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Value added tax

**VAT Expert Group
16th meeting – 9 January 2017**

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VAT EXPERT GROUP

VEG N^o 061

SUMMARY MINUTES

**16TH MEETING
– 9 JANUARY 2017 –**

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

The agenda (*document taxud.c.1(2016)7411533*) was adopted as proposed.

2. NATURE OF THE MEETING

The meeting was not open to the public.

3. LIST OF POINTS DISCUSSED

3.1. VEG N°060 Elements for the 2017 proposal; Definitive VAT regime for intra-EU trade

The Chair explained the objective of the meeting is to discuss and get feedback from the experts in relation to the questions contained in the VEG working document N°060 which dealt with the issues of the VAT identification number, chain transactions, call-off stock and proof of intra-EU supplies, in respect of which in its conclusions of 9 November 2016 the ECOFIN Council invited the Commission to present a legislative proposal on improvements to the current EU VAT rules for cross-border transactions.

The Chair informed the group that the Commission is due to table a legislative proposal in the autumn 2017 (3rd quarter 2017 as indicated in the 2017 Commission Work Programme). It was also announced that a public consultation on the definitive regime had been launched on 21 December 2016 and members were invited to participate.

Before starting to analyse the questions asked to the group, the experts expressed concerns regarding the feasibility of the planning announced by the Chair and emphasised the need for further detailed technical discussions, given the complexity of the file and the amount of work a legislative proposal on a definitive regime requires.

On the first question, namely whether the exemption for intra-EU supplies should be conditioned not only by the obligation to possess a valid VAT identification number, but also by the submission of the recapitulative statements:

The group expressed serious concerns on imposing such a condition, including on the submission of recapitulative statements.

According to the experts, this would increase the burden on the business and will not help to fight fraud. The Group considered such a condition disproportionate, as also recognised by the Court of Justice of the EU. Some members also underlined issues currently experienced with the working of the VIES that blocks and does not allow a businesses to check thousands of VAT numbers per day. The experts insisted that the focus should be on improving national procedures for granting the VAT identification numbers and ensuring the reliability of the numbers in the VIES by regularly updating the system. A member referred to a practical problem where a business customer had a VAT identification number, but VIES was not updated to reflect this. Some members raised the issue of potential problems for start-ups or businesses re-entering the market in situations

where they apply for VAT registration, but they obtain the VAT identification number only after several months. In this respect the experts showed concerns as regards the lack of harmonised procedures to get an identification number and feared the differences in the procedures' length to obtain VAT numbers would create problems for companies established in certain Member States. The members also believed that the concept of certified taxable person (CTP) could be a good way to push Member States to revise their VAT registration system.

Members also wanted to emphasise that if the VAT numbers were to be used to prove the transactions, other means of proof should also be allowed. The members underlined the need to have the possibility to provide alternative proof, both in cases where a VAT number is present but the operator has doubt regarding the reliability of the contracting party, and in cases where the VAT number is absent but the operator believes its partner is reliable and thus should be able to benefit from the exemption.

Some members proposed a strong VAT identification system at EU level, with the creation of an EU agency to regulate and attribute VAT identification numbers. With this system, they believe the concept of CTP would not be needed anymore.

Members also indicated that within the current system, the absence of a valid VAT identification number could lead to double taxation of intra-EU supplies since the supplier, without the VAT number of the customer, could be held liable for paying the VAT in his own Member State whereas the Member State of arrival of the goods would at the same time claim the VAT from the customer who effects the corresponding intra-EU acquisition.

In addition, members underlined that tax authorities adopt a discordant approach when it comes to the VAT identification number. On the one hand, the tax authorities consider it a formal requirement to benefit from the exemption and refuse to grant such exemption where the supplier does not possess a valid VAT identification number of his customer, but on the other hand they also ask for additional proof before granting him the right to exempt his intra-EU supplies.

