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Preventing Double Taxation through Administrative Cooperation in VAT

by

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Summary

This paper analyses the role of administrative cooperation in the European VAT system. It examines, to what extent Regulation 904/2010 obliges Member States to prevent double taxation issues in VAT and how the system of administrative cooperation could be amended to ensure a correct assessment of VAT taking into account other resolution mechanisms.

The supporting role administrative cooperation has to the VAT Directive necessarily implies its duty to prevent double taxation issues, especially having regard to the aim of establishing an internal market and ensuring coherence with the principle of neutrality.

The current system generally allows for an exchange of information between Member States but does not impose an obligation for the tax administrations to come to an agreement concerning the place of supply of a transaction. This is confirmed in the judgements *WebMindLicenses* and *KrakVet* of the European Court of Justice.

An analysis of the applicable resolution mechanisms in VAT shows the need for a comprehensive tool that provides legal certainty for the taxpayer. The author establishes, that in theory, the framework of administrative cooperation provides for the right prerequisites to serve as a resolution mechanism for double taxation.

On the basis of these findings, the paper presents several proposals to improve the scope of administrative cooperation. This includes the introduction of a broader scope of automatic exchange as well as the dialogue between tax administrations. Those measures could strengthen cooperation and trust between Member States, establishing a unified resolution mechanism for double taxation. The proposals are supported by the introduction of a consolidated European VAT administration which uses the analysis of big data and centralized resources to advance the efficiency of administrative cooperation in the European Union.

Preface

This research is performed during the master studies at the School of Economics and Management, Department of Business Law, Lund University.

I would first like to thank my supervisor Sigrid Hemels for her constructive feedback and support in the writing of this thesis. Her passionate guest lecture on the relevance of administrative cooperation on direct taxation inspired the topic of this thesis.

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Abbreviation list

AG	Advocate General
Art.	Article(s)
Commission	European Commission
DAC	Directive on Administrative Cooperation
ECJ, the Court	Court of Justice of the European Union
EU	European Union
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-Operation and Development
Para/Paras	Paragraph/Paragraphs
Regulation 904/2010/ The Regulation	Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax [2010] OJ L 268/1
TBE	Telecommunication, Broadcasting or Electronically supplied
TFEU	Treaty on the Functioning of the European Union
VAT	Value Added Tax
VAT Directive	Council Directive 2006/112/EC on the common system of value added tax of 28 November 2006
VIES	VAT Information Exchange System

1 Introduction

1.1 Background

In 2020, the EU VAT Forum published a report on the 'Prevention and Solution of VAT Double Taxation Dispute' in which it presents the issue of double taxation and points out the lack of effective resolution mechanisms in the European value added tax (VAT) system.[1] While in direct taxation double tax treaties and other instruments prevent double taxation through clear rules which guide the allocation of taxing rights between Member States, in VAT the establishment of the correct place of supply is based on a non-fully harmonized system.[2]

In two recent cases concerning double taxation before the Court of Justice of the European Union (ECJ, the Court), questions concerning the role of administrative cooperation to resolve the issue were raised. In *WebMindLicenses*, the ECJ inferred an obligation for a Member State to send a request for information to prevent double taxation.[3] In *KrakVet Marek Batko* (*KrakVet*), the most recent judgement concerning administrative cooperation, however, the Court did not extend this path and accepted double taxation by not inferring an obligation for Member States to cooperate to avoid double taxation.[4]

In the context of the European VAT system, which aspires close cooperation between the Member States, this decision for taxation in sovereignty seems surprising. The current framework of administrative cooperation generally allows for the exchange of information between tax administrations to enable a correct assessment of VAT.[5] However, this might not be sufficient to ultimately resolve double taxation issues. While it is not obvious, how far the scope of cooperation reaches from the wording of the provisions, jurisprudence conveys a seemingly insignificant power to Regulation 904/2010 on administrative cooperation (Regulation 904/2010, the Regulation) to resolve double taxation issues.[6]

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[1] EU VAT Forum 'Prevention and Solution of VAT Double Taxation Dispute' (2020) <https://ec.europa.eu/taxation_customs/sites/taxation/files/01-2020-executive-note-eu-vat_forum.pdf> accessed 19 April 2021.

[2] Michael Lang, '*Introduction to the Law of Double Taxation Conventions'* (2nd edn, IBFD 2013) <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/idtc2012_c01> accessed 15 May 2021 Ch1; see also a proposal for double tax conventions in VAT: Thomas Ecker, *'A VAT/GST Model Convention'* (IBFD 2013).

[3] Case C-419/14 *WebMindLicenses Kft. v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Föigazgatóság* [2015] ECR I-832.

[4] Case C-276/18 *KrakVet Marek Batko sp.k v Nemzeti Adó-és Vámhivatal Fellebbviteli Igazgatósága* [2020] ECR I-485.

[5] Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax [2010] OJ L 268/1 (Regulation 904/2010, the Regulation).

[6] For a more detailed analysis see chapter 4.

1.2 Research question and aim

The research question of this thesis is: To what extent does Regulation 904/2010 oblige Member States to prevent double taxation issues in VAT and how could the system of administrative cooperation be amended to ensure a correct assessment of VAT taking into account other resolution mechanisms?

This paper seeks to establish the suitability of administrative cooperation as an efficient mechanism to resolve double tax burdens considering the incompatibility of double taxation with the European VAT system. It aims at demonstrating the difficulty to resolve double taxation by highlighting the ineffectiveness of the other resolution mechanisms in place to address the problem. This analysis of the current system intends to show the need for improvement in the scope of administrative cooperation. The last part of the paper focuses on demonstrating the opportunities to increase cooperation between Member States with a special focus on digital technologies.

1.3 Method and material

This paper uses the legal dogmatic method. It seeks to examine the legal question by analyzing current EU legislation as well as jurisprudence of the Court and literature on the matter.

In literature, double taxation in VAT has received increasing interest and in that context the lack of a functioning resolution mechanism has been pointed out by scholars as well as it has shown in jurisprudence. Artinger and Ismer discuss causes of double taxation and analyze measures to avoid double taxation in VAT.[7] The EU VAT Forum defines the impact and meaning of double taxation in VAT and evaluates the available resolution mechanisms to resolve double taxation issues.[8] In the analysis of other resolution mechanisms, the EU VAT Forum notices administrative cooperation as a possible means to tackle the issue in the future but does not go into detail.[9] The European Commission (Commission) assesses the effectiveness of Regulation 904/2010 and presents possible future developments.[10]

In the judgements, the role of administrative cooperation in the context of double taxation is discussed. De Troyer analyzes the impact of the *WebMindLicenses* judgement and demonstrates issues in the system of

[7] Katharina Artinger, Roland Ismer 'International Double Taxation Under VAT: Causes and Possible Solutions' (2017) 45 Intertax 593, 594.
[8] EU VAT Forum (n 1).
[9] Ibid 58.
[10] Commission, 'Impact Assessment Accompanying the Document Amended Proposal for a Council Regulation Amending Regulation (EU) No 904/2010 as Regards Measures to Strengthen Administrative Cooperation in the Field of Value Added Tax' SWD (2017) 428 final.

administrative cooperation in VAT.[11] Traversa examines the effect of the *KrakVet* judgement.[12]

In the research for effective mechanisms to combat double taxation, the capability of administrative cooperation has only been examined to a limited extent. Hence, this paper seeks to analyze which role administrative cooperation could potentially take in the VAT framework to combat double taxation.

1.4 Delimitation

The main focus of this paper is on the position of administrative cooperation as a means to prevent double taxation issues in VAT between Member States of the EU. The term 'prevention' in that regard covers not only the literal prevention of double taxation but also resolving double taxation issues to prevent a lasting double tax burden on a taxpayer. This paper does not provide for a detailed portrayal of double taxation in VAT, in particular, the principle of neutrality is only mentioned briefly. While it is important not to disregard non-taxation as an inconsistency in the European VAT system, this paper will predominantly focus on double taxation.[13] The paper does not specifically discuss how administrative cooperation can help to combat fraud since that issue has already been addressed in detail in literature and legislation.[14] Fraud is only touched upon in the context of *WebMindLicenses* as far it concerns double taxation issues. The analysis of Regulation 904/2010 is restricted to the provisions referred to by the ECJ.

Due to the limited length of this paper, the proposed approaches for improvement in administrative cooperation do not provide for a comprehensive solution. The proposals are merely theoretical concepts and should serve as impulses for change. In that regard, taxpayer's rights in the context of information exchange are also not taken into account.

1.5 Outline

Chapter 2 provides for an overview of the double taxation issues arising from the current VAT system. Chapter 3 describes the development of administrative cooperation in VAT and examines the aims of Regulation 904/2010 as well as in how far the *status quo* in administrative cooperation is able to address the intentions of the VAT Directive. The fourth section analyses the consequences of the *WebMindLicenses* judgement. It further

[11] Ilse de Troyer 'Administrative Cooperation and Recovery of Taxes' in Christiana HJI Panayi, Werner Haslehner and Edoardo Traversa (eds), *Research Handbook on European Union Taxation Law* (Edward Elgar Publishing 2020); Ilse de Troyer, 'International Cooperation to Avoid Double Taxation in the Field of VAT: Does the Court of Justice Produce a Revolution?' (2016) 3 EC Tax Review 170.

[12] Edoardo Traversa, 'KrakVet Marek Batko (Case C-276/18): Against All Odds, VAT Double Taxation Exists in the EU' (Kluwer International Tax Blog, 27 July 2020) <http://kluwertaxblog.com/2020/07/27/krakvet-marek-batko-case-c-276-18-against-all-odds-vat-double-taxation-exists-in-the-eu/> accessed 15 March 2021.

[13] For a more extensive analysis of non-taxation in VAT see for example: Rebecca Millar, 'Intentional and Unintentional Double Non-Taxation Issues in VAT' (Sydney Law School Research Paper No. 09/45, 9 June 2009) < http://ssrn.com/abstract=1416582> accessed 20 May 2021.

