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Value added tax

**VAT Expert Group
26th meeting – 11 May 2020**

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VAT EXPERT GROUP¹

VEG No 092

SUMMARY MINUTES

**26TH MEETING
– 11 MAY 2020 –**

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¹ Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

1. APPROVAL OF THE AGENDA

The agenda (*document taxud.c.1(2020)2175334*) was not contested or discussed.

2. NATURE OF THE MEETING

The meeting was not open to the public.

3. VEG NO 091: UPGRADING THE EU VAT SYSTEM – A REFLECTION ON POSSIBLE WAYS FORWARD: CONTRIBUTION OF THE VEG

The Commission services explained the state of play of the different ongoing projects:

- the Explanatory notes on the quick fixes were published in December 2019 and Explanatory Notes on e-commerce would be published soon as well.
- the Fiscalis workshops on Transaction Based Reporting (TBR) and e-invoicing are planned for September. Still not decided if they will take place in Estonia (merged) or via videoconference.
- the Commission will adopt before the summer a Tax Action Plan. It will cover both direct and indirect taxation.

This introduction was followed by a presentation by members of the group of their contribution to working paper VEG N° 86 “Upgrading the EU VAT system”. The latter document was presented at the 24th meeting of the group. The aspects stressed in the document VEG N° 091 were the following:

- **Keeping pace with new business models.** The main point raised was the increased “servitization” of the economy, which should lead to consider aligning the rules on the place of supply of goods with the ones applicable to services. The flow of the goods could still be monitored by systems such as the one that will be used for the call-off stock. The digitalisation and new technologies, in general, could play a role in that regard.
- **Opportunities offered by new technologies.** The group highlighted that there is a need for harmonisation of the different obligations implemented by Member States (transaction based reporting, e-invoicing, split payment, SAF-T) in order to reduce compliance costs. In this regard, the group welcomed the Commission services’ initiative to organise a Fiscalis workshop on TBR and e-invoicing.
- **Simplification of the VAT system.** The group indicated that the consideration of the single VAT identification number should be accompanied by a further extension of the One-Stop-Shop (OSS) to B2B supplies of goods and deemed supplies that trigger registration and are not covered by the OSS, the inclusion of the right of deduction in the OSS, a discussion on whether the single registration should be optional or compulsory and the implications on audits by the different Member States involved.

The group took the view that in the short term the OSS could be extended to transactions where it can be easily applied, while in the mid-term it would be advisable to carry out an in-depth assessment of the functioning of the OSS.

- **Other.** Other topics where the group considered that further work is required, include:
 - Reduction of the number of exemptions and reduced rates, to increase the neutrality and transparency of the system and to reduce costs for both businesses and tax administrations.
 - VAT groups, transactions head to branch, transfer pricing and fixed establishments. The litigation is important in these fields and the Court of Justice of the European Union (CJEU) rulings have only addressed partial aspects of this problematic. More legal certainty is needed which could be achieved by guidelines of the VAT Committee and even a Regulation.
 - Common interpretation of the CJEU rulings, bad debt relief, VAT refunds and donations inter alia.
- The VEG pointed out the possibility to work in subgroups on some of these topics. Its contribution included a timeline for actions, envisaging ones in the short term while others would only take place in the medium or long term.
- The group stressed the need to involve stakeholders from the very preliminary steps of the preparation of EU legislation.
- Finally, the importance of technology and how it should influence the shaping of the future VAT system, in particular improving collection and control while reducing administrative costs and addressing the situations created by new business models, was stressed once again.

The Commission services provided their views on the points raised by the group. In particular:

- The views of the Commission services are aligned with those of the group in many of the aspects discussed. In particular, the need to take advantage of the opportunities created by new technologies and the need to tackle the increasing de-harmonisation of VAT obligations. This latter task should be carried out as soon as possible to avoid further de-harmonisation of the VAT obligations implemented by Member States that would make the task more difficult.
- Some of the aspects raised, such as the extension of the OSS to B2B supplies of goods and deemed supplies, and the right of deduction in the OSS, are addressed by the proposal on the definitive VAT system. The impact assessment leading to this proposal also took into account the advantages and disadvantages of aligning the rules on the place of supply of goods with those of the services.
- The Commission services will launch a study on three topics: TBR and e-invoicing, platform economy and single registration.

- The Commission services invited the group to prioritise three or four topics that present particular problems of implementation and could possibly be discussed in the VAT Committee. On these topics the group was invited to carry out an analysis that could be presented and discussed at the next meeting of the group. If appropriate, the Commission services may refer the topic for discussion with Member States in the VAT Committee.

4. VEG No 089: VAT TREATMENT OF FINANCIAL SERVICES – A REFLECTION ON POSSIBLE OPTIONS FOR REVIEW

The Commission services recalled that the discussion on the VAT treatment of financial and insurance services have been triggered by the loss of the cost-sharing exemption following the rulings by the CJEU in 2017. The need for a broader review had been driven by a variety of other significant problems faced by the sector: (i) legal uncertainty; (ii) regulatory complexity stemming from complicated rules, difficult to apply, and outdated in light of the evolution of the sector; (iii) tax competition among Member States arising from different interpretation and application of the rules; and (iv) distortion of competition from third countries which apply zero VAT rates.

