European Commission

Explanatory Meeting Albania and North Macedonia
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Administrative cooperation in the field of VAT

DG Taxation and Customs Union
Indirect taxation and tax administration
Unit C4 – Sector A

European Commission

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

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Why administrative cooperation in the field of VAT?

- VAT = consumption tax on the supply of goods and services, introduced in 1968
- EU: free movement of goods and services
  - removal of the tax borders between Member States in 1993
- **VAT fraud** is a major concern within the EU
  - Distortion of the internal market
  - Unfair competition
  - Less revenues for budgets of Member States and European Union

Why administrative cooperation in the field of VAT?

- Therefore:
  - need to control the correct application of the VAT rules; and
  - **need for administrative cooperation**
- **1979**: First EU rules on exchange of VAT information between Member States
- **1993**: Removal of tax borders between EU Member States
  - Reg. 218/92 to strengthen the exchange of information for intra-Community supplies and acquisitions of goods
  - main innovation: VIES (VAT Information Exchange System)

Legal framework

- **Council Regulation (EU) No 904/2010** of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT
  - Lays down **rules and procedures** for cooperation and information exchanges
- **Council Regulation (EU) No 2018/1541** of 2 October 2018 amending Council Regulation (EU) No 904/2010
  - Reinforcement of instruments to fight VAT fraud

Legal framework

- **Commission Implementing Regulation (EU) No 79/2012** of 31 January 2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010

- **Commission Implementing Regulation (EU) No 815/2012** of 13 September 2012 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 (special scheme for Telecommunications, Broadcasting and Electronic (TBE) services – MOSS - to be soon adapted to e-commerce package)

- **Agreement between the EU and Norway** on administrative cooperation, combating fraud and recovery of claims in the field of VAT (OJ L 195, 01.08.2018, p. 1)

Instruments for administrative cooperation

- ***Exchange of information***
  - On request (Articles 7 to 12)
  - Without prior request (Articles 13 to 15) + Feedback (Article 16)

- ***Request for administrative notification*** *(Article 25 to 27)*
- ***Presence of tax officials*** *(Article 28)*
  - Administrative offices
  - Administrative enquires
- ***Simultaneous controls*** *(Article 29)*
- ***Eurofisc*** *(Article 33 to 37)*

Exchange of information on request

- Request for information and also for a specific administrative enquiry **(Art. 7)**
- Requested authority **shall** communicate information requested
- Administrative enquiry:
  - Mandatory for cases mentioned in Annex 1 (distance selling, immovable property, TBE services)
  - Limitation of cases where Member States may refuse to carry out administrative enquiry
  - Always date and value of relevant supplies
  - Mandatory administrative enquiries (Art. 7. 4a)

Exchange of information on request

What?

Any information that may help to:

- effect a correct assessment of VAT
- monitor the correct application of VAT, particularly on intra-Community transactions
- combat VAT fraud

Exchange of information on request

By whom? (Art.3 to 6)

- **Competent authorities** in the Member States
- **Requesting/requested authority**
  - Central liaison office (CLO) (responsible for contacts with other MS)
  - Liaison department (designated to exchange directly information)
  - Any 'competent official' (authorised to exchange directly information)

Exchange of information on request

How? (Art. 8)

- By means of a **standard form** adopted by the SCAC Committee
- By other means **BUT** only in exceptional cases where the request includes the reasons for which the requesting authority considers the standard form not to be appropriate
- By **electronic means** (as far as possible) – details adopted by Comitology

Exchange of information on request

Timeframe? (Art. 10 to 12)

- As quickly as possible
- 3 Months maximum, but
- 1 month maximum if requested authority is already in possession of requested information
- Or specific timeline agreed between the requested and the requesting authorities

Mandatory administrative enquiries (art. 7. 4a)

- Upon request of two Member States
- On the amount declared by a taxable person
  - established in the requested Member State
  - With VAT liabilities in the requesting Member States
- <u>The administrative enquiry cannot be refused</u>
- Upon request of the requested Member State, officials from the requesting Member States shall participate in the administrative enquiry

Exchange of information without prior request (art. 13 to 15)

What? (art. 13)

Any information that may help to:

- effect a correct assessment of VAT
- monitor the correct application of VAT, particularly on intra-Community transactions
- combat VAT fraud

In the following cases…

Cases

- Where taxation takes place in MS of destination and information from MS of origin is necessary for control purposes by MS of destination
- Where a breach of VAT legislation has been committed or is likely to have been committed in the other MS
- Where there is a risk of tax loss in the other MS

Exchange of information without prior request

By whom? (art. 3 to 6)

- **Competent authorities** in the Member States
- **Requesting/requested authority**
  - Central liaison office (CLO) (responsible for contacts with other MS)
  - Liaison department (designated to exchange directly information)
  - Any 'competent official' (authorised to exchange directly information)

Exchange of information without prior request

How?

Either

- **Automatic exchange** of information **(art. 14)**; *or*
- **Spontaneous exchange** of information **(art. 15)**

Automatic exchange of information (art. 14)

- Categories of information are defined in Commission Implementing Regulation (EU) No 79/2012:
  - information on non-established traders (allocation of VAT numbers; VAT refunds)
  - information on intra-Community supplies of new means of transport
- MOSS, e-commerce
- Frequency of exchange for each category and practical arrangements (determined by in SCAC Committee)

Spontaneous exchange of information (art. 15)

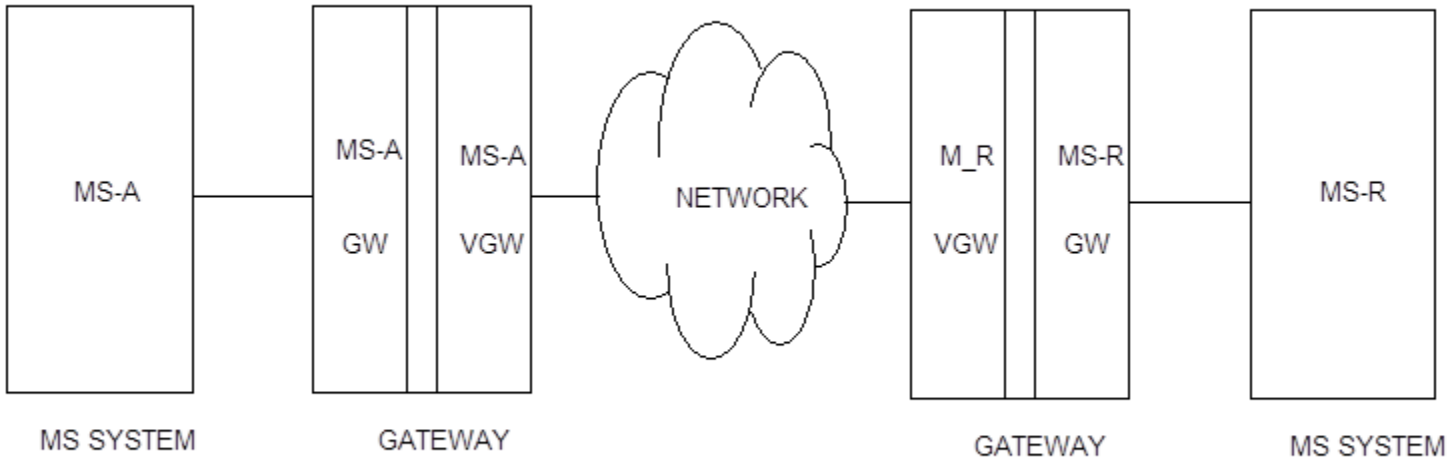
- **Any information** *('that may help to…')* which has not been forwarded under the automatic exchange of information of which a MS is aware and which it considers may be useful to the other MS
- By means of a **standard form** adopted by the SCAC Committee
- By **electronic means** (as far as possible) – details adopted by Comitology

Automated access (art. 17 to 24)

- Data to be made accessible without delay via the electronic system (art. 17 and 21)
  - VAT registries (VAT identification information)
  - Sales listings
  - MOSS information

Exchange specific to IC-transactions

- *VIES = **V**AT **I**nformation **E**xchange **S**ystem:*



Access to customs and vehicle registration information (art. 17, 21, 21a)