[14] See for example: Commission 428 (n 10).

examines the *KrakVet* judgement in the light of Regulation 904/2010 and the outcome of *WebMindLicenses*. In Chapter 5 the existing mechanisms to resolve double taxation issues in VAT are presented and the compatibility of Regulation 904/2010 as a resolution mechanism is analysed. Chapter 6 introduces proposals for an extension of the scope of administrative cooperation as well as a common European VAT administration. In Chapter 7 the results of the research are consolidated.

2 The Role of Administrative Cooperation in a non-fully Harmonized VAT System

2.1 Double taxation in VAT

Art. 113 TFEU sets out the aim to establish an internal market and eliminate distortions of competition in the EU by harmonizing the European VAT system.[15] This aim is reflected in the Preamble to the VAT Directive and reinforced through the principle of neutrality.[16] Ensuring fiscal neutrality entails *inter alia* preventing a different VAT treatment of a cross-border transaction in comparison to an internal situation.[17] This includes preventing all cases of double taxation and also non-taxation of a transaction that do not stem from derogations in the Directive itself.[18] Hence, for the rules to be applied coherently and in line with the aim of the VAT Directive, in cross-border transactions, Member States need to apply the VAT system in the same way to prevent inconsistencies. Any derogations from single taxation of a transaction would be contrary to the VAT system since it poses a threat to non-distorted competition and is not in line with the principle of neutrality.[19]

The Commission points out that due to the lack of full harmonization, the European VAT system is perceived to be fragmented into 27 separate VAT systems.[20] The differences between those systems regularly result in mismatches between Member States in cross-border transactions, which shows in double taxation issues.[21]

The causes for double taxation can be split into four elements: Firstly, it can arise from the different implementation of the provisions of the VAT Directive which leave sovereignty to the Member States. Marchgraber further identifies the 'different interpretation of the same provision, a deviating appraisal of the same situation or a diverging assessment of the legal description' as causes for a double tax burden.[22] For the purpose of this paper,

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[15] The Preamble to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L 347/1 recital 4 (VAT Directive); Treaty on the Functioning of the European Union [2012] OJ 326 Art. 113.

[16] Recitals 17 and 62 VAT Directive; Case C-111/05 *Aktiebolaget NN v Skatteverket* [2007] ECR I-195 para 43; *KrakVet* para 42.

[17] Marta Papis, 'The Principle of Neutrality in EU VAT' in Cecile Brokelind (ed) Principles of Law: Function, Status and Impact in EU Tax Law (IBFD 2014) 16.3.1; Julie Kajus and Ben Terra *A Guide to the European VAT Directives: Introduction to European VAT* 2021, vol 1 (IBFD 2021) 2.5.

[18] Emelie Stetter 'Double (non-) Taxation in VAT: In how far is the Single Tax Principle reflected in the European VAT System?' (Lund University, 2021) 6. (see also for a more detailed analysis of the aim of the VAT directive and double (non-) taxation)

[19] Stetter (n 18) 6; Artinger and Ismer (n 7) 593.

[20] Commission, 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Future of VAT: Towards a Simpler, More Robust and Efficient VAT System Tailored to the Single Market' COM (2011) 851 final 3.

[21] Artinger and Ismer (n 7) 594; Marie Lamensch 'Key Policy Issues for the Future of the EU VAT System' in Christiana HJI Panayi, Werner Haslehner and Edoardo Traversa (eds), *Research Handbook on European Union Taxation Law* (Edward Elgar Publishing 2020) 344.

[22] Christoph Marchgraber, 'Double (Non-) Taxation and EU Law' (Kluwer Law International B.V. 2018) 62.

the definition of double taxation will be limited to juridical double taxation.[23] An established definition describes juridical double taxation as 'the imposition of at least two output VAT liabilities in respect of the same transaction'.[24] For simplification, this paper refers to such a repeated taxation as double taxation, nevertheless the definition shall also include transactions underlying multiple taxation between more than two Member States.

Since three of the identified causes constitute interpretative issues, they could be approached by tax administrations entering into discourse and reaching a common understanding of the circumstances. In the case of different legislation, finding a resolution for double taxation is also dependent on cooperation between Member States to come to an agreement concerning the right to tax. Hence, in theory, all four causes for double taxation could be solved through communication between the involved Member States. That requires a functioning system of administrative cooperation to allocate taxing rights.[25] Finding such a resolution mechanism is crucial considering the non-existence of double tax conventions in VAT.

2.2 Proposal to change the VAT system

Issues like double taxation and fraud strengthen the effect that over the past years, the European VAT system has been 'increasingly perceived as largely insufficient to reach the objectives of the […] Internal Market'.[26] The Commission acknowledged the shortcomings with the proposal of an Action Plan to create a single EU VAT area and introducing a definitive VAT system. The new system would require the tax administrations of one Member State to collect the VAT due on behalf of the other Member States.[27] This requires a comprehensive extent of trust and cooperation between Member States.[28] Traversa considers this the main reason why the proposal has not yet passed the unanimity requirement.[29]

2.3 Conclusion

For a system to constitute a working whole, the different elements making up that system need to perfectly interlace. When every Member State levies VAT in sovereignty, it requires a clear legal system to define taxing rights between Member States to reach an internal market without distortions of competition. If Member States apply the law unilaterally, it will inevitably lead to

[23] As opposed to economic double taxation which concerns the 'repeated taxation of a consumption in consecutive transactions', see Stetter (n 18).
[24] Artinger and Ismer (n 7) 595.
[25] European Court of Auditors 'Special Report: E-Commerce: Many of the Challenges of Collecting VAT and Custom Duties Remain to be Resolved' (European Court of Auditors, 2019) <https://www.eca.europa.eu/Lists/ECADocuments/SR19_12/SR_E-COMMERCE_VULNERABILITY_TO_TAX_FRAUD_EN.pdf> accessed 15 April 2021 38.
[26] Lamensch, 'Key Policy Issues' (n 21) 341.
[27] Commission, 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an Action Plan on VAT: Towards a Single EU VAT Area – Time to Decide' COM (2016) 148 final 4; Rita De la Feria, 'The Definitive VAT System: Breaking With Transition' (2018) 3 EC Tax Review 122.
[28] De la Feria (n 27) 122.
[29] Edoardo Traversa, 'Ongoing Tax Reforms at the EU Level: Why Trust Matters' (2019) 47 Intertax 244, 244.

discrepancies despite working towards the same goal. Therefore, in order to reach a functioning internal market, supporting instruments like administrative cooperation play a decisive role until the VAT system has bridged the interpretative gaps between Member States. The issues in the VAT system show the need for a far-reaching system of administrative cooperation in VAT to compensate for the portrayed lack in harmonization. That relevance might increase even more significantly with the adoption of a definitive VAT system. Adapting the European VAT system to a globalized economy and ensuring a functioning internal market without distortions of competition 'necessarily implies enhancing the cooperation between tax administration(s) within the European Union'.[30]

[30] Ibid 246.

3 Relation Between the Regulation and Double Taxation

3.1 Historical development of administrative cooperation

Administrative cooperation in VAT originated in 1979 when the scope of Directive 77/799 on Mutual Assistance was extended to VAT.[31] It was initiated to prevent budget losses through tax evasion and to ensure fair taxation to protect the internal market.[32] In 1992 the Directive was additionally supplemented to complement the system for VAT.[33] This legislation was repealed in 2003 though and removed from the scope of Directive 77/799 at the same time. The change had the aim of clarifying the rights and obligations for Member States blurred by the simultaneous application of two legal instruments as well as strengthening the cooperation to combat VAT fraud.[34] From this point on, the framework on administrative cooperation in direct taxation and VAT developed independently and in a different pace. While the DAC, that replaced Directive 77/799, has been amended almost every year since first coming into force in 2013, the development of administrative cooperation legislation in VAT has been rather gradual and lags behind.[35] The DAC has been adapted to the changes in the economy and the degree of information to be exchanged has been matched to the intensity of cooperation between tax administrations that was needed to keep up with the increasingly interwoven and digital economy.[36]

After several amendments to Regulation 1798/2003 which did not achieve the intended effects of a higher and more intense degree in cooperation, Regulation 904/2010 was proposed as a measure to improve administrative cooperation in VAT without further complicating the legislation at the time.[37] While it maintained the general framework of the former Regulation, the recast introduced important developments in defining cases in which Member

[31] Giorgio Beretta, 'VAT and Administrative Cooperation in the EU' [2020] Tax Notes International <https://www.taxnotes.com/document-list/contributors-authors/beretta-giorgio> accessed 30 March 2021.
[32] Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation [1977] OJ L 336/15.
[33] Council Regulation 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) OJ L 24/1.
[34] Recital 8-14 Council Regulation 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 [2003] OJ L 264/1; Council Directive 2003/93/EC of 7 October 2003 amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation [2003] OJ L 264/23.
[35] Sigrid Hemels 'Administrative Cooperation in the Assessment and Recovery of Direct Tax Claims' in Ben Terra and others (eds) European Tax Law: Vol. 1 General Topics and Direct Taxation (Wolters Kluwer 2018) 13.1.
[36] Bart Peeters and Lars Vanneste, 'European Union/International - DAC6: An Additional Common EU Reporting Standard?' (2020) 12 World Tax Journal <https://research.ibfd.org/#/doc?url=/collections/wtj/html/wtj_2020_03_e2_1.html> accessed 25 April 2021.
[37] Julie Kajus and Ben Terra 'Administrative Cooperation and Combating Fraud in the Field of Value Added Tax' (IBFD, 5 March 2019) <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/linkresolver/static/evdcom_admin_coop_integrated_text&refresh=1616167995357#evdcom_admin_coop_integrated_text> accessed 19 March 2021; Recital 1 Preamble to Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax [2010] OJ L 268/1.

