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Value added tax

**Group on the Future of VAT
21st meeting – 12 March 2018**

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GROUP ON THE FUTURE OF VAT

GFV N^o 074

MINUTES

**21ST MEETING
– 12 MARCH 2018 –**

1. NATURE OF THE MEETING

The meeting was not open to the public.

2. RESULTS

Discussions on the implementing rules of the VAT e-commerce package will be continued during the upcoming Fiscalis workshop in Malta involving business as well.

3. LIST OF POINTS DISCUSSED

The minutes of the 20th GFV meeting (GFV No 069) were adopted. The special arrangements when the IOSS (Import One Stop Shop) is not used as well as the possible use of SURV-RECAPP (Customs surveillance application) for the monthly listing of imports have been discussed. Implementing provisions are needed to clarify the deeming provision for electronic interfaces laid down in Article 14a of the VAT Directive. The legal changes to the Council Implementing Regulation 282/2011 (VAT IR) and the Commission Implementing Regulation 815/2012 (COM IR) have been examined in detail. Member States have been reminded that TIC (Taxation Information and Communication) has to be updated regularly concerning VAT rates but also invoicing rules. A short summary of the last VEG (VAT Expert group) meeting on 26 February 2018 has been provided, followed by additional information on the upcoming Fiscalis workshop in Malta (21-23 March 2018).

3.1. Special arrangements – if the IOSS is not used (GFV 067 Rev. 1)

The Commission presented the working paper including detailed explanation of the special arrangements, as requested by delegations at the previous meeting. The document clarified, in particular, that when small consignments are presented to customs, a customs declaration is lodged followed by an electronic monthly global declaration and payment of the VAT collected from the consignees. The procedures for global declaration and payment refer to existing customs procedures. However, Member States must allow their use. Furthermore, the deadline for global payment laid down in the special arrangements (end of the month following the importation) does not coincide with the deadline in Article 111 of the UCC (Union Customs Code) which foresees a payment by the middle of the month following the month of importation. This issue still has to be tackled.

As for the need for implementing provisions, the Commission referred to document GFV No 072 (p. 19), which lists the issues potentially requiring further clarification.

- On the "**appropriate measures**" the declarant has to take to ensure that the correct tax is paid, one Member State suggested in a written comment that the person presenting the goods to customs must retain the goods until the customer has paid the VAT.

- As to the **record keeping** obligation for the declarant (Article 369zb(3)), the Commission explained that the time period is the one laid down by Member States at national level.
- Some Member States expressed doubts about the possibility of using **entry into the declarant's records**, as this type of simplified customs declaration can only be used if the declarant is acting in his own name.
- A customs working group is currently discussing the possibility of a **standard customs declaration with a reduced data set**. This simplified declaration will provide equal treatment of postal and express couriers as well as of those using the IOSS and those making use of the special arrangements. The UCC Delegated and Implementing Regulations will have to be amended to allow for these changes.

3.2. Monthly listing of imports under the IOSS (GFV 070) – SURV-RECAPP

The Commission explained how the central database SURV-RECAPP works. It could be used to provide the monthly listing of imports declared under the IOSS. It is part of surveillance and collects data from single customs declarations. Each administration can only see the customs declarations lodged in their own Member State. Surveillance 3, which is a data warehousing application, creates aggregated reports and also provides data from other Member States but on an aggregated level. If this database were to be used for the monthly listing, all customs declarations including the IOSS number and the value of the imports would need to be collected in Surveillance 3. Only the statistical value would be mentioned which is not the same as the taxable amount, but quite close. The advantage of using this database is that it is an existing proven framework. However, it still has to be assessed how to manage the reduced data set and how to deal with an increased number of customs declarations. One Member State asked for the assessment of the Commission's Legal Service on whether it would be allowed to use customs data for VAT purposes. The Commission confirmed that this question has already been submitted to its Legal Service and promised to keep the group informed once the Commission has taken a position on this. Another Member State wanted this item to be discussed in a customs and IT forum because they are better placed to treat this subject. The Commission replied that a Customs Project Group will be set up to discuss the overall IT impact of the VAT e-commerce package for customs.

