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Indirect Taxation and Tax administration
Value added tax

**Group on the Future of VAT
17th meeting – 10 January 2017**

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GROUP ON THE FUTURE OF VAT

GFV N° 058

SUMMARY MINUTES

**17TH MEETING
– 10 JANUARY 2017 –**

1. APPROVAL OF THE AGENDA AND OF THE MINUTES OF PREVIOUS MEETING

The agenda (*document taxud.c.1(2016)7412213*) was adopted as proposed.

2. NATURE OF THE MEETING

The meeting was not open to the public.

3. LIST OF POINTS DISCUSSED

3.1. Discussion on paper GFV N° 056: Elements for the 2017 proposal; Definitive VAT regime for intra-EU trade

The Chair explained that the objective of the meeting is to discuss and get feedback from the delegates in relation to the questions contained in the GFV working document N°056¹ which dealt with the issues listed in the conclusions of 8 November 2016² where the ECOFIN Council invited the Commission to present a legislative proposal on improvements to the current EU VAT rules for cross-border transactions by the Autumn 2017.

3.1.1. VAT number – Recapitulative statement

There was general agreement that the VAT identification number should be a condition, provided by the law³, to grant the exemption for intra-EU supplies. With regard to the recapitulative statements, the views diverged more so that whilst some delegates were open to discuss the issue further, others voiced concerns.

The VAT number should have the priority for the improvement of the treatment of intra-EU supplies with respect to the work programme envisaged for the achievement of the definitive regime.

A delegate, making reference to the judgment of the Court of Justice in Plöckl⁴, highlighted that the principle of proportionality does not require that the exemption provided by article 138 of the VAT directive is subordinated to the communication of the VAT number of the recipient. The VAT number, according to the settled case law is a formal requirement, not a substantive requirement. Moreover, it has to be taken into account that the supplier should not be penalised for something that the purchaser cannot provide. However, some members objected that for the sake of the correct collection of the tax, the control mechanism of the VAT system for intra-EU trade should be based both on

¹ (i) possession of a vat identification number and submission of recapitulative statement as conditions for the exemption for intra-EU supplies; (ii) elements that should be considered as proof of evidence of transport for the exemption for intra-EU supplies; (iii) rules for the simplification of taxation of the call-off stocks; (iv) rules for the simplification of taxation of chain transactions.

² Meeting n°3495 <http://data.consilium.europa.eu/doc/document/ST-12764-2016-INIT/en/pdf>

³ Amending Article 138 of the VAT Directive 2006/112/EC

⁴ Case C-24/15, Plöckl.

a valid VAT number and on the recapitulative statement. Without them no control at EU level is possible. In the view of certain members of the GFV both elements are important to track intra-EU supplies, although the VAT number must be considered a material condition whereas the recapitulative statement should not be mandatory.

The Commission reported that during the VAT Expert group meeting⁵ the members raised an important issue related to the granting of the VAT number by the tax administrations and its reliability. If the VAT number is to be made compulsory for the exemption of intra-EU supplies it is essential to ensure legal certainty and a simple mechanism for the attribution/withdrawal which excludes situations of double taxation or non-taxation⁶. For that purpose controls should be carried out within a reasonable time.

With particular regard to the recapitulative statement, the large majority of the delegates pointed out that this is a formal requirement which should not be a substantive condition for the exemption of intra-EU supplies because it is a future event (i.e. the submission of the list). Some members recalled the double purpose of recapitulative statements which are the control and the statistics. Regarding the statistics relating to the trading of goods between Member States, each Member State is allowed to organise the way Intrastat data are supplied by the parties responsible for providing information⁷. Regarding the control purpose, the majority of the delegates remarked that recapitulative statements are a useful instrument but not essential and showed interest in opening a discussion on that issue. It has to be noted that although they were improved through Council Directive 2008/117/EC of 16 December 2008⁸ they have not proved to be effective to ensure a fraud proof system, therefore also the hypothesis of their abolition should not be excluded. Their abolition could lead to a reduction of obligations which could be desirable for taxable persons. Also ensuring a reasonable deadline to submit recapitulative statements could be considered as an amendment for their improvement for the sake of efficiency and effectiveness of intra-EU transactions.

The members of the Group made reference also to consequences related to the lack of fulfilment of such requirement (submission of a recapitulative statement) by a taxable person. The measure provided for by Member States in that case should be proportionate to the circumstances, taking into account any error or fraud. In that light a sanction seems more appropriate than the denial of the exemption.

The Commission indicated that the preparatory works for the implementation of the VAT number for intra-UE supplies will proceed. There are still some doubts on the timeframe about the modification of the rules related to recapitulative statements as Member States asked for an estimation of the impact of their abolition or amendment. The best method to assess the consequences would be a study but the time frame to deliver the whole proposal does not allow for it.

⁵ See VEG summary minutes 16th meeting of 9 January 2017

⁶ These situations are the result of a different consideration of a VAT number released by the tax authority of a Member State when it is disregarded by another Member State.