In response to the statement entered into the minutes of the Council meeting at which the Quick Fixes were adopted, the Commission in June 2019 launched a study to evaluate the functioning of the relevant VAT rules and to investigate tentative options for review and their impacts to serve as a basis for a future impact assessment.

The Commission services then briefly explained the state of play of the ongoing study with a view to promote debate and collect views, as well as data, on the modelling of the options for review. The tentative options are based on five intervention areas, namely service definitions, removal of the exemption (and to which extent), cost-sharing arrangements, the option to tax and possible use of a fixed rate of deduction. As these intervention areas can also be combined, both stand alone and combined options are being assessed by the contractor of the study.

It was noted that those options are selected for the purpose of the study only and should not to be seen as definitive. Input from all relevant stakeholders (VEG included) will feed into the selection of final options for the impact assessment where a public consultation is also envisaged.

The consultant in charge of the study (Economisti Associati) briefly presented the Second Interim Report with a focus on the tentative options modelled (stand alone and combined) and their expected impacts on VAT revenues and demand, legal certainty and complexity, as well as their expected macroeconomic, social and market impacts. In particular:

- The removal of the exemption alone, while restoring the right of deduction and reducing “hidden input VAT”, would increase the amount of VAT on outputs resulting in a considerable growth in VAT revenues and a significant drop in the demand for services. The application of a reduced rate would reduce the extent of these effects. The removal of the exemption would also solve the main problems faced by the industry (by restoring VAT neutrality and levelling the playing field) while bringing some new forms of complexity (e.g. taxable base calculation).

- The reintroduction of cost-sharing arrangements (in a more flexible form than before) would remove current uncertainty without solving the other problems faced by the industry. Limited economic effects were expected as VAT groups, although being a different instrument, already offer a similar solution to the issue of “hidden input VAT”.
- The option to tax, if made mandatory for all Member States, would promote harmonisation. It could be designed as either applicable on a transaction basis or to the whole company. In any case, economic effects were expected to be small.
- The fixed rate of deduction would solve the complexity linked to the calculation of the pro-rata deduction and could be either designed as mandatory or optional.
- The revision of service definitions would solve the problem of divergent interpretations by Member States, reducing legal uncertainty, and it would take into account the existent new business models, although without significant economic impacts overall.

Members and invited experts intervened to ask for clarifications on the study and its preliminary findings, and to give their views on the modelling of options:

- One member was surprised to see the significant rise expected in VAT revenues and the corresponding drop in demand deriving from taxation of the sector (especially if at standard rate) as most clients should be businesses entitled to deduction. Concern was expressed about the calculation of the tax base for interest payments where it was suggested that consideration should be given to international practises (e.g. South Africa, New Zealand, Singapore). The point of possible interrelation with the Financial Transaction Tax (FTT) was also raised.
- Further to a point made about the need for a definition of derivatives, another member noted that the valuation of derivatives needed for their taxation causes technical issues.
- One member enquired whether in-house activities had been taken into account in the study in the context of the “input hidden VAT”. Mention was also made by one expert of the importance to review the VAT treatment of outsourced activities.
- Further, the importance of addressing new business models and fintech under development in the sector was underlined by one member.
- One expert warned that the social impacts of taxing asset management will not be minor as clients include private individuals, pension funds and other financial institutions which will suffer higher costs. Another expert agreed that taxation would result in a high level of social impacts and warned that the removal of VAT exemption without a corresponding adjustment in corporate income taxation could lead to delocalisation of operators.
- As to cost-sharing arrangements, one expert evoked the need in a globalised economy to allow for cross-border application. The need to clarify how such arrangements interact with VAT groups was also advocated. Another expert pointed to legal uncertainty stemming from cost-sharing arrangements.

- A few members asked for clarification on the foreseen calculation of the fixed rate of deduction (e.g. harmonised *versus* country-by-country rate). The risk of hampering the level playing field by introducing a fixed rate of deduction was also raised.
- A member asked whether for the purposes of the study, the UK had been included in the calculations. The question was also asked whether an option to tax insurance services was assessed and, if so, whether abolition of the Insurance Premium Tax (IPT) had been analysed.
- One expert clarified that the VAT exemption had not been introduced to benefit the sector itself, adding however that two of the original reasons for exemption were still relevant today: the technical difficulty in establishing the tax base which for a sector characterised by approximately 100 million transactions per day results in a very high administrative burden, and the social impact in terms of higher costs for consumers (e.g. on loans and pensions) as well as for governments and local authorities.
- The need to involve the sector was also stressed, for example through a special platform of discussion dedicated to the relevant industry. Another expert agreed with the need to involve the relevant industry in the process of review, stressing in particular that the decision to tax the sector should be carefully evaluated for the massive changes it would bring.

