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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value Added Tax Policy

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1087 FINAL**

MINUTES

**124TH MEETING
– 11 APRIL 2024 –**

The Chair welcomed the delegations to the non-public 124th meeting of the VAT Committee.

Procedural, housekeeping and information points

Delegations were reminded that, whenever meetings are held in person, they need to take the necessary steps within the deadline set in the invitation for the meeting and indicate who will attend it so as to avoid difficulties in accessing Commission premises.

Language regime: It was possible to speak and listen in FR-DE-EN-ES-IT-PL.

Next meeting: the 125th meeting is likely to take place in the second half of November 2024 and will be an online meeting.

Update on work by the Commission

The Chair informed delegations about the following:

- Implementation of the Single VAT Registration (SVR) part of the VAT in the Digital Age (ViDA) package: preparations for the implementation of the SVR have started, covering the foreseen IT impact as well as the need for updates of the relevant Implementing Acts, Explanatory Notes and Guides. A Fiscalis seminar dedicated to the implementation of the SVR and the securing of the use of the Import One Stop Shop (IOSS) will be held in June 2024.
- VAT e-commerce statistics: statistical data in accordance with Part D of Annex IV to Implementing Regulation (EU) No 79/2012 on VAT registration, VAT return and VAT payment data related to the One Stop Shop (OSS) schemes should be provided automatically every year. The due date for the 2023 data is end of April 2024.
- SME scheme – Implementation: work is ongoing on:
 - the preparation of *Explanatory Notes*. A revised draft was discussed with the members of the VAT Expert Group (VEG) and the delegates of the Group on the Future of VAT (GFV) at the meetings that took place on 18 March and 21 March respectively. Any written comments on the revised draft are to be submitted by 22 April 2024. Ongoing work in the VAT Committee in relation to guidelines will also feed into the final version of the Explanatory Notes which is to be published in the autumn;
 - the preparation of an *SME Guide*. A first draft was also discussed with the members of VEG and with delegates of GFV on 18 March and 21 March respectively. Any written comments are to be submitted by 22 April 2024. Ongoing work in the VAT Committee in relation to guidelines will also feed into the final version of the SME Guide which is to be published in the autumn;
 - the development of a *SME web portal*, which will provide small businesses with information on the new rules, access to the relevant EU VAT legislation, the SME Guide and the Explanatory Notes. Work is advancing well. As Member States had been asked to provide their SME national contacts points, delegations which had not yet replied were reminded to do so as soon as

possible. Data on national VAT rules have already been collected and shared with the delegates. Delegates were reminded that Member States will have to (i) include in the SME web portal information on their national legislation and (ii) regularly update the SME scheme implementation questionnaire, elaborated by the Commission services, on how they are going to implement the SME scheme. This information is very useful for other Member States when developing their IT systems.

- extending the *Taxes in Europe Data Base (TEDB)*, to enable Member States to report on their threshold(s) and other data which will also feed into what is to be published on the SME web portal.
 - the development of a new database, *SME-on-the-Web*, to enable verification of the exempt status of SMEs. A draft Privacy statement is under discussion in SCAC. Specifications for the SME-on-the-Web are to be presented in SCIT in April 2024.
 - *National visits* have already been completed with almost all Member States and *conformance tests* are set to run in the period 1 April - 31 December 2024. Both are carried out in the context of the IT implementation of the new rules.
- Exemptions for International Organisations – Electronic exemption certificate/procedure: work is ongoing on the preparation of a legislative proposal by the Commission to transform the VAT and/or Excise Duty exemption certificate into an electronic form and put in place an electronic procedure.
- Adoption of Commission Decision (EU) 2024/775 of 4 March 2024 on relief from import duties and VAT exemption on importation granted for goods to be distributed or made available free of charge to persons fleeing Russia’s military aggression against Ukraine and to persons in need in Ukraine: after the expiration of Commission Decision (EU) 2023/829, five Member States requested the extension of the measure and to that end, Commission Decision (EU) 2024/775 was adopted on 4 March 2024. The current Decision is applicable from 1 January 2024 until 31 December 2024.
- Defence package (COM(2024) 150 final of 5.3.2024 and JOIN(2024) 10 final of 5.3.2024): adopted by the Commission on 5 March 2024 and includes a VAT waiver on EU equipment. In particular, where Member States jointly own the jointly procured equipment through the Structure for European Armament Programme (SEAP) acting as an international organisation, they will be able to benefit from a VAT exemption under Article 151.
- Vouchers: under the rules of the [Voucher Directive](#), which have applied since 1 January 2019, the Commission is obliged to draw up an assessment report on the application of these rules. Since that report is supposed to be based on information obtained from the Member States, such information had been collected and processed and the report is currently being finalised.
- Taxes in Europe Database (TEDB) – VAT form: the four delegations which had not yet updated their VAT form in the TEDB were reminded to do so as soon as possible.