The experts stressed that according to the Court of Justice of the EU, whenever there is fraud the tax authorities are entitled to deny the exemption where the supplier knows or should have known about the fraud. Conditioning the exemption on the possession of a valid VAT number or on the submission of recapitulative statements is contrary to the case-law and disproportionate. The experts believe neutrality can be ensured with other forms of proof.

On the recapitulative statements, the experts stated that these have different status depending on the Member State concerned. Some noted that in some Member States they have no fiscal value and are only used for accountancy purposes, while other consider them as mere simplification measures. On that point, a member referred to a pending case before the Court of Justice in which the issue of recapitulative statements being a simplification measure only was addressed.

On the second question, namely whether the proof of evidence for the purposes of exempting intra-EU supplies should be linked with the CTP concept:

The group considered that legislative amendments as regards the proof of evidence of intra-EU supplies should not be linked to the CTP concept. Experts emphasised that the CTP concept is a long term concept while the proof of evidence is a short term quick fix and as such they should not be mixed together.

The experts inquired whether the CTP concept will be harmonised at EU level and wondered about the consequences in case the requirements to become a CTP were not met.

Some experts indicated that in the definitive regime, what will be needed is proof of the destination of the goods, not proof for the exemption related to the CTP status since everything will be taxed at destination. Hence it is crucial to determine what will be the proof of the shipment of the goods, making it crucial for Member States to mutually recognise the way in which to prove the destination of the goods, and not the proof of the exemption itself.

On the third question as regards the modification of the current rules for the simplification of the call-off stock rules in the context of the Plöckl (C-24/15) judgment:

Those experts who took the floor considered that the *Plöck* case covered a rather marginal and specific situation and thus its impacts on consignment stocks were considered quite limited. It was stressed that when dealing with transfer of goods, it is rare to not have a VAT identification number. The impact of the CTP status on consignment stocks would thus be limited and the improvements made by the introduction of the CTP would not change anything since it will not help tracking the goods as the status of CTP does not require any proof of dispatch of the goods and, as such, it does not help proving their transfer and destination.

On the fourth question, namely whether simplification measures for the chain transactions should be implanted in the current VAT system or rather linked with the CTP status and the definitive regime:

The group stressed the urgency of having a common harmonised approach in relation to chain transactions.

The experts were however not in favour of linking the chain transaction simplification measures to the CTP as this would result in delays in having access to the simplification, but also in view of the fact that it might not be that all parties in chain transactions would have the CTP status.

A discussion followed on what should be the rule governing the burden of proof for the transfer of goods. Several members indicated that some Member States use in this respect the transfer to dispose of the goods as owner, whilst others use the transfer of liability for the transport. Some experts underlined that the responsibility of the transport should not be mistaken with the fiscal responsibility, but acknowledged that this could be a solution. A suggestion was put forward to make the transporter responsible for proving the transport.

On how to follow the flow of goods and tax them at destination, the experts quoted the case *Fast Bunkering Klaipėda* (C-526/13). Even though this case does not concern the proof of destination and how to follow the flow of goods, it indirectly assumed that this is an essential issue to take into account.

Some experts mentioned that aligning the rules on the place of taxation for goods and services would eliminate the problem of chain transactions. Both transactions should be equal, and if intermediate transactions throughout the chain were to be considered as services and subject to the destination principle, the issue of determining the place of taxation would no longer exist. It was also emphasised that there are practical experiences of this in the United Kingdom and Ireland.

On the fifth question on what additional objective criteria should be taken into account for granting the status of Certified Taxable Person, other than those already identified in Working paper VEG N° 057:

The last question asked to the group was if the experts had other criteria they could suggest for a business to be granted the CTP status.

The experts stressed that the CTP could only be considered a simplification measure if it would be subject to common criteria and harmonised rules at EU level. In that respect, some members expressed their preference for having the rules on CTP in a Regulation so that Member States would apply them in a uniform way.

