



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax Administration  
Value Added Tax

**VAT Expert Group  
18<sup>th</sup> meeting – 5 February 2018**

**taxud.c.1(2018)588112 – EN**

Brussels, 29 January 2018

**VAT EXPERT GROUP**

**VEG N<sup>o</sup> 067**

**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 at the VEG meeting of 5 February 2018.

	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>The VAT Committee guidelines relating to the current Article 33 of the VAT Directive (see ANNEX 2) concerning the meaning of 'intervenes <u>indirectly</u> in the transport or dispatch of goods' should be taken up in the VAT IR.</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.';	
2	<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><b>Minute statement:</b></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"> <li>- <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></li> <li>- <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></li> <li>- <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></li> </ul> <p><i>(...)'</i></p> <p><u>Points for discussion:</u></p> <ol style="list-style-type: none"> <li>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?</li> <li>2) Second indent of the statement: need to provide that the dispatch or transport of the goods is deemed to take place following the second supply (the deemed supply by the electronic interface)</li> </ol>

		<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?</p> <p>5) 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 (<b>see ANNEX 3</b>) should be reconsidered and possibly be taken up in the</p>

	<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>	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 meeting of

	<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>26 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><b>Minute statement:</b></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 tax administrations and is proportionate to the purpose of the provision, as well</i></p>

<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>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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**GUIDELINES RESULTING FROM THE 104<sup>th</sup> 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 100<sup>TH</sup> 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.