Topical issues in the Council

The Chair briefly mentioned the latest developments in Council:

- VAT in the Digital Age (ViDA): negotiations in Council are ongoing and considerable progress has been made on the three work streams. The Belgian Presidency is working hard to solve the last technical issues before a possible agreement either at the May or June ECOFIN.
- Customs reform, including the VAT proposal (COM(2023) 262 final): negotiations in Council under the Belgian Presidency are ongoing and a joint meeting with customs delegates has taken place in order to coordinate the discussion on the customs and the VAT rules related to e commerce.

1. ADOPTION OF THE AGENDA (Document taxud.c.1(2024)2193508)

The agenda was adopted as proposed.

In view of the recent number of late requests from Member States for topics to be included on the agenda, delegations were reminded that according to Article 2(1) of the Rules of Procedure of the VAT Committee, only consultations or questions for which a written request for inclusion has reached the Chair at least eight weeks before the meeting are included on the agenda. Such a deadline is justified by the need for the Commission services to be able to analyse each request and produce a Working paper on the subject.

2. REPORT ON THE RESULTS OF THE WRITTEN PROCEDURES

2.1. Minutes from the 123rd meeting

The Chair mentioned that the minutes from the 123rd meeting held on 20 November 2023 had been agreed in written procedure and had been published on CIRCABC.

2.2. Guidelines from previous meetings

The Chair stated that since the last meeting on 20 November 2023, the following sets of guidelines had been agreed and made available on CIRCABC and on the Directorate-General's public [website](#).

Guidelines from the 122nd meeting

- The unanimous/ almost unanimous guideline on *Vouchers in the form of city cards* and the interpretation of Articles 30a, 30b and 73a of the VAT Directive (*Document C, WP 1074*).
- The unanimous/ almost unanimous guideline on the *Permanent address or habitual residence of non-EU travellers* and the interpretation of Articles 146(1) and 147(2) of the VAT Directive (*Document A, WP 1065*).

Guidelines from the 123rd meeting

- The almost unanimous (updated) guideline on *SME and fixed establishment* and the interpretation of the new new Articles 284, 284a-284e, 288, 288a, 292a-292d of the VAT Directive and Articles 17(1)(a) and (2), 21(2b), 31(2a), 32(1) and 37a-37b of the VAT Administrative Cooperation Regulation (*Document A, WP 1075*).
- The unanimous (updated) guideline on *SME and the interaction with the normal rules* and the interpretation of the new new Articles 284, 284a-284e, 288, 288a, 292a-292d of the VAT Directive and Articles 17(1)(a) and (2), 21(2b), 31(2a), 32(1) and 37a-37b of the VAT Administrative Cooperation Regulation (*Document B, WP 1076*).

In addition, the Chair indicated that:

- the written procedure on the draft guideline on the *Interaction between the SME scheme, the One-Stop-Shop (OSS) Union scheme and the Import One-Stop-Shop (IOSS) scheme* and the interpretation of Title XII, Chapters 1 and 6 of the VAT Directive of the VAT Directive (*Document C, WP 1077*) was still ongoing;
- the written procedure on the draft guideline on the SME scheme as updated form 1 January 2025 and the interpretation of the new Articles 284, 284a-284e, 288, 288a, 292a-292d of the VAT Directive and Articles 17(1)(a) and (2), 21(2b), 31(2a), 32(1) and 37a-37b of the VAT Administrative Cooperation Regulation expired on 4 March 2024 (*Document D, WP 1078*) was still ongoing;
- the written procedure on the draft guideline on the *VAT treatment of the sales of skin in the secondary market* and the interpretation of Articles 2(1) and 9(1) of the VAT Directive would be launched in the coming days.