⁷ See Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0638&from=GA>

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:014:0007:0009:EN:PDF>

3.1.2. Proof of transport regarding the exemption for intra-EU supplies of goods

Delegates recognised that the proof of evidence of transport for the purposes of exempting intra-EU supplies is an important issue that should be tackled in order to avoid VAT fraud and ensure legal certainty for businesses. At present the interpretation provided by the European Court of Justice with regard to the rules on the evidence of transport for intra-EU supplies does not ensure always the correct collection of the tax.

One delegation expressed its objection to the harmonisation of the proof of transport, considering that the amendment of the provisions related to the VAT number for intra-EU supplies is enough. The reason of this opposition was grounded on the belief that the need of harmonised rules on proof comes only from a business' perspective which is not justified because taxable persons have no say in the matter of controls and burden of proof which is a competence of Member States. Also the intervention of the Commission on that issue might potentially create troubles and add complexity, as it happened with the last implementing regulation.

The Commission reminded that creating a better environment for businesses is a fundamental element for the achievement of the single market which is the main objective of the European Union. The mechanism of taxation of VAT requires that businesses act as unpaid tax collectors on behalf of the tax authority in the previous stages before the final consumption stage. Therefore it is necessary to provide businesses legal certainty and simplification to improve their collaboration. The rules on the burden of proof are an important step forward in the light of these objectives. The aim of the Commission is not to provide fully harmonised rules on the proof of intra-EU supplies, keeping the competence of Member States as it is. However the aim is to provide a set of minimum standardised means of proof which are commonly accepted by all jurisdictions supported by guidelines for their correct understanding. In any case tax authorities will have always the possibility to rebut the proof, thus allowing a reaction to fraudulent scenarios.

The large majority of the delegates welcomed and supported the approach of the Commission to have a minimum set of documents for EU common rules on the burden of proof for intra-EU supplies. The delegates requested to provide also clear common rules on the rebuttal of the proof, eventually linked to legal presumptions. In particular the proof of the transport of the goods and the ex-works system should be examined in depth. Delegates were favourable to ease tax compliance for businesses simplifying the rules and ensuring legal certainty. However space to Member State's discretion in relation to the evaluation of documentation has to be left in order to react to fraud as fraudsters use to submit apparently perfect documents.

The Group considered that legislative amendments as regards the proof of evidence of intra-EU supplies should not be linked to the CTP concept. The delegates noted that it is possible that the implementation of the CTP will not be an improvement but rather an extra burden and not efficient. The concept in any case should not be narrow at this early stage. Actually the concept of CTP in the context of the burden of proof looks useless, without representing an effective improvement to the current system. The needs of the current system address for a more general solution not restricted only to a certain group of businesses.

3.1.3. Call off stocks

The members of the Group recalled that the modification of the rules of the Directive related to call off stock is a problematic issue since long time. The Council conclusions recognised that it is time to modify the current VAT rules in order to allow simplification for call-off stock to be applied in a more uniform manner in the EU. An in-depth examination of the call-off stock issue has already been carried out by the Commission with the previous joint work of the VEG and GFV that should be taken into account as a solid basis for further work.

The majority of the delegates agreed that a legislative modification is needed to boost the harmonisation of the rules on call-off stock. However they could not see a strong connection between the issue of the VAT number and the Plöckl case⁹. They considered that the VAT number is a condition also for intra-EU supplies but the case law is not directly linked to the case at stake. The Plöckl case covered a rather marginal and specific situation and as such its impact on consignment stocks would be quite limited. The Group pointed out that also for these rules the link with the CTP cannot be seen as an improvement, and its effectiveness in terms of harmonisation was considered doubtful.

3.1.4. Chain transactions

The Group was in favour of a legislative proposal that could improve and harmonise the chain transaction rules before the definitive regime. They endorsed the prescription of the Council in its conclusions, considering the simplification measures as a priority. However, almost all delegates were against linking the rules on chain transactions with the CTP concept. They took the view that the CTP status does not represent a useful measure of simplification in that field.

On the basis of the delegates' feedback, the Commission concluded that there is no interest in discussing the CTP concept in depth, as such a concept is not welcomed by Member States.

3.2. Document from Malta on "Intra-community Supplies – VAT Purchaser Payment (VPP) System": exchange of views

The Maltese delegate presented a system that could in his view be effective to combat fraud, in particular MTIC fraud¹⁰. This system would provide a lot of advantages both to businesses and to tax administrations. Regarding businesses it would ensure more legal certainty as suppliers will have proof that VAT has been paid and for purchasers the input VAT will be allowed. In fact, goods will only be delivered once the supplier has proof that the purchaser has paid the VAT directly to the tax authorities. Regarding tax administrations it would reduce the risk of dispersion of revenues eliminating difficulties encountered for tax collection. The said system should be based on an improvement and an extension of the MOSS. Not only suppliers should be enabled to use the extended MOSS but also it should be available for taxable purchasers who could remain liable to pay the VAT on their intra-EU purchases via the MOSS in their own Member State.

⁹ Judgment C-24/15, Plöckl

¹⁰ Missing trader intra-Community fraud

Therefore, with the VPP system the MOSS will be extended also to B2B supplies of goods and both taxable suppliers and taxable purchasers will be registered under the new One Stop Shop.