States may not refuse to reply to a request for information and specifying circumstances in which information has to be exchanged spontaneously.[38]

Since 2010, Regulation 904/2010 has been amended several times with a primary focus on adapting the framework to challenges in VAT and enhancing the prevention of fraud.[39] Regulation 2017/2454 introduced rules concerning the extension of special scheme to cover all distance sales of goods and services instead of only TBE services for the provision of information and transfer of money.[40] Regulation 2018/1541 adds rules tackling the most common fraud schemes in VAT through measures like a more intense use of data in EUROFISC, a multilateral information exchange network for the early detection of VAT fraud.[41] With the aim of combatting fraud in electronic commerce, the most recent amendment introduces a central electronic system for the exchange of payment information between Member States.[42]

It can be observed that since the introduction of administrative cooperation in VAT, several amendments to the system have been introduced in order to improve cooperation between Member States. Nevertheless, there is still a considerable scope for improvement considering the demonstrated double taxation problems arising from misunderstandings and lack of cooperation between the Member States. It therefore needs to be examined, in how far Regulation 904/2010 intends and enables for Member States to cooperate to combat double taxation.

3.2 Collaboration as an aim of Regulation 904/2010?

In general, administrative cooperation in VAT serves the purpose of an interception system to ensure the prevention of distortions of competition arising from information asymmetries between Member States.[43] Recital 5 to Regulation 904/2010 sets out the purpose of the Regulation to enhance the degree of harmonization and ensuring the establishment of an internal market

[38] Julie Kajus and Ben Terra *A Guide to the European VAT Directives: Introduction to European VAT* 2021, vol 1 (IBFD 2021) 3.2.3.
[39] Council Regulation 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia [2013] OJ L 158/1; Council Regulation 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax [2017] OJ L 348/1; Council Regulation 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax [2018] OJ L 259/1; Council Regulation 2018/1909 of 4 December 2018 amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements [2018] OJ L 311/1; Council Regulation 2020/283 of 18 February 2020 amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud [2020] OJ L 62/1.
[40] Recital 2-3 Regulation 2017/2454.
[41] Kajus and Terra *Introduction to European VAT* (n 38) 1.3.1.
[42] Art. 24a Regulation 2020/283.
[43] KPE Lasok QC EU Value Added Tax Law (Edward Elgar Publishing 2020) 1050.

hence to help fulfil the objective of the VAT Directive.[44] This auxiliary relation to the Directive implies the system of administrative cooperation is to be interpreted in the light of the aims set out in the VAT Directive.

On a similar note, recital 7 sets out the aim of administrative cooperation 'to help ensure VAT is correctly assessed'. Consequently, taking into account the relation to the VAT Directive, a 'correct assessment of VAT' can only be guaranteed if it does not lead to distortions of competition, levied in the way intended by the VAT Directive. This includes not only combatting VAT fraud but also monitoring that VAT on supplies of goods or services is applied coherently, especially in cross-border transactions.[45] Art. 1 explicitly describes those two objects of Regulation 904/2010 to ensure 'a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-community transactions', to combat VAT fraud and to protect VAT revenue of the Member States.[46] The notion of the 'protection of revenue' was added with the introduction of Regulation 904/2010. It regards the upside to revenue in each Member State but would not exclude two Member States from taxing the same transaction to ensure their sovereign revenue.

In comparison to the combat of fraud, the avoidance of double taxation is not explicitly stated in the aim of Regulation 904/2010. However, taking into account its role as a supporting system to ensure the provisions of the VAT Directive are applied correctly, the nature and objective of Regulation 904/2010 imply the prevention of double taxation constitutes an aim of administrative cooperation.

The meaning of the term 'cooperation' can be understood in two ways. The way it has been used by the Court in recent case law concerns the 'common participation in the request and provision of information' which then is used for a unilateral assessment of the VAT in the requesting Member State.[47] This represents the more conservative interpretation of 'cooperation', defined as 'being helpful by doing what someone asks you to do'.[48] The common understanding of cooperation is usually more extensive, in the sense of 'collaborating', thus 'working together' in a joint effort towards a 'particular purpose'.[49] The two meanings also show in the titles in the different language versions of Regulation 904/2010. In the German and Swedish versions, 'cooperation' is translated as 'Zusammenarbeit' and 'samarbete', which means 'working together', while in the French, Italian and Spanish version the wording follows the English version ('coopération', 'cooperazione' and 'cooperaciòn'). For the purpose of this paper, the term cooperation is applied as it has been in legislation and jurisprudence, collaboration on the other hand describes the second, more extensive meaning of cooperation.

Recital 7 explicitly states the obligation to 'provide assistance' to the other Member State in order to achieve the correct assessment of VAT, covering the former sense of cooperation. However, to reach the aim of the Regulation

[44] Recital 5 Preamble to Regulation 904/2010; Recital 17 and 62 VAT Directive.
[45] Recitals 2-7 Preamble to Regulation 904/2010; Art. 1 Regulation 904/2010.
[46] Art.1 Regulation 904/2010.
[47] De Troyer Revolution (n 11) 172; see chapter 4 for a detailed analysis.
[48] Cambridge Dictionary 'Cooperate' (Cambridge University Press 2021) <https://dictionary.cambridge.org/dictionary/english/cooperate> accessed 8 April 2021.
[49] Ibid.

and prevent double taxation, it might require cooperation in the sense of collaboration. Considering the need to come to a common understanding of the taxing rights in a situation and overcome interpretative issues, in certain situations it might be necessary to not only provide information to the other Member State but also work together towards only taxing a transaction once.

Thus, taking into account the implicit aim of preventing double taxation, Regulation 904/2010 necessarily implies collaboration between Member States in circumstances where it is proves expedient to ascertain the place of supply in compliance with the VAT Directive.

3.3 In how far does the current system allow to fulfil the aim?

3.3.1 Ways to exchange information

In general, Regulation 904/2010 allows for exchange of information on request or without prior request. In the latter case, the information can be exchanged automatically or spontaneously.[50] According to Art. 54 (1), a received request for information needs to be responded to when it does 'not impose a disproportionate administrative burden' on the requested authority and the requesting authority could not reasonably obtain the information themselves.[51] Especially the wording of the former reason provides for a broad opportunity for Member States to refuse a request, since it implicates a subjective perception of the burden and cannot be quantified.[52] The perceived administrative burden was also one of the main issues the Member States raised in the evaluation of Regulation 904/2010 for the impact assessment of the Regulation conducted by the Commission in 2017.[53]

The European Commission addressed the need for a broader capacity in tax authorities processing such requests already in 2013 through Regulation 1286/2013 which had the objective of enhancing administrative cooperation.[54] In 2020, the Commission further determined the issue that tax administrations did not have the capacities to 'exploit the massive volume of data they collect through the implementation measures taken during recent years'.[55]

Another problem that has been raised repeatedly are late replies to the forwarded requests.[56] As a general rule, requests should be answered no later than 3 months after receiving the request but as quickly as possible.[57] However, practice has shown a significant number of late replies, which is

[50] Art. 14, Art. 15 Regulation 904/2010.
[51] Art. 7 in combination with Art. 54 (1) Regulation 904/2010.
[52] Commission 428 (n 10) 9.
[53] Ibid.
[54] Council Regulation 1286/2013 of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC [2013] OJ L 347/20 Recital 6.
[55] Commission, Communication from the Commission to the European Parliament and the Council: An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy' COM (2020) 312 final 5.
[56] De Troyer, 'Key Policy Issues' (n 11) 485; Commission 428 (n 10) 9.
[57] Art. 10 Regulation 904/2010.

crucial for the effectiveness of administrative cooperation.[58] The Commission holds that these issues are not to be solved through amending the Regulation but through a better implementation of the rules in the Member States.[59] However, the issue of late replies is subject to a currently pending case in which the ECJ is asked to clarify whether a non-compliance with the time limits set out in the Regulation might unlawfully interfere with the rights of a taxable person.[60] If this question was to be answered positively, the judgement might provide for an improvement in legal certainty within the framework of administrative cooperation.

When no prior request has been made, Member States can obtain the information by automatic exchange or spontaneous exchange. Information has to be exchanged automatically, if it is 'necessary for the effectiveness of the control system of the Member State of destination', if there is a risk for a breach of VAT and if 'there is a risk for tax loss in the other Member State'.[61] Spontaneous exchange is obligatory, if an authority knows it has information that is useful to the authority of the other Member State.[62]

3.3.2 Information to be exchanged

Art.1 lays down that on the basis of the Regulation, any information can be exchanged that 'may help to effect a correct assessment of VAT, monitor the correct application of VAT and to combat VAT fraud'.[63] In general, this provides for a quite broad base for the information to be exchanged.

The Regulation allows for an automated access to information which is stored in an electronic system by each Member State for certain categories. It includes *inter alia* information on the recapitulative statements of a taxpayer as well as information on the importation of goods.[64] The information in the recapitulative statements concerning the intra-community transactions pursuant to Art. 21 (2) covers the VAT identification numbers of the taxable persons partaking in the transaction as well as the total value of the intra-community supplies of goods or services and the general total value of the supplies and services from each person partaking in the supply.[65] The information that has to be provided for imported goods further includes more detailed information on the particular transactions when it is succeeded by an intra-community supply of goods.[66] Pursuant to Art. 20 the information on the recapitulative statements, that has to be granted automated access to, needs to be entered into the information exchange system the latest one month

[58] European Court of Auditors (n 25) 59; Marie Lamensch, 'European Union -Trust: A Sustainable Option for the Future of the EU VAT System?' (2019) 30 International VAT Monitor <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2019_02_e2_3> accessed 24 May 2021.
[59] Commission 428 (n 10) 9.
[60] Case C-186/20 *HYDINA SK s.r.o. v Finančné riaditeľstvo Slovenskej republiky*, request for a preliminary ruling of 29 April 2020.
[61] Art. 13 Regulation 904/2010.
[62] Art. 15 Regulation 904/2010; KPE Lasok (n 43) 1062.
[63] Art. 1 Regulation 904/2010.
[64] Art. 17 Regulation 904/2010.
[65] Art. 21 (2) Regulation 904/2010.
[66] Art. 21 (2a) Regulation 904/2010.

after ‘the end of the period to which that information relates’.[67] This data is made available for tax administrations of Member States through the VAT Information Exchange System (VIES). While most Member States consider this automated exchange of information through the IT-tool very useful and effective, the inaccuracy of the data oftentimes constitutes an obstacle for the correct assessment of VAT.[68]

3.3.3 Mechanisms for tax authorities to collaborate

In the current framework, each Member State has an assigned authority and a central liaison office that is responsible for the communication with other Member States.[69] Art. 28 of Regulation 904/2010 lays down the possibility for Member States to agree on the presence at the administrative authorities of another Member State for the exchange of information and during administrative enquiries. Member States can also agree on simultaneous controls of a taxable person.[70] Amendment 2018/1541 further established the option to carry out joint administrative enquiries in forming a team for a joint audit. The latter was introduced in order ‘to strengthen the capacity of tax authorities to check cross-border supplies’ in the context of fighting fraud.[71] Joint audits might help uncover double taxation issues retrospectively and improve the understanding of the respective tax legislations.[72] However, there is no provision providing the Member States with an opportunity to form a joint force to commonly assess the place of supply to prevent double taxation.