3. CONSULTATIONS PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

- 3.1** Origin: Germany
Reference: Article 281
Subject: Flat rate scheme for small enterprises operating under public law
(Document taxud.c.1(2024)2194891 – Working paper No 1085)

The Commission services presented the Working paper on the consultation submitted by Germany regarding the introduction of a simplification measure for the deduction of input tax by public bodies with limited business activity. The consultation is based on Article 281 of the VAT Directive which allows Member States to introduce simplified measures for charging and collecting the VAT to small enterprises. The proposed measure will apply to taxable persons which (i) are bodies governed by public law; (ii) do not have a commercial accounting system, and (iii) have had a taxable turnover of less than EUR 45 000 in the previous year. It will allow eligible public bodies to determine their input tax deduction based on a percentage reduction of their output tax. The flat-rate deduction rate is to be based on the ratio of costs, minus personnel costs and a 20% ‘risk markdown’, to taxable outputs.

In their analysis, the Commission services expressed some doubts whether Article 281 is the best legal basis for the proposed measure as it is not targeted at small enterprises but at certain public bodies. Additionally, the schemes outlined in Chapter 1 of Title XII of the VAT Directive relate to outputs and the general principle of exempting outputs below a certain turnover limit, whereas the proposed measure relates exclusively to an input tax issue. The Commission services thus found that since the envisaged measure specifically deals with deductions, it could better sit within the realm of deductions rather than the special scheme for small enterprises. Finally, the Commission services raised various issues linked to the scope, the formula used and the practical application of the envisaged measure which the German delegation was asked to clarify.

Before opening the floor to all delegations, the Chair invited the German delegation to elaborate on the matters raised in the Working paper.

After thanking the Commission services for the detailed and comprehensive analysis, the German delegation introduced the background of their consultation, explaining that the measure was targeted at bodies governed by public law acting in the general public interest which may also supply services falling within the scope of VAT. They further explained that unlike normal commercial companies, public bodies are subject to different accounting obligations and encounter difficulties in allocating their input tax to the respective output activities which is the reason why the proposed flat-rate simplification measure is envisaged. Finally, the German delegation noted the importance of the points raised in the Commission services' analysis and indicated that they will look into them in detail and, depending on the outcome of their national consultation, may further consult the VAT Committee.

As no delegation asked for the floor, the Chair thanked the German delegation and concluded that the VAT Committee took formal note of their consultation.

3.2 Origin: Slovenia
Reference: Article 11
Subject: VAT grouping
(Document taxud.c.1(2024)2191681 – Working paper No 1083)

The Commission services presented the Working paper and explained that Slovenia intends to introduce, with effect from 1 January 2026, VAT grouping provisions into their legislation. In their analysis, the Commission services made several remarks in respect of the draft Slovenian legislation for which they asked for confirmation or some further clarifications.

The Chair thus invited the Slovenian delegation to clarify the matters raised in the Working paper.

The Slovenian delegation thanked the Commission services for having dealt with their consultation. Regarding the territorial scope of the VAT grouping scheme, they confirmed that the draft Article 5.a(1) of their national law conforms with the respective VAT Committee guidelines and the Commission services' interpretation set out in *section 3.1* of the Working paper, namely that only taxable persons established and fixed establishments located in the territory of Slovenia may become members of a VAT group, so that neither fixed establishments located in other Member States nor the main establishment of a fixed

establishment located in Slovenia can join that VAT group. Regarding the criteria for being eligible to become a member of a group, the Slovenia delegation indicated that only taxable persons meeting the conditions of financial, economic and organisational links are eligible to join a group. Regarding the financial, economic and organisational links, the Slovenian delegation confirmed that all three links must be present simultaneously and be maintained for the entire existence of the group. They also explained that to prevent tax evasion or avoidance, the draft Article 5.a of their national law excludes non-taxable persons from becoming members of a group, based on the option available to Member States under the second paragraph of Article 11. On the optional VAT group membership, the Slovenian delegation thanked the Commission services for raising the issue and explained that their proposed Article 137.h(9) is not very clear and admitted that whilst their original intention had been to introduce compulsory VAT grouping membership for particular members for the current calendar year and the following two calendar years, they will modify the wording of the draft provisions to make VAT grouping optional for the members as well. Finally, in respect of the consequences of joining a VAT group, the Slovenian delegation clarified that upon forming a VAT group the individual identification numbers of its members will temporarily cease to exist so that the only VAT identification number will be that of the VAT group which will also be used in VIES for reporting the group's intra-Community supplies.

