



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

**VAT Expert Group  
19<sup>th</sup> meeting – 26 February 2018**

**taxud.c.1(2018)1512115**

Brussels, 6 March 2018

**VAT EXPERT GROUP<sup>1</sup>**

**VEG No 076**

**SUMMARY MINUTES  
19<sup>TH</sup> MEETING  
– 26 FEBRUARY 2018 –**

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<sup>1</sup> 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)1002978*) 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, Import scheme (VEG No 73)**

The Commission made a presentation on the Import scheme also explaining why it has been proposed and adopted. The registration for this scheme has to be done before declaring distance sales of goods imported from third territories or third countries, because the individual VAT identification number for the application of this special scheme is needed for the VAT exemption to apply upon importation. Under this scheme, VAT becomes chargeable at the time of sale, in the Member State in which dispatch or transport ends. The main challenges for customs will be the insertion of the IOSS (Import One-Stop Shop) number in the import declaration as well as its instant validation upon importation, the monthly listing of the total value of imports per IOSS number as well as the fact that an import declaration will have to be made for all parcels as of 1 January 2021. The Commission explained the functioning of the central database for customs declarations, SURV-RECAPP, which might be used to establish the monthly listing.

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

- **Customs procedure and simplifications:** As of 2021 customs declarations for all parcels have to be submitted electronically irrespective of the use of the Import scheme. Already existing simplifications could be used (simplified declaration and entry into the declarant's records). Further simplifications (e.g. minimal dataset, any other form of customs declaration) are still under discussion.
- **Intermediary:** An intermediary will be authorised to act as such by the Member State in which he has established his business or has a fixed establishment (Member State of identification) and will be allocated a VAT identification number for the Import scheme for each taxable persons he represents. The Directive does neither foresee a bank guarantee nor a limitation of the intermediary's liability. Member States could however require further conditions to be fulfilled for someone to act as an intermediary.
- **Deeming provision, Article 14a VAT Directive:** The exact scope of this Article is still under discussion. This provision only deems the marketplace to be a supplier for VAT purposes in two specific situations. It does not deem who imports the goods for customs purposes.
- **Monthly listing of VAT declared under the Import scheme:** This listing intends to give Member States an indication whether the values of consignments that are actually

imported and those declared via the Import scheme coincide. It is not foreseen to give taxable persons access to this data.

- **Customs declaration:** The information in the customs declarations allows to determine if VAT has to be charged or if an exemption applies and to identify the parcel.
- **Fraud:** VEG members raised concerns about the possible fraudulent hijacking of IOSS numbers. Blocking all parcels at customs because of one case of misuse would be too harmful for business.

### **3.2. VAT E-commerce Directive, Special arrangements (VEG No 74)**

The Commission explained the special arrangements that can be applied if the Import scheme is not used. Member States have to permit such use. No permission of the customer is needed to use these special arrangements. Concerning record keeping for these transactions, it should be sufficient to store the invoice.

### **3.3. Implications of the CJEU judgments on cost-sharing for the financial and insurance sectors (VEG No 075)**

The Commission made a presentation on implications of the CJEU judgments on cost-sharing for the financial and insurance sectors.

Several cases concerning the interpretation of cost-sharing arrangements were recently brought before the CJEU: *Commission v Luxembourg*, *DNB Banka*, *Aviva*, and *Commission v Germany*. In three of those cases – *DNB Banka*, *Aviva* and *Commission v Germany* – the CJEU examined the availability of Article 132(1)(f) of the VAT Directive to the financial and insurance sectors. The CJEU in those cases in general found that cost-sharing arrangements are not applicable to the financial and insurance sectors. This conclusion departs from the current interpretation and application of this provision by most Member States.

In view of the potential impact of the jurisprudence on the financial and insurance sectors, it seems that the current state of affairs is not sustainable. Therefore, several policy options should be considered at EU level. These are:

- 1) do nothing; or
- 2) prepare guidelines (soft-law); or
- 3) a legislative proposal with a narrow approach (making cost-sharing available for the financial and insurance sectors); or
- 4) a legislative proposal with a broad approach (review of the VAT rules governing the financial and insurance sectors).

As part of reflections on the way forward, this issue had already been discussed within the Group on the Future of VAT (GFV) with Member States in February 2018, and was now brought to the VEG in order to consult other relevant stakeholders.

VEG members agreed that the current state of play after the CJEU judgments is unsustainable and that action is needed. Most of the participants which expressed their views confessed their strong preference for Option 3, but acknowledged that such an

option would be difficult to reach unanimous agreement on in Council, given that some Member States are already satisfied with the outcome of the judgments and have no incentive to change the current rules. Therefore, most of the participants accepted Option 4 as the most viable way forward. The Commission also confirmed that a targeted solution (Option 3) would not be necessarily quicker to adopt than a broad solution (Option 4), given the unanimity requirement.

As to why there is a need to act and to review the existing VAT rules for financial and insurance sectors, some of the arguments put forward by VEG members were: difficulties to determine whether a supply is single/complex exacerbated in the financial sector, unequal treatment of "fintech" services among Member States, the existence of new business models, and the fact that "financial services" are more and more provided outside of the traditional banking and financial framework. Some VEG members also referred to the possibility to examine taxation of such services as part of a broad review (Option 4), as well as to apply a reduced rate on such services. The fact that taxation, even at reduced rate, would allow the right to deduct input VAT to operators was also pointed out as another element to be taken into account.

#### **3.4. Meaning of "financial, economic and organisational links" among VAT group members (VEG No 70 Rev1) and possible VAT implications of Transfer Pricing – Exchange of views (VEG N°71 Rev1)**

The VEG position papers on VAT implications of Transfer Pricing, as well as on the "links test" in relation to VAT groups, will, subject to further consultation, be formally adopted through written procedure, so that they can be presented to Member States in the VAT Committee meeting which is to take place in April 2018. That will ensure that the final outcome captures all views in the group.

#### **3.5. AOB**

The Commission informed the participants that a note on the impact of UK's withdrawal from the EU on Tax and Customs issues (Brexit) has been published and will be updated regularly on the TAXUD website. No questions were raised and VEG members were invited to share this information with their clients.

#### **4. NEXT STEPS**

The Commission will organise a Fiscalis workshop in Malta from 21 to 23 March 2018. This meeting will focus on the Implementing rules of the E-commerce package adopted in December 2017 as well as on IT specifications.

The Commission emphasised that written contributions from group members in follow-up to the exchanges held on the agenda points 1 and 2 (VEG 073 and VEG 074) would be welcome. Representatives were invited to provide these by 2 March 2018 at the latest.

**5. 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 entities<sup>2</sup>.

For the discussion on working documents VEG No 073-074 Ebay was present as an observer together with the following other concerned parties: EEA, Etsy, Posteurop, Rakuten and the Marketplace Coalition.

For the discussion on working documents VEG No 070Rev1, 071Rev1 and 075 the following observers were present: Association for Financial Markets in Europe and Insurance Europe.

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

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