3.4 Conclusion

The above analysis shows that the prevention of double taxation comprises a goal of administrative cooperation. Thus, to be in line with the aims set out in the Preamble to Regulation 904/2010 and the VAT Directive, administrative cooperation needs to provide help for ensuring a correct assessment of VAT as far as possible through the applicable rules. For the purpose of preventing double taxation, the scope of the information to be exchanged allows for sending a request to another administration to receive all relevant information to come to an assessment on whether to tax the transaction and if it has potentially already been taxed in the other Member State. Through its lack of obligations and neglected time limits, the regulatory framework does not provide for a high amount of legal certainty in the exchange of information though. It must further be observed that the option for authorities to collaborate is limited to joint audits or simultaneous controls but apart from that the cooperation between Member States consists of a unilateral exchange of information for a sovereign assessment of the VAT. While the current system of administrative cooperation can bridge information asymmetries between Member States, it does not provide for a possibility for joint endeavours to prevent double taxation issues. Recollecting the potential

[67] Art. 20 (2) Regulation 904/2010.
[68] Commission 428 (n 10) 115.
[69] Art. 3, Art. 4 Regulation 904/2010.
[70] Art. 28 Regulation 904/2010.
[71] Recital 7 Preamble to Regulation 2018/1541; Commission 428 (n 10) 40; European Court of Auditors (n 25) 21-28.
[72] Irene J.J Burgers and Diana Criclivaia, 'Joint Tax Audits: Which Countries May Benefit Most?' (2016) 8 World Tax Journal 306, 321.

solution of double taxation through dialogue, 'the Regulation can improve dispute resolution and help in preventing double (non-) taxation, but it cannot be considered now as a very effective means of doing so'.[73]

[73] EU VAT Forum (n 1) 81.

4 Relevant ECJ Jurisprudence on Administrative Cooperation

The combination of a non-fully harmonized VAT system and the lack of opportunities for Member States to cooperate to compensate for the arising mismatches is not only problematic in the light of the aim of the European VAT system to establish a functioning internal market but also considering the objectives set out in the Preamble to Regulation 904/2010. The effects of this are also represented in jurisprudence of the ECJ.

4.1 Case C-419/14 *WebMindLicenses*

In *WebMindLicenses*, the place of supply of the transaction in question had to be adjusted following the presence of fraud.[74]

WebMindLicenses, a Hungarian company acquired know-how, which it then made available to Lalib, a company established in Portugal. However, a tax inspection revealed that there was no 'genuine economic transaction' underlying the licensing agreement to the know-how.[75] The Court held, in line with previous case law, that in case abusive practice is found, the place of supply of the artificial arrangement has to be readjusted to the place where it had been in absence of abusive practice.[76] It further expressed an obligation for the tax authorities of the Member States involved to send a request for information to the authorities of the other Member State to find out whether the transaction has already been subject to tax in the other Member State and prevent double taxation arising from the adjustment of the place of supply.[77] The Court inferred this obligation for when 'such a request may prove expedient, or even necessary' to fulfil the 'duty set out in recital 7 in the preamble' to Regulation 904/2010.[78]

This interpretation of Regulation 904/2010 constitutes a derogation from the previous case law in administrative cooperation.[79] While *Ryborg* (1991)[80] and *Twoh International* (2007)[81] were both cases governed by different legal instruments for administrative cooperation than Regulation 904/2010, a similar Recital to number 7 always existed and in those cases the Court insisted on the fact that cooperation is to be regarded as a 'may' and not a 'should'.[82] This view on administrative cooperation was sustained by AG Wathelet in his Opinion on *WebMindLicenses*, pointing out the optional nature to invoke Regulation 904/2010. He comes to the conclusion that it does

[74] *WebMindLicenses* para 54.
[75] Ibid paras 20-22.
[76] Case C-255/02 *Halifax plc, Leeds Permanent Development Services Ltd, County Wide Property Investments Ltd v Commissioners of Customs & Excise* [2006] ECR I-121 para 98; Case C- 653/11 *Her Majesty's Commissioners of Revenue and Customs v Paul Newey* [2013] ECR I-409 para 50.
[77] *WebMindLicenses* paras 57-59
[78] Ibid para 57.
[79] De Troyer, 'Revolution' (n 11) 170.
[80] Case C-297/89 *Rigsadvokaten and Nicolai Christian Ryborg* [1991] ECR I-160.
[81] C-185/04 *Twoh International BV v Staatssecretaris van Financiën* [2007] ECR I-550.
[82] De Troyer, 'Revolution' (n 11) 171.

not impose an obligation for a tax authority to send a request to another Member State.[83]

The ECJ agrees that in general, Regulation 904/2010 does not define situations in which the option to send a request for information to another MS has to be exhausted. It emphasizes, however, that the circumstances of the case in combination with Recital 7 require the utilization of this possibility.[84] Therefore the Court holds that a Member State is obliged to send a request for information in the risk of double taxation (at least when acceded by fraud, this is to be confirmed for non-fraud situations), especially when 'the tax authorities of a Member State know or should reasonably know that the tax authorities of another Member State have information which is useful, or even essential, for determining whether VAT is chargeable in the first Member State'.[85] This reasonably leads De Troyer to asking, whether with the decision in *WebMindLicenses* the Court of Justice produces a revolution.[86]

Cooperation in the case of risk of double taxation has to be split into two increments, the first one being the obligation to send a request for information when there is a risk for double taxation and the second being the obligation for Member States to come to a common understanding of the 'correct' place of supply through a joint approach to the taxation of the transaction.

While it is clear from the judgement in *WebMindLicenses* that there is an obligation for Member States to send a request for information, there is no explicit expression in the judgement for the second increment, meaning a joint assessment of VAT.[87] The non-inference of an obligation to jointly assess a place of supply also raises the question whether the decision implies that a Member State has to accept and take into account the decision of the other Member State.[88] Interpreting the judgement in the light of Recital 7, to reach a 'correct assessment of VAT' would reasonably imply that somehow the Member States have to come to a common understanding of the taxing rights. Therefore, even if not explicitly mentioned in the judgement, the Court opened the line of thought for a joint effort in taxation through administrative cooperation.[89]

4.2 Judgement C-276/18 *KrakVet Marek Batko*

KrakVet concerns the simultaneous application of distance selling rules for goods by two Member States, leading to double taxation.

KrakVet, a Polish company, sold goods through a website to customers in Hungary. KrakVet was not established in Hungary for VAT purposes and did not have a warehouse in Hungary but offered customers a delivery of the goods by a transport company which had a warehouse in Hungary.[90] KrakVet

[83] Case C-419/14 *WebMindLicenses Kft. v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Föigazgatóság* [2015] ECR I-606, Opinion of AG Wathelet, paras 95-101.
[84] *WebMindLicenses* paras 56-59.
[85] Ibid paras 57-58.
[86] De Troyer, 'Revolution' (n 11) 170.
[87] Ibid (n 10) 172.
[88] De Troyer, 'Key Policy Issues' (n 11) 485.
[89] De Troyer, 'Revolution' (n 11) 172.
[90] *KrakVet* paras 26-29.

paid Polish VAT on the supply of the goods, after having assured the place of supply through an advance tax ruling from Polish tax authorities. Based on Regulation 904/2010, the Hungarian authorities sent a request for information to the Polish authorities to establish the property rights during the transportation process of the goods at the time of the packaging in KrakVet's warehouse.[91] Having received the information, the Hungarian authorities concluded the distance selling threshold had been exceeded and required KrakVet to compensate for the difference in VAT, plus interest and penalty payments.[92]

The ECJ was asked whether there was an obligation arising from Regulation 904/2010 to prevent double taxation issues when VAT is imposed even though it has already been subject to tax in another Member State. It established that despite the aim set out in Recital 5 and 7, the scope of administrative cooperation in VAT is limited to the exchange of information and does not bind Member States to reach a common understanding to the classification of a cross-border transaction. Therefore, there is no obligation arising from Regulation 904/2010 to prevent double taxation in VAT through joint efforts. [93] The Court argues, in theory it would be possible to avoid double taxation as in this case if the VAT Directive was applied correctly.[94]

4.3 The judgements in the light of Regulation 904/2010

Even though in *KrakVet* the Court recalls the goals of the VAT Directive and the objective of administrative cooperation to correctly assess VAT, in this case they do not infer an obligation from the Preamble of the Regulation to avoid double taxation in VAT. Having regard to the fact that in *WebMindLicenses*, the Court considered Recital 7 in combination with Article 1 to be sufficient to infer such an obligation, it is appears inconsistent with the reasoning in the prior judgement to only infer such an obligation in presence of fraud. It must be recalled that Article 1 sets out the correct assessment of VAT and the combat of VAT fraud as two equal aims of administrative cooperation. Even though the 'protection of VAT revenue' is explicitly underlined in Art.1 (2) and the current approach to VAT seems to follow the 'overprotection' of revenue by accepting double taxation, the protection of the taxpayer should not be disregarded, since the prevention of double taxation also constitutes a facet to the 'correct assessment of VAT'.[95]

In *KrakVet*, the Hungarian authority, independently of the Court, asked for information from the Polish authorities.[96] Hence, inferring the obligation to refer a request as in *WebMindLicenses* was not necessary here. The *KrakVet* judgement rather concerns the second increment, hence the common or unilateral establishment of the place of supply. The decision of the Court seems to contradict the assumption inferred from the *WebMindLicenses* judgement, that the obligation for a referral for information based on Recital

[91] Case C-276/18 *KrakVet Marek Batko sp.k v Nemzeti Adó-és Vámhivatal Fellebbviteli Igazgatósága* [2020] ECR I-81, Opinion of AG Sharpston para 67.
[92] *KrakVet* para 34.
[93] Ibid paras 43-49.
[94] Ibid para 50.
[95] Stetter (n 15) 5.2.2; The notion might cover non-taxation issues though.
[96] *KrakVet* Opinion, para 67.

