the same time also appoint an intermediary.

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6.	DE	IOSS IOSS number Art. 369q VAT Directive	Is the taxable person allocated a new IOSS number in case he is excluded and registers for the IOSS again at a later stage or changes intermediary?		If a taxable person is excluded and registers for the MOSS at a later stage, he will be attributed a new number. If he changes intermediary without ceasing to use the scheme and the new intermediary's MSI is the same as the former one's, the number does not change.
7.	DE	IOSS VAT return Art. 369t VAT Directive	If a supply is declared via the IOSS applying an incorrect VAT rate (e.g. VAT rate is too high) and needs to be corrected, should there be a separate field for this kind of issues?	Not implemented.	This correction will not be shown separately, as the current MOSS does not foresee this option. As of 2021 these corrections can be made in a subsequent VAT return. There is no need for further boxes.