None of the other delegations asked for the floor.

The Chair thanked the Slovenian delegation for the explanations and concluded that the VAT Committee took note of the Slovenian consultation under Article 11 of the VAT Directive on VAT grouping.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.1** Origin: Denmark
References: Articles 103, 135, 311 and 371
Subject: Crypto art and VAT
(Document taxud.c.1(2024)1916657 – Working paper No 1080)

The Commission services presented the Working paper that had been drafted following a question submitted by Denmark on the VAT treatment of platform-based trading by private individuals of works of crypto art, in particular whether the supply of works of crypto art can benefit from either the special VAT margin scheme provided for in Article 311 or the exemption for services supplied by artists provided for under Article 371 of the VAT Directive.

At the very outset of their presentation, the Commission services made clear that although Member States may submit to the VAT Committee questions arising from concrete cases, the VAT Committee is not the appropriate forum to settle the cases as such but rather to discuss matters where guidance towards a harmonised interpretation of the VAT Directive is needed. While the matter at stake in the paper comes from a concrete case raised by the Danish delegation, this concrete case only serves as a backdrop to, and illustration of, the issues triggered by the emergence of crypto art that need a harmonised interpretation. Therefore, the views of the Commission services and the opinion of the VAT Committee should be seen as aiming to provide general guidance on the application of VAT rules through a concrete case, rather than adjudicating on the case as presented.

In their analysis, the Commission services took the view that (i) transactions involving works of crypto art do not fall within the scope of the exemption laid down in Article 135(1)(e); (ii) it does not seem possible to consider that the margin scheme for works of art under Article 311(1) can apply to crypto art and neither can a reduced rate be applied to works of crypto art; (iii) it is very doubtful that the exemption for supply of services by artists based on Article 371 could be applied to crypto art as the scope of that so-called standstill provision cannot be extended after 1 January 1978. Since crypto art did not exist back in 1978 or at the time of accession of most of the Member States joining later, Member States could not continue to apply an exemption to something, in this case crypto art, that did not exist at the time. Moreover Annex X, Part B, expressly excludes under point 2(a) ‘*assignments of patents, trademarks and other similar rights*’. As works of crypto art must from a VAT standpoint be categorised as services, the question as to whether works of crypto art constitute ‘other similar rights’ as referred to under point 2(a) of Annex X, Part B, of the VAT Directive is a question that needs to be determined on a case-by-case basis depending on the facts of each transfer.

Before opening the floor to all delegations, the Chair thanked the Danish delegation for raising this important and urgent subject and invited them to comment on the analysis in the Working paper.

The Danish delegation thanked the Commission services for preparing the paper. Whilst they agreed with the Commission services’ analysis regarding the first and the second points, the Danish delegation did not share the analysis regarding the third point as, in their view, crypto art can be considered an artistic service covered by the exemption for supply of services by artists based on Article 371. For them, it is not decisive whether crypto art existed in 1978 but whether it would have been exempt as artistic service if it had existed at the time as it is the artistic service that is exempt and not a particular type of artistic services.

Nine delegations took the floor in the discussion that followed, all thanking the Commission services for the paper and the Danish delegation for asking the question. Almost all delegations agreed with the Commission services’ analysis on all three elements. One delegation agreed with the analysis of the first two points but expressed doubts on the non-applicability of Article 371 to crypto art as, in their view, it is not straightforward to establish whether or not products existed in 1978. One delegation expressed a reservation, stating that they are still examining the paper and clarified that they apply a standstill derogation but not based on Article 371. One delegation indicated that the question whether crypto art may qualify as an artistic service could be looked at in more detail in the future in the context of amending the VAT Directive which, however, is not the purpose of the present discussion. Finally, one delegation stressed that the subject is very important and called for guidelines to be agreed. This delegation also noted the difficulties in determining the place of supply where the identity of the customer is not known and considered the use of statistical data for this purpose, as suggested by some courts, not to be a good solution. In reply, one delegation explained that to cope with the anonymity of the customer, they rely on their national rules concerning the burden of proof. As such, the supplier must demonstrate that the place of supply, in accordance with the relevant place of supply rule, is not within their Member State. Consequently, when the place of supply rule depends on where the customer is established and the supplier cannot provide proof thereof, then the customer will be considered to be established in their Member State.