7 and Article 1 may as well constitute an obligation to reach a joint understanding of the situation. *KrakVet* confirms that this interpretation went too far. The decision rather is in line with the Court emphasising that when applied correctly, the VAT Directive provides for the possibility to avoid double taxation, consequently every Member State should unilaterally be able to come to the 'correct' assessment on the place of supply.[97] Accepting double taxation nevertheless is contrary to the aim of the VAT Directive and Regulation 904/2010.[98] To resolve the issue, the Court points out the obligation to refer for a preliminary ruling, when a transaction has been taxed twice in in different Member States.[99]

4.4 Conclusion

As de Troyer observes, it constitutes a significant progression for the ECJ to infer an obligation from the framework of administrative cooperation for Member States to refer a request for information to the other Member State.[100] In the context of the aim of the Regulation and the Directive it can also be inferred from the judgement that it constitutes an obligation to actually collaborate and come to a common solution regarding the 'correct' place of supply of a transaction. Despite the Court not explicitly stating that, the argumentation in the judgement leaves little room for different interpretations.

The decision led scholars to assume, the Court would continue this pathway in future decisions and the hopes were up for the *KrakVet* judgement.[101] Yet, in *KrakVet*, the Court seemed to return to its previous reasoning, leading to the assumption, that *WebMindLicenses* was a mere exception on the base of the context of abusive practice present in the circumstances.

With the *KrakVet* decision the ECJ did not reverse *WebMindLicenses* but clarified that there is no obligation to cooperate which for the interpretation of *WebMindLicenses* would also mean that despite the effort for a 'correct assessment of VAT' through the exchange of information, Member States are not bound by the decision the other Member State makes. The judgement could have been an opportunity for the Court to infer such an obligation for joint endeavours to strengthen the intensity of administrative cooperation and trust between Member States. To ensure neutrality in VAT, transactions with a risk of double taxation should be detected early to be resolved before the second Member State levies the tax. Such a preventive mechanism could in theory be covered by Regulation 904/2010, however, as apparent from jurisprudence, the Court does neither consider it to be in the scope of administrative cooperation nor necessary to establish.[102]

[97] *KrakVet* para 50.
[98] Stetter (n 18) 5.
[99] *KrakVet* para 51.
[100] De Troyer, 'Revolution' (n 11).
[101] Ibid 173; Traversa, 'KrakVet' (n 12).
[102] *KrakVet* paras 50-59.

5 Administrative Cooperation: The Way to Solve Double Taxation?

To avoid double taxation of a transaction, the Member States that are involved in a cross-border transaction have to come to an agreement on the place of supply of the goods or services and consequently the place of taxation.[103] As the Court reaffirmed in *KrakVet*, at present, the predominant solution for taxpayers which are burdened with two or more levies of tax on a transaction consists of the request for a preliminary ruling.[104] Notwithstanding that, there are also alternative resolution mechanisms that can in theory help to prevent or resolve cases of double taxation.[105] The mechanisms touch upon various stages of the VAT cycle, reaching from preventive tools to instruments that aim at resolving taxation issues that have already taken place.

5.1 Resolution mechanisms in the European VAT system

5.1.1 Cross-border rulings in VAT

A resolution mechanism that intervenes as a preventive tool are cross-border rulings. Cross-border rulings in VAT are currently tested in a pilot project in which 18 Member States voluntarily participate. This tool clarifies potential deviating interpretations of the place of supply of 'complex cross-border EU transactions' before the transaction takes place to ascertain the correct treatment of VAT.[106] A cross-border ruling can be requested by taxpayers through the tax authorities of the concerned Member State.[107]

Artinger and Ismer consider the preventive nature of the tool a major advantage in comparison to other mechanisms.[108] Another benefit of cross-border rulings is that next to the reinforcement of VAT compliance for businesses, the tool is specifically aimed at preventing double taxation.[109] However, this instrument can only resolve double taxation issues that the taxpayer had anticipated, it does not help in an unexpected occurrence of double taxation.[110] In addition to that, not all Member States participate in the project, leading to a lack of awareness of the tool and a decrease in its effectiveness.[111] Another drawback is that while the rulings aim to find a

[103] Ben JM Terra, 'VAT in the EEC: The Place of Supply' (1989) 26 Common Market Law Review 449,449.
[104] *KrakVet* para 51.
[105] For an extensive analysis of the resolution mechanisms see: EU VAT Forum (n 1) 32-56.
[106] Mojka Bartol Lesar, 'European Union – EU VAT Cross-Border Rulings' (2019) 30 International VAT Monitor <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2019_06_e2_4> accessed 21 May 2021.
[107] Commission, Information Note – VAT Double Taxation – Dialogue Between Tax Administrations (14 October 2015, Brussels) < https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/key_documents/eu_vat_forum/dialogue_tax_administrations_ms_en.pdf> accessed 21 May 2021.
[108] Artinger and Ismer (n 7) 600.
[109] Ibid.
[110] Ibid; Lamensch, 'Key Policy Issues' (n 21) 345.
[111] Bartol Lesar (n 105) Ch5; Francesco Cannas, 'European Union/Italy – The Participation of Italy in the EU VAT Cross-border Rulings Project: Legal and Procedural Issues' (2020) 31 International VAT Monitor <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2020_05_it_1> accessed 19 May 2021.

common solution where possible, there is no obligation for the Member States to come to an agreement. [112] Even when a ruling has been issued, it is not necessarily binding on the tax administrations in a majority of the participating countries.[113]

Nevertheless, considering the preventive nature of cross-border rulings, they appear to be a very promising measure to introduce more legal certainty to cross-border transactions in the EU.

5.1.2 Dialogue between tax administrations

Another tool that involves the communication between the involved Member States is the dialogue between tax administrations.[114] When confronted with double taxation, a taxable person can request the Member States involved in the transaction to enter into dialogue with each other and solve the differences through a joint endeavour to the understanding of the circumstances.[115] This mechanism was initiated by the VAT Forum and is a promising resolution mechanism for double taxation in VAT specifically, since it approaches the root of diverging assessments of a situation which is a different interpretation of a transaction or a provision in place.[116] For misunderstandings, generally, oral communication might be a much more suitable way to reach the same understanding and find a common solution than the exchange written assessments by the tax administrations.[117] However, like in the cross-border rulings pilot project, there is no obligation for Member States to participate in such negotiations, no need for them to come to an agreement and the agreement the tax administrations come to is not binding.[118] In addition to that, Bartol Lesar raises the issue of the impact of a decision of the EU VAT Forum when the circumstances of double taxation have already been brought to a national court since they are not bound by the decisions made in the tax administrations dialogue.[119]

Taking aside the lack of enforcement power, the dialogue could constitute a taxpayer-friendly, tailored solution to double taxation when applied consistently.

5.1.3 Consultation of the VAT Committee

Following from Art. 398 VAT Directive, the VAT Committee can be consulted to eliminate causes of double taxation[120] Even though this has gotten more importance by AG's referring to this option, the result is not legally binding. [121] Also, only general questions on the application of the VAT Directive can be referred to the VAT Committee, hence, this is non-applicable for double taxation issues concerning specific circumstances.[122] It does

[112] EU VAT Forum (n 1) 4.
[113] Bartol Lesar (n 106) Ch5.
[114] EU VAT Forum (n 1) 40.
[115] Bartol Lesar (n 106) Ch5.
[116] EU VAT Forum (n 1) 44.
[117] Ibid 13.
[118] Ibid 40.
[119] Bartol Lesar (n 106) Ch5.
[120] Artinger and Ismer (n 7) 600.
[121] Ibid 601.
[122] EU VAT Forum (n 1) 50.

however provide for the opportunity for Member States to refer a question for a general interpretation when they do not come to a common understanding of a provision in the procedure of a cross-border ruling.[123]

5.1.4 SOLVIT

The Internal Market Problem solving Network (SOLVIT) is a mechanism which provides for communication centres in all Member States which in turn communicate with the respective tax administrations. Taxpayers can issue a complaint in cases where a Member State has applied EU law incorrectly in cross-border situations. This mechanism is not specifically designed to prevent double taxation, but there have been double taxation issues resolved through it.[124] This can be suitable for situations where double taxation arises from an incorrect implementation of provisions of the Directive but is not appropriate for when the issue stems from diverging interpretations of the situation.[125] While the cooperation of the SOLVIT centres in the respective Member States could help solve double taxation mechanisms through them contacting the tax administrations, a direct correspondence between the administrations as in cross-border rulings or the dialogue between tax administrations would be a more efficient solution to communicate.

5.1.5 Dispute resolution mechanism

While in 2017, in addition to the existing double tax treaties a dispute resolution for differing interpretations of taxing rights was introduced to prevent double taxation in direct taxes, such a legal instrument does not exist in VAT yet.[126] However, the Commission has proposed the idea of introducing dispute resolution mechanism of VAT in the context of an 'action plan for a fair and simple taxation' which is planned to be investigated in 2022/2023.[127] However, this is merely a concept in theory at the moment and it remains to be seen whether the Commission considers the introduction of a dispute resolution mechanism necessary.