3.3. Electronic interfaces (GFV 071)

The Commission presented ideas on how to define the term "facilitate", the scope of Article 14a, the deeming transactions, the acceptance of payment as well as the record keeping obligations pursuant to Article 242a of the VAT Directive.

- The majority of the Member States that intervened agreed that indicators should be provided to determining the **scope** and to define "**facilitate**". However, such indicators require further analysis. One Member State pointed out that it was rare that an electronic interface (EI) sets the terms of an underlying supply and this should therefore not serve as criteria to determine the term "facilitate". The Commission clarified that the terms and conditions refer to the general use of the electronic interface and not of the underlying supply. The EI should not be given too much room of manoeuvre to get out of the scope of Article 14a of the VAT

Directive. Member States agreed on the need for legal clarity. While some Member States were in favour of a negative list, others who intervened preferred a positive list to define the scope of the deeming provision. One Member State stressed the need to work closely with business in order to make this provision work and enforceable.

- Concerning the **scope of Article 14a(2)** of the VAT Directive, only one Member State that intervened does not consider domestic supplies to be covered by this provision. There is no need for an implementing rule to further clarify this issue.
- All of the Members States that intervened on this point agreed that the **transport** of the two deemed transactions should be linked to the **second supply of goods** (between the EI and the customer). They also agreed that an effective flow of VAT between the seller and the EI should be avoided, but the way to achieve this requires further analysis. Member States considered a possible joint and several liability for the warehouse keeper for the B2B supply useful and wanted to discuss this further.
- The time at which the **payment has been accepted** as referred to in Articles 66a and 369n of the VAT Directive (chargeability of VAT) has to be clarified. One Member State suggested defining it as the moment when the money is available and can be forwarded. It does not have to be gone through already. This should be clarified in the VAT IR.
- It was further clarified that a supplier or deemed supplier has to fulfil record keeping obligations pursuant to Article 242 of the VAT Directive if he does not use OSS and pursuant to Articles 369, 369k, 369x of the VAT Directive and Article 63c of the VAT IR if OSS is used. If an EI is not a (deemed) supplier and does not use the import scheme (acting as an intermediary), but still facilitates a B2C supply of goods or services within the EU, the record keeping obligation in Article 242a of the VAT Directive applies. One Member State wanted this to be written down in the VAT IR. The Commission asked Member States to express their views on what kind of information they want the EI to provide pursuant to **Article 242a** of the VAT Directive and how they intend to exchange this information between Member States. The Commission replied that information can be exchanged upon request, based on the current provisions of Regulation 904/2010. In the future, joint audits could be used, as proposed in the recent Commission proposal amending this Regulation. One Member State observed that we should not ask an EI for information it does not already have or that is not available to it. Another Member State wanted to include the time of supply and the time of acceptance of the payment.

3.4. VAT Implementing Regulation (GFV 072)

The Commission presented the changes required in the VAT IR line by line and asked Member States for their view on the proposed amendments:

- Some Member States asked to add a clarification in the VAT IR that the identification number allocated to an intermediary pursuant to Article 369q(2) of the VAT Directive is not a VAT identification number.

- One Member State wanted to be more precise when it comes to the beginning, the cessation and the exclusion of the import scheme, referring to the time of dispatch that should be relevant.
- The question has been raised whether a quarantine period of two calendar quarters is still considered necessary in case of a voluntary deregistration by a taxable person using a special scheme.
- One Member States wanted to determine that someone (tax administration or the intermediary) has to inform the taxable persons represented by an intermediary of the exclusion of the latter from the import scheme.

3.5. Commission Implementing Regulation (GFV 073)

The Commission presented the changes required in the Commission Implementing Regulation line by line. Some Member States stated that they wanted to discuss this in SCIT as well. Two Member States asked for a separation of goods and services in the VAT return for control purposes. The Commission observed that the structure of the VAT number and the solution for corrections should be discussed with priority as it affects customs work and the IT development work.

4. CONCLUSION

The Commission thanked Member States for the fruitful discussions which will be continued with business during the Fiscalis workshop in Malta (21-23 March 2018) and asked them to send further comments in writing.

5. LIST OF PARTICIPANTS

Commission officials from DG TAXUD Units A2, A4, B3 and C1 and the members of the Group on the Future of VAT 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>