The delegate made clear that such idea should be improved upon through suggestions made by Member States in order to attain the objectives of the VAT intra-EU Definitive Regime. It could also be implemented in parallel with the system of the Certified Taxable Person (CTP) which is being proposed by the Commission. This proposal will also address the problem of the high-jacking of VAT numbers.

The majority of the delegates were not supporting the VPP as it seems not fully in line with the destination principle and its implementation. It seems that such system introduces a sort of reverse charge, which should be considered a temporary antifraud solution but not compatible with the nature of VAT and its application. Some members raised the issue of the complexity of controls, which probably increases with that system. The present system does not need to be radically changed, as the first step is to enhance the controls. However the idea of a common web portal with useful information on VAT rates for businesses should be promoted. A member noted that there are some common points with split payment, which is already in place in some Member States; therefore it would be suitable to explore new systems for tax collection. Regarding the connection of VPP with CTP, a member objected that the latter focuses only on the purchaser, without taking care of the supplier. It is not acceptable that a supplier, who is not a CTP, would collect VAT of tax administrations other than that of the tax administration of registration. Other concerns were raised in relation to the security of the payments and their control, and about the certainty that the supplies will be taxed in the place of consumption.

The Commission thanked the Maltese delegation for its contribution concluding that it is time to make a reflection on a development of new technology for tax collection.

3.3. Information update

3.3.1. Information on ongoing work on the SME VAT package

The Chair updated the Group on the work currently undertaken in view of preparing the future proposal on the SME VAT package. At the end of the presentation, experts were reminded of the Fiscalis that would be organised on 20-22 March 2017 in Poland and invited to register as soon as possible before the deadline. They were also informed about the open public consultation that was launched on the subject and invited to provide their contributions.

3.3.2. Information on ongoing work on the reform of rules on VAT rates

Finally, the Chair gave the last presentation which concerned the reform of rules on VAT rates. At the end of the presentation, experts were again invited to answer to the public consultation that had been launched simultaneously with those on the definitive regime and the SME VAT package. The Chair then gave the floor to the group and invited them to ask questions or remarks regarding the proposal.

The experts underlined that the issue with VAT rates is not so much the rates themselves as what is subject to reduced rates. According to them, goods or services subject to

reduced rate should be identified using the combined nomenclature, allowing for quick electronic checks. They emphasised the need for a binding list with which businesses could work and comply. They also pointed out that reduced rates should not be harmonized when they relate to local services that cannot distort competition. EU rules must only aim at regulating cross-border situations. They took the view that from a competition perspective, the problem is not only related to the tax per se but also to the fact that if one tax authority does not do a proper control on its businesses, this will create a price gap that could distort competition with other Member States.

Finally, the experts discussed e-books and the need to know their treatment in different Member States. The Chair answered that the proposal for aligning e-books rates to those of paper books was already on the table, but its main downside remains that it would not harmonise the definitions for e-books, e-publications and e-periodicals.

4. CONCLUSIONS

The Commission services are going to follow an intense timetable in order to meet the tight deadline (that corresponds to the third quarter of 2017) to deliver the proposal on the definitive regime. The main points discussed were based on "quick fixes" to the current VAT system requested in the ECOFIN conclusions of 8 November 2016. Almost the unanimity of the delegates expressed concerns in relation to the timing, considering a Proposal in the Autumn of 2017 on the definitive regime would be premature. Only one delegation showed support for a Commission proposal on the definitive regime in 2017. Without the possibility to examine further and in depth the fundamental features of the definitive regime and the concept of CTP, it will not be possible to achieve the adoption of the proposal by the Council. Delegates insisted that the proposal should only focus on quick measures to improve the current rules as requested by the Council. Therefore, the definitive regime and the CTP concept (which is the key element of the definitive regime) should not be a condition for the application of quick fixes and should be developed autonomously afterwards because to foresee what the final system should be like requires more time. The option proposed by the Commission is not sufficiently fraud-proof and the idea of extending the OSS to all cross border supplies has to be carefully analysed and studied in advance in order to estimate its impact. Even if the sectorial implementation of this method for tax collection is working properly, its extension should be gradual.

Regarding the 'quick fixes', the Group was supportive of short-term improvements to allow for more harmonised rules on call-off stock, proof of intra-EU supply and chain transactions. The Group insisted that the delivery of VAT numbers should be improved and considered a substantial condition for the exemption of Intra EU supplies.

The Commission is concerned as MS and businesses about the time frame set at political level.

5. NEXT STEPS

The Chair informed the group that since the Commission is due to adopt a legislative proposal on the definitive regime already in the Autumn 2017, no further meetings would be organised dedicated to the topic.

Three public consultations had been launched on 21 December 2016 and members were invited to participate. The subjects of the public consultations are:

- (i) Definitive regime
- (ii) SME package
- (iii) VAT Rates package

6. NEXT MEETING

The Chair informed the delegates that the exact date of the next meeting could not be confirmed yet.

7. LIST OF PARTICIPANTS

Commission's services and the members of the Group on the Future of VAT as published in the Register of Commission Expert Groups and other similar entities¹¹.

¹¹ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>