5.1.6 Request for a preliminary ruling

When confronted with cases of double taxation, the ECJ consistently upholds the obligation to refer a request for a preliminary ruling.[128] This mechanism is provided for through Art. 267 TFEU and applies when the transaction and the double taxation have already taken place.[129] However, the request for a preliminary ruling has not proven very accessible, since a taxpayer cannot pose a request themselves and the legal process imposes high costs and responsibility on the taxpayer.[130] What is more, when the Court leaves the application open to the national courts, Member States might apply the

[123] Bartol Lesar (n 106) Ch6.
[124] EU VAT Forum (n 1) 41.
[125] Ibid 42.
[126] Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union [2017] OJ L 265/1.
[127] Commission 312 (n 55)13.
[128] See for example: Case C-544/16 *Marcandi Ltd. V Commissioners for Her Majesty's Revenue and Customs* [2018] ECR I-540 para 64; *KrakVet* para 51.
[129] Art. 267 TFEU.
[130] EU VAT Forum (n 1) 72.

preliminary ruling differently, leading to persisting differences in the application of the provisions in question.[131] This shows for instance in the request for a preliminary ruling referred to the ECJ in 2020 following the judgement in *WebMindLicenses*. It seeks to ascertain the correct place of supply of the transaction containing the provision of know-how since the Portuguese as well as the Hungarian tax authorities upheld their diverging assessments on the place of supply after the decision of the Court in 2015.[132] This request displays, that preliminary rulings might not necessarily be the most effective solution to double taxation issues. The Court has in previous instances given decisive rulings on the allocation of taxing rights in specific cases though, which, if pursued, would ultimately provide for legal certainty for the taxpayer.[133]

In the authors opinion, leaving a legal procedure as the only established and binding instrument to resolve double taxation disputes is not exactly beneficial for an increase in trust and better relations between the European Member States. The high costs of a lengthy juridical process may even lead taxpayers to refraining from addressing the issue and rather changing their way of business than actually using the proposed resolution mechanism.[134] In addition to that, double taxation issues that do not concern the interpretation of VAT rules, but different interpretations of the circumstances cannot be solved by the ECJ because it is dependent on the national tax authorities.[135]

5.2 The framework of Regulation 904/2010

Administrative cooperation makes it possible 'to prevent (as far as is possible) the continued existence of national fiscal jurisdictions within the EU from posing an obstacle to the establishment and functioning of the internal market'.[136] It must be distinct from other resolution mechanisms because administrative cooperation does not only provide for cooperation between the Member States but constitutes a policy which 'actively pursues the wider EU objectives of a proper functioning EU VAT area of fairness and fight against tax evasion and avoidance'.[137] As observed, the prevention of double taxation constitutes an aim of Regulation 904/2010, despite not being explicitly mentioned in the Preamble or the provisions of the Regulation. The combination of the role administrative cooperation plays in the European VAT system and its 'interlinkage to double taxation issues' suggest the framework as an appropriate resolution mechanism.[138] An impact assessment conducted by the Commission in 2017 confirmed, that Member States find Regulation 904/2010 'effective or very effective to ensure the correct

[131] EU VAT Forum (n 1) 72.
[132] Case C-596/20 *DuoDecad Kft. v Nemzeti Adó-és Vámhivatal Kiemelt Adó- és Vámhivatal Fellebbviteli Igazgatósága,* request for a preliminary ruling of 12 November 2020.
[133] See for example: Case 168/84 *Gunther Berkholz and Finanzamt Hamburg-Mitte-Altstadt* [1985] ECR I-299; Case 231/94 *Faaborg-Gelting Linien A/S and Finanzamt Flensburg* [1996] ECR I-184.
[134] EU VAT Forum (n 1) 21.
[135] Art. 267 TFEU; also portrayed by *DuoDecad*.
[136] Lasok (n 43) 1050**.**
[137] Commission 428 (n 10) 143.
[138] EU VAT Forum (n 1) 58.

collection and application of VAT'.[139] In addition to that, the adaptability of the DAC in direct taxation shows that administrative cooperation as an instrument in general is well suited to help keep the VAT system updated corresponding to the increased connectedness of the economy.

Hence, while the framework does currently not include many provisions that entail obligations, it has the right prerequisites to build upon for developing a legally binding system to prevent double taxation issues. The analysis of other existing but ineffective resolution mechanisms shows the need for a legally binding resolution mechanism at every stage of the VAT system. Therefore, administrative cooperation as an instrument that sets out a 'legal regime that the Member States are obliged to put into effect' could be an effective means to provide for the needed legal certainty.[140]

An improvement in administrative cooperation and collaboration does not only require a wider scope of the system but also a higher degree of formal obligations for tax administrations to come to a solution. *WebMindLicenses* has shown it is possible to infer such an obligation from case law through combining the optional nature of the Regulation with obligations set out in the recitals in specific circumstances. However, the legal certainty for the taxpayer could be more efficiently improved by extending the obligations arising directly from Regulation 904/2010.

In addition, the nature of the causes for double taxation identified by Marchgraber facilitate for dialogue to resolve those interpretative issues. Hence, a mechanism that that enables a common interpretation of a situation is perfectly suited to prevent double taxation because it bridges the gaps between the systems of the Member States.

5.3 Conclusion

It is apparent from the above analysis, that none of the mechanisms that are in place at the moment are able to guarantee efficient solutions to double taxation or VAT disputes.[141] A request for a preliminary ruling should not be the only binding instrument, despite the courts constant reference to it. [142] In addition to that, it is difficult for the taxpayer to get an overview over the multiple instruments that exist because there is no summarizing platform that lists the options a taxpayer has when confronted with double taxation.[143]

Administrative cooperation could pose as a one central solution that is easily accessible for taxpayers, can be consulted at every step of the VAT process and does not impose a high-cost burden on the taxpayer through expensive legal procedures. The framework and aim of Regulation 904/2010 underline the suitability of the system to compensate for the mismatches arising from the VAT Directive. As long as the VAT Directive does not provide for an unambiguous legal framework and there is no introduction of VAT double tax treaties to resolve the double taxation issues, it is important to strengthen administrative cooperation.

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[139] Commission 428 (n 10) 105.
[140] Lasok (n 43) 1051.
[141] EU VAT Forum (n 1) 50.
[142] See for example *Marcandi* paras 64-66; *KrakVet* para 51.
[143] EU VAT Forum (n 1) 57.

6 Proposals for a Suitable Framework of Administrative Cooperation

6.1 Infer an obligation from the current framework?

6.1.1 Make need for single taxation explicit

Despite the Courts hesitation to apply a principle of single taxation in VAT, the analysis of the VAT Directive shows, that the prevention of double taxation is a goal inherent in the European VAT system which henceforth should be applied in a consistent manner throughout the other legal instruments guiding the VAT system.[144] For a higher degree of legal certainty, the aim to prevent double taxation in VAT needs to be a goal clearly set out in a provision of the VAT Directive and not just implicit. For that purpose, the objective to avoid double taxation should be stated as explicitly in a provision or in the Preamble as it is inherent in Regulation 904/2010 and the VAT Directive.

6.1.2 Extend scope of automatic exchange

To ensure that a double taxation dispute can be prevented, firstly, Member States need to have all necessary information and secondly, they need to come to the same findings concerning the place of supply. Those two stages could be addressed by several measures to enhance the legal certainty of resolving double taxation disputes.

First of all, cross-border rulings should be extended to be mandatory for all Member States to participate in. This could increase the awareness of the tool and subsequently enhance the prevention of double taxation issues in the first place. In addition to that, the issued rulings should be made subject to automatic exchange. Otherwise, Member States might not know about the rulings in other member States and therefore not request the information on the rulings.[145] In direct taxation, the automatic exchange of information concerning advance cross-border rulings was introduced with DAC3, which applies since 2017.[146] This includes not the cross-border ruling itself but information regarding it, the full ruling can only be obtained on request.[147]

A further measure to be taken would be the extension of the scope of automatic exchange of information between Member States (Art. 14). In an impact assessment for Regulation 904/2010, the Commission found the use of automatic and spontaneous exchange to be below expectations, despite the perception of it being a ‘very effective tool’ to ensure the objective of the VAT Directive.[148] It would ensure all Member States have all relevant information readily available to make an informed assessment on the circumstances of a critical cross-border transaction. Such a preventive exchange of information preceding the taxation must be considered to be covered by the scope of Regulation 904/2010, since it provides for the basis

[144] See Stetter (n 18) Ch4.
[145] Hemels (n 35) 13.1.2.2 (iii).
[146] Sigrid Hemels, ‘Administrative Cooperation in the post BEPS era’ (Presentation at Lund University 2020) 21.
[147] Hemels (n 35) 13.1.2.2 (iii).
[148] Commission 428 (10) 116.

to exchange all information which could help a 'correct assessment of VAT'.[149] It could also address the issue of Member States not even asking for information, unanswered requests or late replies made on the basis of Art. 7 of Regulation 904/2010. In the context of online platforms, the OECD noticed the impracticality of a provision of information on request because of the available 'resources required to obtain information' and the insignificant amounts concerned in one request.[150] Automatic exchange could help Member States to detect possible cases of double taxation more easily and initiate endeavours to enter into dialogue with the other Member State in question.