In reply to comments made in relation to the scope of Article 371, the Commission services stated that they could not agree with the Danish delegation's interpretation of a standstill derogation and its nature.

The Chair thanked the delegations for their contributions, indicating that beyond work on finding the correct VAT treatment of crypto art, there are issues on how to concretely tax and enforce the rules in practice considering the anonymity of the customers which leaves reflections on the further evolution of the VAT system to tackle this type of transactions. The Chair then concluded that in view of the large convergence of views, the Commission services would prepare draft guidelines on the subject.

- 4.2** Origin: Denmark
References: Article 132(1)(i) and (j)
Subject: School and university education – Cases C-449/17, A&G
Fahrschul, C-47/19, HA, C-373/19, Dubrovin & Tröger
Aquatics
(Document taxud.c.1(2024)2192424 – Working paper No 1084)

The Commission services presented the Working paper that had been drafted following a question submitted by Denmark on the application of the VAT exemption for school and university education under Article 132(1)(i) and (j) of the VAT Directive in relation to teaching offered by self-governing evening schools, private and municipal music schools, private dance schools, private gyms or similar entities, in view of the judgments by the Court of Justice of the European Union (CJEU) in cases *A&G Fahrschul-Akademie* (C-449/17), *Finanzamt Hamburg-Barmbek-Uhlenhorst* (C-47/19) and *Dubrovin&Tröger-Aquatics* (C-373/19).

In their submission, Denmark was of the opinion that following these rulings, teaching offered by self-governing evening schools, private and municipal music schools, private dance schools, private gyms or similar entities, as well as school related activities such as school chess offered by associations, which currently are generally exempted in Denmark, can no longer be covered by the exemption for school and university education under Article 132(1)(i) and (j). For this reason, Denmark seeks the opinion of the VAT Committee as they intend to change their practice in respect of the application of that exemption.

In their presentation, the Commission services outlined in detail the subject matter and the three rulings of the CJEU in which the latter essentially found that although the tuition referred to therein (driving tuition, surfing and sailing courses as well as swimming classes) covered a wide range of practical and theoretical knowledge or was of undoubted importance and in the general interest, it nevertheless constituted specialised tuition, which does not amount to the transfer of knowledge and skills covering a wide and diversified set of subjects or to their furthering and development, which is characteristic of school or university education. The Commission services then explained the rationale behind the exemption in Article 132(1)(i) and (j) of school or university education and outlined the impact of the recent jurisprudence of the CJEU on the activities inquired by the Danish delegation.

In the opinion of the Commission services: (i) the above jurisprudence cannot necessarily be generalised to such extent as to conclude that other services, such as educational services provided in evening schools, music schools, dance or ballet schools, or fitness

and sports facilities, would all per se fall out of the integrated educational system as referred to by the CJEU; (ii) nonetheless, in practice, tuition given in evening schools, music and dance/ballet schools as well as in fitness facilities may in many cases be of a recreational nature only, and thus fall out of the exemption of Article 132(1)(i) and (j); (iii) it may at first sight appear that some facilities do not form part of the integrated educational system common to all Member States that is covered by Article 132(1)(i) and (j). However, the requirements laid down in the aforementioned provisions, as interpreted by the CJEU, need to be considered in their entirety and in the context of the concrete case and in relation to the individual service provided.

The Commission services also stressed that Article 132(1)(i) and (j) refers not only to school or university education but also to vocational training and retraining which may also be considered. In addition, they pointed to the possibility for some of the activities to fall under the exemption for the supply of certain services closely linked to sport or physical education by non-profit making organisations (Article 132(1)(m)) or for the supply of certain cultural services and goods closely linked thereto (Article 132(1)(n)) which needs to be assessed in line with the prerequisites of the respective provision in the individual case. Finally, they also indicated that Member States may in line with Article 133 make the granting to bodies other than those governed by public law subject in each individual case to one or more additional conditions, as laid out in that provision.

The Chair thanked the Danish delegation and invited them to comment on the analysis in the Working paper.

