



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

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Brussels, 19 April 2018

**VALUE ADDED TAX COMMITTEE**  
**(ARTICLE 398 OF DIRECTIVE 2006/112/EC)**  
**WORKING PAPER NO 945 REV**

**QUESTION**  
**CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

**ORIGIN:** Commission

**REFERENCES:** Articles 2(1), 72, 73, 80, 83 and 85

**SUBJECT:** Possible VAT implications of Transfer Pricing – the point of view of the VAT Expert Group

## **1. INTRODUCTION**

The Commission services wish to re-discuss with the VAT Committee the possible VAT implications of transfer pricing rules laid down for the purposes of direct taxation after a first exchange held on the subject matter during the 108<sup>th</sup> meeting in March 2017 on the basis of Working paper No 923. Transfer pricing rules are aimed at ensuring that the conditions of the transactions within a multinational enterprise group ("MNE group"), including the price, match comparable market conditions and that profits are fairly divided between the jurisdictions in which a multinational enterprise ("MNE") operates<sup>1</sup>.

According to the minutes of the 108<sup>th</sup> meeting, the Chair had *inter alia* concluded that transfer pricing could have an impact in some concrete cases, but that those would be subject to a case-by-case assessment. In that respect he also noted that whilst business stakeholders had raised transfer pricing as an issue no concrete examples had been submitted for discussion and that therefore he would therefore table the matter at an upcoming meeting of the VAT Expert Group (VEG) for exchanges. The Commission services would then report back to the VAT Committee on the feedback obtained from the VEG.

The VEG, a body set up to assist and to advise the Commission on VAT matters<sup>2</sup>, has in the meantime undertaken work on this subject and the Commission services now wish to hold an exchange of views within the VAT Committee, on the basis of the report adopted by the VEG.

## **2. SUBJECT MATTER**

The purpose of Working paper No 923 prepared by the Commission services was to allow a first exchange of views on whether transfer pricing rules could have VAT implications<sup>3</sup>. Without prejudice to other aspects being raised, it seemed that the main aspect which should be looked at first was whether transfer pricing adjustments could be seen as consideration given in exchange for a supply.

The paper prepared by the VEG, which can be found as a separate Annex<sup>4</sup>, reflects the point of view of the experts appointed as members of the VEG and should not be taken as the position of the Commission services.

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<sup>1</sup> Communication from the Commission to the European Parliament and the Council "A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action" [COM\(2015\) 302 final](#), p. 10. For an historical context of transfer pricing rules, see p. 3 of this Communication.

<sup>2</sup> [http://ec.europa.eu/taxation\\_customs/taxation/vat/key\\_documents/expert\\_group/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/expert_group/index_en.htm)

<sup>3</sup> While VAT consequences derived from transfer pricing adjustments will not affect taxable persons for which VAT is neutral (because they charge VAT on their outputs and are able to deduct their input VAT), there could be an impact where one of the parties of a transaction cannot deduct their input VAT (e.g. because the supplies carried out by that party are exempt).

<sup>4</sup> VEG No 071 REV2 - ref: taxud.c.1(2018)2326098 (*available in English only*).

**3. DELEGATIONS' OPINION**

Delegations are invited to express their views on the matters as outlined in the paper prepared by the VEG.

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