The Commission already raised its intent to extend the exchange of data for cross-border transactions to an automatic exchange of information to better verify those transactions and prevent VAT fraud in 2022/2023.[151] While initially being aimed at fraud, this initiative and possible amendment of Regulation 904/2010 could also help detect circumstances in which double taxation arises. A more detailed exchange of information for cross-border transactions in regular intervals could enable Member States to resolve possible cases of double taxation before the second Member State levies the tax. Since in general VIES has proven to be well accepted and helpful for Member States, an extension of automatically exchanged information and improvement of the capacity of the system could increase the effectiveness of VIES and also the legal certainty for taxpayers.[152] It would enable a Member State to see when another Member State has come to a diverging assessment of the place of supply, and they can enter into dialogue with the other Member States on the basis of Regulation 904/2010.[153]

While the exchange of bulk information might not be feasible directly, the extension of mandatory categories of information exchange and specification in the Regulation itself could improve the connection between Member States at least for categories that are known for their probability to cause double taxation. Those categories could for instance be identified through the topics frequently subject to cross-border rulings. The Commission already introduced an enhanced information exchange for the prevention of fraud through the recent amendments to the Regulation, for example for information on car registration and electronic commerce, which can be seen as a first step towards a broader scope of automatic exchange.[154]

6.1.3 Infer obligation to collaborate

While it is crucial for Member States to have all relevant information to make an informed assessment of a situation, the *KrakVet* judgement shows, that this does not necessarily lead to a prevention of double taxation. Hence, in certain circumstances, there is a need for a mutual effort by Member States to come

[149] Art.1 (1) Regulation 904/2010.
[150] OECD, *The Sharing and Gig Economy: Effective Taxation of Platform Sellers: Forum on Tax Administration* (OECD Publishing Paris 2019) < https://doi.org/10.1787/574b61f8-en> accessed 20 April 2021 39.
[151] Commission 312 (n 55) 12.
[152] Lamensch, 'Key Policy Issues' (n 21) 346.
[153] See 6.1.3.
[154] Art.1 Regulation 2017/2454; Art. 1 (5) Regulation 2018/1541.

to a joint assessment of the situation.[155] The VAT Forum determines that 'an efficient resolution mechanism would […] require that the financial authorities are obliged to find a solution if they have different views with regard to the VAT regime that should be applied'.[156]

In order to ensure a 'correct application of VAT', a Member State should be obliged to enter into dialogue with another Member State when they observe that the latter has already taxed the transaction of which they come to the conclusion to be in the right to tax or that both Member States levied tax on the transaction already. Therefore, the initiative by the EU VAT Forum for Member States to enter into dialogue should be extended and incorporated into the framework of administrative cooperation. The Commission has planned to start an initiative called 'EU cooperative compliance framework' in 2020/2021 which is supposed to provide for a 'preventive dialogue' in cross-border issues in the area of corporate income tax.[157] Such an option to collaborate should also be initiated for administrative cooperation in VAT.

Art. 28 of Regulation 904/2010 already provides for the possibility for tax administrations to form joint audits in the effort of combatting fraud. This Article could be extended to the prevention of double taxation issues by including a Paragraph which provides for the possibility to form expert groups on double taxation issues as well.[158] Considering the possibility to join forces for an audit to prevent the loss of revenue and allocate taxing rights correctly after transactions have been fully pursued and taxed, it should also be possible to form such a joint endeavour to ensure a correct taxation on the opposite of the revenue stream, hence ensuring Member States sovereignties do not overlap.

To ensure legal certainty for the taxpayer and make a difference to the mechanisms already in place, the dialogue should include an obligation for Member States to come to an agreement and if that is not possible, to consult national courts and if the dispute cannot be settled there, to refer the dispute to the ECJ. [159] Traversa also suggests such a duty to cooperate in the 'form of (a) procedural obligation to initiate a dialogue between the concerned Member States as a way to reach a common understanding on the applicable rules'.[160] Enabling tax administrations to the possibility to detect and act on cases of double taxation would shift the burden to take action on double taxation from the taxpayer to the authorities.

For that matter, the tax authorities underlie a 'difficult trade-off between the need to protect revenue and minimize competitive distortion, and the need to safeguard the efficiency of tax administration and avoid undue compliance burden'.[161] The proposed measures could improve the intensity of the degree

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[155] Van der Hel - van Dijk L and Griffioen M 'Tackling VAT Fraud in Europe: The International Puzzle Continues…' (2016) 44 Intertax 503,507.
[156] EU VAT Forum (n 1) 81.
[157] Commission 312 (n 55) 8.
[158] Art. 28 Regulation 904/2010.
[159] EU VAT Forum (n 1) 47.
[160] Traversa, 'KrakVet' (n 12).
[161] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (OECD Publishing, Paris 2021) <https://doi.org/10.1787/51825505-en > accessed 10 May 2021.

of cooperation and start a collaboration between administrations in regard to double taxation issues, yet it would also multiply the burden on the tax administrations, aggravating the already existing issues.

6.2 One VAT administration on EU level?

Lamensch introduces the idea of going 'beyond mere regulatory harmonisation' and centralizing the level of VAT collection in the EU.[162] In the context of the 'action plan for fair and simple taxation', in 2020 the Commission expressed their intent to move towards a single European VAT registration.[163] This could be seen as a first step towards a European VAT Administration, which could address the difficulties arising from an enhanced need for exchange of information between administration following a more intense cooperation between Member States.

At the moment, taxpayers issue their recapitulative statement to their national tax administrations which then enters the data into information exchange system. Tax authorities of another Member State can extract the data from the system to verify the VAT returns received from the acquiring counterpart of the transaction.[164] In the system of a common single European VAT administration, the taxpayers would issue their information on the intra-community transactions directly to the central institution. Data of all inner-European transactions could be collected through more extensive recapitulative statements.

An even more advanced exchange of information would include the real-time availability of data through mandatory e-invoicing which is directly shared with the tax administration.[165] This information would then be processed in one central administration, so all necessary data to make an assessment of a taxable transaction is readily available in one place and can directly be used. In addition, an algorithm could identify transactions that have been taxed twice or which have not been taxed at all. This would ease the information of tax authorities about double taxation issues since currently they only become aware of those situations when a taxpayer issues a complaint.[166] For this purpose, the use of digital solutions and technology could help to better process the mass of data through artificial intelligence or blockchain technology which allows to trace intra-community transactions.[167] There is already an IT-tool in place which is based on mining big data, it is the Transactional Network Analysis (TNA) which detects fraud networks between different operators.[168] It uses data from VIES.[169] In addition to that, some Member States already have national reporting systems in place which include the sharing of data in real-time to the tax authorities in order to combat

[162] Marie Lamensch, 'Key Policy Issues' (n 21) 358.
[163] Commission 312 (n 55) 6.
[164] Commission 428 (n 10) 188.
[165] Petrosino (n 133).
[166] EU VAT Forum (n 1) 18.
[167] Commission 312 (n 55) 5.
[168] Commission 428 (n 10) 38.
[169] Petrosino (n 133).

fraud.[170] The possibilities of such digital tools for tax have received increased interest in research.[171]

The compliance of such a big data processor with data protection on an EU level needs to be examined. Also, the Commission remarks that a majority of the European Member States would not agree to give officials of other administrations direct access to the national databases.[172] Another drawback to a single centralized institution is the fragmentation of the VAT administration and other tax administrations in the Member States which for example complicates the communication and coordination between income taxes and VAT.[173]

On a positive note, the single VAT Administration could solve the current deficiencies to the VIES, which in general is perceived as a good instrument to exchange information but leaves room for improvement.[174] A single website for this European institution would also simplify the access for taxpayers to the VIES data which at the moment still proves a difficult task in certain countries.[175] In addition, that website could provide for an overview over all other accessible tools to resolve double taxation disputes.[176]

In a European institution for authorities, officials of each Member State would be present. In circumstances of misunderstandings between Member States, those officials could form joint task forces to resolve the discrepancies. At the moment, the cross-border rulings and dialogue between tax administrations are conducted by national contact persons.[177] Further, to increase the effectiveness, a common working language could be introduced to reduce language barriers and misunderstandings.[178] The impact assessment of Regulation 904/2010 has shown that tax authorities perceive the largest burden of information exchange when 'significant human resources' are necessary to comply with administrative cooperation for example answering requests for administrative enquiries.[179] In an exemplary cost statement, the Commission also observed that the highest costs for tax administrations arise from the requests of information and administrative enquiries.[180] By centralizing the human resources for all Member States and automizing the exchange of data, less resources would be needed to answer requests of

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[170] Petrosino (n 133).
[171] Robert Müller, 'European Union - Proposal for an Automated Real-Time VAT Collection Mechanism in B2C E-Commerce Using Blockchain Technology' (2020) 31 International VAT Monitor <https://research.ibfd.org/#/doc?url=/collections/ivm/html/ivm_2020_03_e2_3.html> accessed 5 May 2021; research project of Marta Papis-Almansa 'VATTECH' starting in October 2021: Rimfors F, 'Prestigefyllt EU-Stipendium på 2,2 miljoner till forskning om momsbedrägerier'(Högskolan Kristianstad, 17 May 2021) <https://www.hkr.se/nyheter/2021/prestigefyllt-eu-stipendium-pa-22-miljoner-till-forskning-om-momsbedragerier/> accessed 23 May 2021.
[172] COM 428 (n 10) 131.
[173] Ebrill (n 173) 134.
[174] COM 428 (n 10) 131.
[175] COM 428 (n 10).
[176] EU VAT Forum (n 1) 57.
[177] EU VAT Forum (n 1) 85.
[178] Commission 428 (n 10)128.
[179] Ibid 118.
[180] Ibid 117.

information, benefitting from economies of scale and reducing tax administration costs.[181] For that matter, probably more national contact persons would be necessary to enter into dialogue with the administrative contact persons of another Member State. In general, the closer cooperation could strengthen the trust between Member States which will be especially relevant for the envisioned future of the European VAT system.

6.3 Conclusion

Including the aim to prevent double taxation issues in the VAT Directive and the Regulation would not only make it obligatory on all Member States to participate but would also provide for a more official mechanism to resolve such issues. The extension of the scope of information on intra-community transactions that is shared on the basis of Art.17 via VIES could help and solve issues like in *WebMindLicenses*, it would render a request for information unnecessary. An introduction of an obligation to collaborate through tax administrations dialogue to prevent double taxation would also be more in line with the VAT system and prevent situation as in the request for a preliminary ruling in *DuoDecad* and render expensive legal procedures unnecessary. These measures could further provide for a more intense degree of cooperation between tax administrations and establish a form of collaboration between the administrations of all Member States, not just limited to the Member States participating in the Pilot Projects of the Commission or the VAT Forum. They would generally increase the legal certainty of cross-border transactions. A common European Administration would complement this enhancement of cooperation between Member States. It could solve the issue of information requests between Member States and relieve them of the administrative burden imposed by the current system and the extensive amount of information exchange that is necessary to enable a functioning system of VAT. While those measures can facilitate a more uniform application of VAT legislation, in the long term the rules of the VAT system need to be reformed to provide for an efficient legal framework.[182]

[181] Commission, 'Report from the Commission to the Council and the European Parliament Eighth Report Under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures COM (2017) 780 final 18; Liam Ebrill and others *The modern VAT* (International Monetary Fund 2001) 132.
[182] Ibid (n 1) 35; Commission 312 (n 55) 15.