The Danish delegation thanked the Commission services for the paper and stated that they could to a large extent agree that a case-by-case assessment is necessary. They also agreed that vocational training as well as the exemptions under Article 132(1)(m) and (n) and Article 133 have to be considered. Additionally, while their focus had been on the exemption related to “school and university education” under Article 132(1)(i) and (j), they were also interested to hear from the Commission services and other delegations on the relevance and applicability of the exemption for “children’s or young people’s education” under Article 132(1)(i), giving as example music schools where classes are directed at children and young people of a certain age and where the tuition is provided outside the ordinary school system, and stating that, to their knowledge, the CJEU had not yet had the occasion to shed light on the scope of the term “children’s or young people’s education” within Article 132(1)(i). Finally, they expressed their will to agree guidelines, if possible, to give some guidance on the subject.

Seven delegations asked for the floor in the discussion that followed thanking the Commission services for the thorough and comprehensive analysis in the paper and for the presentation itself.

Almost all of these delegations agreed that a case-by-case assessment is necessary. In view of the differences in the national educational systems, these delegations were of the opinion that it is rather up to Member States to establish their own practice reflecting the particular characteristics of their national educational system and could thus not see the added value and usefulness of agreeing common guidelines on the subject. Some delegations acknowledged, however, that there may be cases where it could be very difficult to establish and implement in practice whether or not certain educational activities are purely recreational or fall within the integrated general system of education.

One delegation stated that they were still analysing the paper but nevertheless expressed a doubt on the meaning of case-by-case assessment and considered it too burdensome and complicated to analyse the activity of individual schools on a case-by-case basis which would also run counter to the objective of simplification. This delegation was interested, like the Danish delegation, to hear the views regarding the exemption for “children’s or young people’s education” under Article 132(1)(i).

In reply to the comments made, the Commission services stated that the CJEU has not yet had the occasion to shed light in its jurisprudence on the exemption related to “children’s or young people’s education”. On the scope of the term “school and university education” in points (i) and (j) of Article 132(1), the Commission services stated that the CJEU had already clarified in the *Eulitz* case (C-473/08) that school and university education is covered by both, points (i) and (j) of Article 132(1), but with different conditions to be fulfilled. Finally, on the criterion of recreational, the Commission services indicated that the CJEU had not (yet) shed any light on what ‘recreational’ means.

The Chair thanked all delegations for the fruitful discussion and concluded that guidelines are not considered useful given the differences in the educational systems across Member States.

4.3 Origin: Slovakia
References: Articles 2, 9 and 13
Subject: Activities carried out by bodies governed by public law
(Document taxud.c.1(2024)2145677 – Working paper No 1082)

The Commission services presented the Working paper that had been drafted following a question submitted by Slovakia related to the application of Articles 2(1), 9(1) and 13(1) of the VAT Directive and in particular the interpretation of the terms ‘economic activity’, ‘activities or transactions in which they engage as public authorities’ and ‘significant distortions of competition’ in relation to public bodies.

In their presentation, the Commission services started by stressing that the views of the Commission services and the opinion of the VAT Committee should be seen as aiming to provide general guidance on the application of the VAT rules through a concrete case, rather than adjudicating on the case as presented. Afterwards, they explained the logical sequence of criteria (‘cascade reasoning’) established in the paper for the application of the various provisions of the VAT Directive in relation to activities carried out by public bodies, based on the analysis of the relevant CJEU case-law and past discussions of the VAT Committee. The Commission services underlined that this cascade reasoning cannot be generalised per se and should be applied on a case-by-case basis, where a thorough assessment of the relevant facts is required. In the opinion of the Commission services, the question whether or not the special scheme for public bodies pursuant to Article 13 is applicable only arises if (i) the activities performed by these bodies qualify as an economic activity subject to VAT based on specific criteria and (ii) these bodies engage in these activities as public authorities. The reply to such a question always requires a case-by-case analysis.

Before opening the floor to all delegations, the Chair thanked the Slovak delegation for raising the question and invited them to share their views on the analysis in the Working paper.

The Slovak delegation thanked the Commission services for the comprehensive analysis and the guidance related to the assessment test to apply to each individual case. They acknowledged the complexity of the subject and the difficulty of designing one general solution but nonetheless expressed a desire to agree guidelines covering the assessment criteria set out in the Working paper.

Three delegations took the floor in the discussion that followed thanking the Commission services for the Working paper.