- From 01/01/2020: certain customs information (art. 17. 1. (f) and 21. 2a)
- From 01/01/2020: vehicle registration information (for Eurofisc liaison officials only) (art. 21a)

Other tools for administrative cooperation

- On a voluntary basis
  - Presence in the administrative offices of another Member State (art. 28. 1)
  - Participation during administrative enquiries carried out in another MS (art. 28. 2)
  - Administrative enquiries carried out jointly (art. 28. 2a)
  - Simultaneous controls (art. 29)
  - Eurofisc (art. 33 to 36)
- Request for administrative notification (art. 25 to 27)

Simultaneous controls (art. 29)

- A coordinated control of the tax liability of one or more taxable persons organised by two or more participating countries, which includes at least one Member State
- whenever such controls would appear to be more effective than controls carried out by only one Member State
- MS tax administrations carry out part of an cross border audit within their jurisdiction

Presence in administrative offices and during administrative enquiries (art. 28. 1 and 28. 2)

- Presence in administrative offices
- Participation in administrative enquiries
- Note: the administrative enquiry itself is carried out exclusively by officials of the requested authority

Administrative enquiries carried out jointly (art. 28. 2a)

- Enquiries carried out jointly by officials from both requested and requesting Member States
- Under the direction and according to the legislation of the requested Member State
- Same access to premises and documents
- Officials from the requesting Member States have the possibility to interview taxpayers and to exercise inspection powers if so permitted under the legislation of the requested Member State
- Possibility to draft a common enquiry report

Request for administrative notification (art. 25 to 27)

- The authority of a Member State
- can be requested to notify all instruments and decisions of the applicant authority of another Member State,
- which concern the application of VAT legislation in the territory of the applicant Member State.

EUROFISC (art. 33 to 36)

- Multilateral cooperation tool for combating VAT fraud
- A network for the swift exchange, processing and analysis of targeted information on cross- border fraud between Member States and for the coordination of any follow-up actions (art. 33)
- Organised in different 'working fields' (6 at the moment), each of them focused on a specific cross-border fraud area

EUROFISC - tasks (art. 33)

- Establish a multilateral early warning mechanism for combating VAT fraud
- Carry out and coordinate the swift multilateral exchange, and the joint processing and analysis of targeted data in the subject areas in which Eurofisc will operate (working fields)
- Coordinate the work of the Eurofisc liaison officials of the participating Member States in acting on warnings received
- Coordinate administrative enquiries of fraud indentified by the Eurofisc liaison officials
- Cooperation with law enforcement authorities at EU level **(art. 36. 3)**

Provisions concerning the special schemes for e-commerce (art. 43 to 47)

Applicable from 01/01/2015 to 31/12/2020

- Transmission of information by the Member State of identification to the other Member States concerned:
  - related to the identification of the non EU established trader
  - related to the returns submitted by the non EU established trader
- Transmission of the amounts paid by the non EU established trader
- Commission implementing Regulation 815/2012: detailed rules as regards the special schemes for e-commerce B2C
  - Content of transmitted information on identification and VAT returns
  - Applicable as of 1/1/2015

Provisions concerning the special schemes for e-commerce (art. 47a to 47l)

Applicable from 01/01/2021

- Transmission of information by the Member State of identification to the other Member States concerned:
  - related to the identification of the non EU established trader
  - related to the returns submitted by the non EU established trader
- Transmission of the amounts paid by the non EU established trader
- Control of transactions of taxable persons
  - Control of VAT identification number upon import
  - Request for data records
- Commission implementing Regulation 815/2012: being amended

EU-NO agreement

- For administrative cooperation in VAT, including recovery of VAT
- Provisions of the EU/NO agreement mirror provisions of Regulation 904/2010 before the 2018 amendments

Conclusion

- *Legislation provides **lots of possibilities** to exchange information. Not only exchange of information*
- *The use of standard forms and the electronic exchange system allow a rapid exchange*
- *Three different automated access to information for a more efficient action*
- ***Eurofisc** is an efficient tool in the fight against VAT fraud*
- ***Fiscalis** programme for financing, in particular for IT developments*
- *Practical assistance by **SCAC (Committee) and SCIT (sub-committee on IT matters)***

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Thank you for your attention!

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