It is thereby crucial to have a commitment of Member States on common criteria and objective elements to be accepted in a harmonised way, or the CTP concept will receive a different interpretation in every Member States and will become impossible to use. It was stressed that the CTP concept is all about uniform approach. If applied in one way across all Members States, it can work, but if it is applied in twenty-eight ways across the European Union, it will not.

Some experts stated that by reviewing the VAT legislation and improving the functioning of the VAT identification number and the VAT registration process as such, the CTP concept may not be needed anymore.

Some experts also underlined that there is already a concept similar to the CTP for customs law that could be considered and pointed to the experience of some Member States with this concept, referring in particular to the Netherlands and Italy.

3.2. Information update

The session continued with presentations made by the Commission services on the different legislative proposals that are due to be adopted by the Commission in 2017, as well as a presentation of the proposal to modernise VAT for cross-border e-commerce adopted by the Commission on 1 December 2016.

3.2.1. Proposal to modernise VAT for cross-border e-Commerce

The Commission services made a detailed presentation of the proposal. The floor was then opened for experts to ask questions.

The first intervention related to the registration to the MOSS and more specifically if the Commission had data regarding the number of registrations and the VAT revenues made through the MOSS by EU business and non-EU business. The experts also pointed out issues with the use of the MOSS, notably the possibility that paying VAT through the MOSS to another Member State could be considered as triggering a permanent establishment for corporate tax purposes in that State, resulting in controls and challenges from that Member State of the business.

The Chair answered that data on figures existed but could not be made available to the group. It also underlined that the aim of the MOSS is not to increase VAT revenues for the State but to ensure that VAT was collected in the place of destination. However, the import MOSS scheme will increase revenues due to the abolition of the small consignments exemption.

The experts then asked questions on audit procedures for MOSS. Some also wondered why the proposal would enter into force only in 2021, to which the Chair answered it was the time needed to change the IT system and provide guidelines. As for the audit, the Chair said that data on audit was not available yet and that evidence in respect of audits was still not available.

The discussion on audit continued focusing on Regulation 904/10 on administrative cooperation which envisages that Member States coordinate audit activities similar to the non-binding auditing guidelines for the existing MOSS. Nevertheless, the Regulation leaves it for Member States to make direct contact with a business identified in another Member State. The Commission services outlined that the proposal includes a collection fee for Member States of identification of 5% which will encourage effective and efficient controls of business.

To further boost the cooperation, experts also suggested creating a code of procedures at EU level. Other suggested that the Commission should look at the collection of VAT directly, on the basis of and in the context of the control of the EU VAT own resources. It was suggested that this would make sure that Member States carry out controls.

3.2.2. Information on ongoing work on the SME VAT package

After the e-Commerce 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.

3.2.3. 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 for questions or remarks regarding the proposal.

The experts underlined that the point 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 business could work and comply. They also pointed out that reduced rates should not be taken into consideration when they relate to local services that cannot distort competition. EU rules must only aim at regulating cross-border situations. In these 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 other 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/RECOMMENDATIONS/OPINIONS

Whilst being supportive on pursuing the work on the definitive regime, the Group expressed strong concerns regarding the timeframe, given the complexity of the topic and the need to discuss further and in-depth all aspects of the definitive regime as well as its implications in terms of obligations for businesses.

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, but was critical of making the possession by the supplier of a valid VAT identification number of its customer a substantive condition for exempting intra-EU supplies. This was considered disproportionate as recognised by the Court of Justice, but also difficult to apply in practice due to the necessity of checking hundreds of thousands of VAT numbers per day as well as the technical limitations of the VIES system in this respect. The Group insisted that, in any event, the delivery of VAT numbers and its monitoring should be improved and considered such improvement a precondition if such formal condition were to be envisaged.

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.

6. NEXT MEETING

The Chair informed the members 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 VAT Expert Group as published in the Register of Commission Expert Groups and other similar entities¹.

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