One delegation stressed the importance of the subject of taxation of public bodies, in particular in the framework of cooperation between municipalities. While acknowledging that the VAT Committee is not the right forum, this delegation appealed to the Commission services to look to change the VAT Directive. This delegation supported the Commission services' analysis, indicating that they would follow a similar system of scrutiny but focus more on the profit motive which they consider a key element in relation to Article 9.

Another delegation fully agreed with the Commission services' analysis on the subject of 'direct link' but were uncertain how much attention should be attached to the ruling in *Gmina O* (C-612/21) as they wondered whether the percentage of costs covered by the consideration should be taken into account and asked the Commission services' view on this aspect. This delegation also fully shared the Commission services' interpretation of Article 13(2) of the VAT Directive. They wondered, and asked for the Commission services' view on, how the market distortion clause should be applied where the private economic operators who operate in the same sector as public bodies also benefit from an exemption.

One delegation stated that they are still examining the paper.

In reply to the comments made, the Commission services explained that in C-246/08 *Commission v Finland* the decisive element was not the percentage of the remuneration paid but rather the direct link. In C-612/21 *Gmina O* there was on the one hand a specific scheme where the municipality was organising the installation of renewable energy systems via a subcontractor and on the other hand, the payment covered at most one quarter of the costs incurred, the balance being financed by public funds. The conclusion of this ruling does not affect the general criterion that there should always be a direct link between the transactions supplied and the consideration received or to be received for a supply to be considered a supply for consideration. Regarding the remark related to Article 13(2), the Commission services indicated that there is no definitive reply as there would always be some conditions. They explained that under Article 13(2) a public body carrying out exempt activities can be treated as a non-taxable person thus resulting in its supplies being out of scope (instead of taxable but exempt). In their view, distortions would normally arise between out of scope and taxed or taxed and exempt activities.

Finally, the Chair conceded that the existing legal framework is far from being clear, as also confirmed by the extensive case-law of the CJEU on the subject, and recalled the

work undertaken by the Commission services in the past with a view to amend the existing legal framework which, however, had been stopped due to the lack of political support from Member States for a harmonised treatment of the activities of public bodies. The Chair concluded the discussion stating that with the logical sequence of criteria having been set out, it does not seem appropriate nor necessary to prepare draft guidelines on the subject.

5. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 5.1** Origin: Commission
References: New Articles 284, 284a-284e, 288, 288am 292a-292d of the VAT Directive
Articles 17(1)(a) and (2), 21(2b), 31(2a), 32(1) and 37a-37b of the VAT Administrative Cooperation Regulation
Subject: The SME scheme updated as of 1 January 2025 – follow-up (Document taxud.c.1(2023)11242551 – Working paper No 1073)

In introducing the subject, the Commission services pointed out the need to continue the discussion started during the last VAT Committee meeting of 20 November 2023 on the functioning of the new SME scheme coming into place on 1 January 2025 in order to address the outstanding issues that attracted most attention and needed further clarification so that work on drawing up draft guidelines could be finalised.

The discussion focused on the following issues in need of further clarification: access to the cross-border exemption and the requirement for the taxable person to submit a prior notification; updates to a prior notification; corrections to the prior notification; reporting related to the cross-border exemption; corrections to the quarterly reports; non-compliance with reporting obligations; the issue of deduction; cessation and commencement date of the cross-border exemption; and the (de)activation of the EX number.

In conclusion, the Chair thanked the delegations for their contributions, indicated that the Commission services would finalise the draft guidelines and stressed the need for a flexible and pragmatic approach on the part of Member States with a view to arriving, to the greatest extent possible, at unanimous guidelines in order to ensure uniform application of the new rules across Member States to the benefit of the European small enterprises.

6. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

- 6.1** Origin: Commission
Subject: Case-law – Recent Judgments of the Court of Justice of the European Union
(Document taxud.c.1(2024)2068588 – Information paper)

The Chair drew delegations' attention to the Information paper with the overview of judgments handed down since the cut-off date for the previous meeting's overview paper (12 rulings covering the period from 16 October 2023 until 15 March 2024). He also

reminded that requests for discussion of a case in a future meeting need to be accompanied by the interested delegation's own analysis of the matter on the basis of which the Commission services will establish a Working paper.

No delegation asked for the floor and the Chair concluded the discussion.