The consultant noted that account had been taken of international best practices (both on options and assumptions) as had the experience of Member States already applying the option to tax (e.g. in regard to valuation of derivatives) used to extrapolate the impacts at EU level. The analysis of how the relevant VAT rules are currently applied covers the UK but for the further works, it is seen as third country. In particular, the macroeconomic impact analysis treats the UK and Switzerland as relevant third countries.

In response to comments made, the consultant committed to further analyse the social impacts of taxation of investment services. Acknowledging the need to further explore the links with other taxes, the broader effects will be assessed through the macro econometric model. For the calculation of a fixed rate of deduction, consideration is given to historical deduction rates in the different sectors involved. Thought is also given to possible cross-border application of cost-sharing arrangements. Finally, the high level of expected additional VAT revenues generated by the removal of the exemption is explained by a higher amount of output tax generated by B2C transactions than that of additional input VAT deducted by the operators.

The Chair concluded by thanking for the useful debate, which was meant to contribute to an open process where all stakeholders concerned will have a chance to provide their feedback. With that in mind, members and experts were also invited to send written contributions.

Issues and concerns raised (e.g. new business models (fintech), competitiveness of the sector, social impacts, technical constraints, links with other taxes, other jurisdictions' best practices) will be taken into consideration for the next steps.

5. VEG NO 090: VAT TREATMENT OF THE PLATFORM ECONOMY

The Commission services presented the document and in particular the options that could be envisaged for adapting current VAT rules to the platform economy. The members of the group were asked to provide their views on how to establish a steady framework for the taxation of the transactions carried out by the operators involved within the platform economy.

There were only few reactions from the group. These reactions addressed the qualification of the operators, the qualification of the transactions and the obligations that might be imposed on digital platforms for taxation purposes.

- **Qualification of the operators**

A member asked in case a uniform rule would be laid down for the qualification of the service provided by the platforms, whether that rule would cover all the economic activities carried out by the platforms. That member also questioned the necessity of amending the rules on taxable persons because of a specific business model. The concept of taxable person acting as such is the criteria to be looked at for the qualification of the operators.

Regarding the option on the introduction of a threshold, a member suggested to take stock of the outcome of the Fiscalis meeting organised for SMEs. Setting a threshold might be difficult to control and problematic from a platform perspective.

- **Qualification of the transactions**

A member pointed out that the treatment of barter transactions should be taken into account when analysing the aspect of “supplies made for consideration”.

- **Obligations imposed on platforms**

Several members indicated that the data made available by the business should be available to all Member States in order to avoid multiple reporting for cross border transactions. Certain Member States already require the platforms to share data relevant for tax purposes, and such obligation might be considered burdensome.

A simplification measure would consist in establishing a harmonised dataset. Several members asked questions about the interaction between Article 242(a) of the VAT Directive and the upcoming proposal of DAC7. A member questioned whether Article 242a would not create an overlap once DAC7 is adopted.

Members also raised the issue that EU resident platforms are competing with non EU resident platforms or market place, therefore also enforcement of rules should be agreed to ensure equal treatment.

In response to the above interventions, the Commission services made the following observations:

- currently the issue of the status of taxable person and the issue of occasional activity are treated on a case by case approach. Therefore, identifying common criteria for that

assessment could be explored, keeping in mind the objective of ensuring an equal treatment with the traditional economy;

- currently, the assessment of the nature of the service provided by the platforms may differ among Member States, leading to the risk of double taxation and making it difficult for the platforms to be compliant;
- Article 242a enters into force in 2021. On the other hand, the proposal on DAC7 is not adopted yet by the Commission; once adopted it needs to be agreed in Council. The interaction between the two can therefore only be assessed properly at a later stage.

The Commission services announced that a study on the issues related to VAT and platform economy will be launched soon. Therefore, written comments from the stakeholders are welcome. The group members indicated that they would provide written comments to the questions included at the end of the document.

6. FOLLOW-UP OF THE CONFERENCE ON VAT IN THE DIGITAL AGE - ORAL PRESENTATION BY THE COMMISSION

The Commission services informed the members of its intention to launch a study “VAT in the Digital Age” that will cover 3 topics: digital reporting and e-invoicing, the VAT treatment of the platform economy and moving towards a single EU VAT identification. The common denominator of these three topics is that they are driven by technological developments.

7. AOB

The next meeting of the group could not be confirmed yet, but will most likely take place in November 2020.

8. LIST OF PARTICIPANTS

Commission services and the members of the VAT Expert Group as published in the Register of Commission Expert Groups² as well as the following invited experts only for point 4 on the Agenda related to VEG N° 089: VAT treatment of financial services – a reflection on the possible options for reform: European Banking Federation (EBF), Insurance Europe, Association for Financial Markets in Europe (AFME) and European Fund and Asset Management Association (EFAMA).

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² <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>