7. ANY OTHER BUSINESS

7.1 Origin: Commission
Reference: Article 211
Subject: VAT aspects of centralised clearance for customs upon importation – update
(Document taxud.c.1(2024)2195127 – Working paper No 924 REV10)

The Commission services explained that this is the tenth update of the Working paper and that delegations are requested:

- (i) to take note of the updated information on the evolution of the UCC CCI electronic system and to check whether the information for their Member State in Annex 2 is still correct;
- (ii) with a view to how exchanges of information, as described in Sections 3.2 and 3.3, are taking place, indicate how they are preparing for Phase 1 and if there is anything that should be clarified at Commission level; and
- (iii) indicate how postponed accounting and deferred payment arrangements operate in Member States that allow these arrangements, who can avail of these arrangements and what are the conditions.

The Chair reminded delegations of the need to send any update, as well as their replies to the above mentioned three points, in writing after the meeting and concluded the discussion on this item.

7.2 Origin: Commission
Subject: Informing the VAT Committee of options exercised under Articles 80, 101a, 167a, 199 and 199a of Directive 2006/112/EC
(Document taxud.c.1(2024)2193080 – Information paper)

The Chair briefly drew delegations' attention to the Information paper regarding a recently notified option exercised under Article 199a(1) of the VAT Directive, thanked the delegation concerned and invited all delegations to notify in due time whenever necessary.

No delegation asked for the floor and the Chair concluded the discussion.

Other points raised during the meeting

- The Commission services made a presentation on the subject of the '*Exceptional direct reimbursement of VAT for the acquisition of disinfection robots by the European Commission and donated to EU hospitals*'. The disinfection robots were purchased before the adoption of the [Buy and Donate Directive](#) and thus VAT was paid on those

robots upon acquisition which as a result of the retroactive effective ultimately is not due. Member States were asked to identify, by 15 May 2024, the competent authorities in their national administration, for the next steps related to the exceptional direct reimbursement of the VAT paid on the disinfection robots acquired by the European Commission and donated to EU hospitals, and indicate a contact point and contact details by email.

- Croatia briefly informed delegations on the subject of their question ‘*VAT treatment of transactions whose participants are users of liquefied natural gas terminal services*’, which had been submitted too late for the Commission services to be able to deal with and include it on the Agenda of the present meeting, and stressed that they look forward to discussing the issue at the next meeting of the VAT Committee.

Conclusion

The Chair closed the meeting by thanking the delegations for their participation in the discussions.

LIST OF PARTICIPANTS

BELGIQUE/BELGIË/BELGIUM	Ministry of Finance
БЪЛГАРИЯ/BULGARIA	Ministry of Finance National Revenue Agency
ČESKO/CZECHIA	Ministry of Finance
DANMARK/DENMARK	Ministry of Taxation Tax Agency
DEUTSCHLAND/GERMANY	Federal Ministry of Finance
EESTI/ESTONIA	Ministry of Finance
ÉIRE/IRELAND	Revenue Commissioners
ΕΛΛΑΔΑ/GREECE	Independent Authority for Public Revenues
ESPAÑA/SPAIN	Ministry of Finance Permanent Representation
FRANCE	Ministry of Finance
HRVATSKA/CROATIA	Tax Administration Permanent Representation
ITALIA/ITALY	Ministry of Economy and Finance
ΚΥΠΡΟΣ/CYPRUS	Ministry of Finance
LATVIJA/LATVIA	Ministry of Finance State Revenue Service
LIETUVA/LITHUANIA	Ministry of Finance Tax Administration
LUXEMBOURG	Administration de l'enregistrement, des domaines et de la TVA
MAGYARORSZÁG/HUNGARY	Ministry of Finance
MALTA	Ministry of Finance and Employment
NEDERLAND/NETHERLANDS	Ministry of Finance

ÖSTERREICH/AUSTRIA	Federal Ministry of Finance
POLSKA/POLAND	Ministry of Finance
PORTUGAL	Ministry of Finance
ROMÂNIA/ROMANIA	Ministry of Finance
SLOVENIJA/SLOVENIA	Ministry of Finance
SLOVENSKO/SLOVAKIA	Ministry of Finance
SUOMI/FINLAND	Ministry of Finance Tax Administration
SVERIGE/SWEDEN	Ministry of Finance Tax Authority
EUROPEAN COMMISSION	