7 Conclusion

It is set out in Art. 113 TFEU that the European VAT system is supposed to be harmonized as far as 'necessary to ensure the establishment and the functioning of the internal market without distortions of competition'.[183] The distorting effect any deviation from single taxation has on the market should therefore be prevented by all legal instruments guiding the VAT system. Since, in general, the national VAT legislations are guided by the same set of rules in the VAT Directive, the taxation issues in cross-border transactions predominantly stem from diverging interpretations of the provision, the circumstances or the legal description, resulting in different determinations of the place of supply. To overcome interpretative misunderstandings and reach a consistent perception of the details of a cross-border transaction, it is necessary for the respective tax administrations to communicate with each other.

Administrative cooperation constitutes a supporting interception system to the VAT Directive which aims to help establish the 'correct' place of supply as intended by the Directive. The analysis of Regulation 904/2010 shows that it implicitly aims to avoid and prevent double taxation by cooperating to the extent that it is necessary to ensure correct taxation. While it can bridge information asymmetries, it does not provide for the possibility of joint endeavours to resolve double taxation. Hence, Member States can exchange information on the basis of Regulation 904/2010 to both make an informed assessment of the transaction, but it does not oblige them to collaborate, so they unilaterally determine the place of supply. This does not constitute a problem as long as unilaterally, the tax administrations come to the same conclusion. When they have diverging opinions, however, the individualist approach to taxation can result in a double tax burden for a taxpayer. This also shows in case law. In *WebMindLicenses* the Court held that there is an obligation to send a request for information to avoid double taxation, but it did not specify whether further cooperation should be carried out to commonly establish the place of supply. In *KrakVet*, the Court had a chance to clarify the intensity of cooperation to be practiced. However, it refrained from conferring such significant competence to administrative cooperation by not inferring an obligation for tax authorities to collaborate.

The reference of request C-596/20 for a preliminary ruling shows the ineffectiveness of a preliminary ruling to clarify deviating interpretations of the circumstances of a cross-border transaction. With no other legally binding resolution mechanism in place at present, there is a clear need to enhance the options for a taxpayer to avoid or resolve a double burden of VAT impacting their business. In that regard, the outset of Regulation 904/2010 shows, that in theory, administrative cooperation could serve as a mechanism to help efficiently prevent and resolve double taxation.

In order to prevent and resolve double taxation three measures could be taken: Firstly, explicitly stating the aim to avoid double taxation in the VAT Directive and the Regulation, secondly, increasing the amount of automatically shared information and thirdly, introducing collaboration in

[183] Art. 113 TFEU.

form of expert groups between Member States to resolve double taxation. Bringing initiatives like cross-border rulings and dialogue between tax administrations into a more binding context by including it in the Regulation could significantly improve the legal certainty for taxpayers in cross-border transactions. In addition to that, an enhanced degree of cooperation and collaboration between Member States would shift the burden to declare and resolve double taxation from the taxpayer to the tax administrations.

To simplify the processes and reduce the increased amplitude of information the amendments would entail for the individual tax administrations, a single European VAT administration could be established. It would help to not further intensify the problems that are inherent in the current system anyway. In such a central European institution, the resources to process and analyse the huge amount of data would be consolidated to improve the speed and efficiency of information exchange and subsequently detecting and resolving double taxation.

A shift in administrative cooperation from a national to a European central institution would help to lay a pathway for a closely cooperating European VAT system in the future. It remains to be seen when Member States and legislation will show full commitment to single taxation by adapting the legal instruments on the regulatory level to economic reality. In that regard, emphasis should be laid on the fact that moving from unilateral taxing efforts to joint endeavours would significantly strengthen the progress towards a unified European VAT system.

Bibliography

Scholary Contributions

Artinger K and Ismer R, 'International Double Taxation Under VAT: Causes and Possible Solutions' (2017) 45 Intertax 593

Bartol Lesar M, 'European Union – EU VAT Cross-Border Rulings' (2019) 30 International VAT Monitor < https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2019_06_e2_4> accessed 21 May 2021

Beretta G, 'VAT and Administrative Cooperation in the EU' [2020] Tax Notes International <https://www.taxnotes.com/document-list/contributors-authors/beretta-giorgio> accessed 30 March 2021

Burgers IJJ and Criclivaia D, 'Joint Tax Audits: Which Countries May Benefit Most?' (2016) 8 World Tax Journal 306

Cambridge Dictionary 'Cooperate' (Cambridge University Press 2021) <https://dictionary.cambridge.org/dictionary/english/cooperate> accessed 8 April 2021

Cannas F, 'European Union/Italy – The Participation of Italy in the EU VAT Cross-border Rulings Project: Legal and Procedural Issues' (2020) 31 International VAT Monitor <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2020_05_it_1> accessed 19 May 2021

De la Feria R, 'The Definitive VAT System: Breaking With Transition' (2018) 3 EC Tax Review 122

De Troyer I, 'International Cooperation to Avoid Double Taxation in the Field of VAT: Does the Court of Justice Produce a Revolution?' (2016) 3 EC Tax Review 170

De Troyer I, 'Administrative Cooperation and Recovery of Taxes' in Christiana HJI Panayi, Werner Haslehner and Edoardo Traversa (eds) *Research Handbook on European Union Taxation Law* (Edward Elgar Publishing 2020)

Ebrill L and others, *The modern VAT* (International Monetary Fund 2001)

Ecker T, *A VAT/GST Model Convention* (IBFD 2013)

Hemels S, 'Administrative Cooperation in the Assessment and Recovery of Direct Tax Claims' in Ben Terra and others (eds) *European Tax Law: Vol. 1 General Topics and Direct Taxation* (Wolters Kluwer 2018)

Hemels S, 'Administrative Cooperation in the post BEPS era' (Presentation at Lund University 2020)

Kajus J and Terra B, 'Administrative Cooperation and Combating Fraud in the Field of Value Added Tax' (IBFD, 5 March 2019) <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/linkresolver/static/evdcom_admin_coop_integrated_text&refresh=1616167995357#evdcom_admin_coop_integrated_text> accessed 19 March 2021

Kajus J and Terra B, *A Guide to the European VAT Directives: Introduction to European VAT 2021, vol 1* (IBFD 2021)

Lamensch M, 'European Union -Trust: A Sustainable Option for the Future of the EU VAT System?' (2019) 30 International VAT Monitor <https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2019_02_e2_3> accessed 24 May 2021

Lamensch M, 'Key Policy Issues for the Future of the EU VAT System' in Christiana HJI Panayi, Werner Haslehner and Edoardo Traversa (eds) *Research Handbook on European Union Taxation Law* (Edward Elgar Publishing 2020)

Lang M, '*Introduction to the Law of Double Taxation Conventions'* (2nd edn, IBFD 2013) https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/idtc2012_c01 accessed 15 May 2021

Lasok QC KPE *EU Value Added Tax Law* (Edward Elgar Publishing 2020)

Marchgraber C, *Double (Non-) Taxation and EU Law* (Kluwer Law International B.V. 2018)

Millar R, 'Intentional and Unintentional Double Non-Taxation Issues in VAT' (Sydney Law School Research Paper No. 09/45, 9 June 2009) < http://ssrn.com/abstract=1416582> accessed 20 May 2021

Müller R, 'European Union - Proposal for an Automated Real-Time VAT Collection Mechanism in B2C E-Commerce Using Blockchain Technology' (2020) 31 International VAT Monitor <https://research.ibfd.org/#/doc?url=/collections/ivm/html/ivm_2020_03_e2_3.html> accessed 5 May 2021

Papis M, 'The Principle of Neutrality in EU VAT' in Cecile Brokelind (ed) *Principles of Law: Function, Status and Impact in EU Tax Law* (IBFD 2014)

Peeters B and Vanneste L, 'European Union/International - DAC6: An Additional Common EU Reporting Standard?' (2020) 12 World Tax Journal <https://research.ibfd.org/#/doc?url=/collections/wtj/html/wtj_2020_03_e2_1.html> accessed 25 April 2021

Petrosino N, 'European Union - Are You Ready for the Tax Technology?' (2019) 2 International VAT Monitor < https://research-ibfd-org.ludwig.lub.lu.se/#/doc?url=/document/ivm_2019_02_e2_1> accessed 10 May 2021

Rimfors F, 'Prestigefyllt EU-Stipendium på 2,2 miljoner till forskning om momsbedrägerier'(Högskolan Kristianstad, 17 May 2021) <https://www.hkr.se/nyheter/2021/prestigefyllt-eu-stipendium-pa-22-miljoner-till-forskning-om-momsbedragerier/> accessed 23 May 2021

Stetter E, 'Double (non-) Taxation in VAT: In how far is the Single Tax Principle reflected in the European VAT System? (Lund University, 2021)

Terra BJM, 'VAT in the EEC: The Place of Supply' (1989) 26 Common Market Law Review

Traversa E, 'Ongoing Tax Reforms at the EU Level: Why Trust Matters' (2019) 47 Intertax 244

Traversa E, 'KrakVet Marek Batko (Case C-276/18): Against All Odds, VAT Double Taxation Exists in the EU' (Kluwer International Tax Blog, 27 July 2020) <http://kluwertaxblog.com/2020/07/27/krakvet-marek-batko-case-c-276-18-against-all-odds-vat-double-taxation-exists-in-the-eu/>(accessed 18 March 2021)

Van der Hel - van Dijk L and Griffioen M 'Tackling VAT Fraud in Europe: The International Puzzle Continues…' (2016) 44 Intertax 503

Official Publications

Commission, 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Future of VAT: Towards a Simpler, More Robust and Efficient VAT System Tailored to the Single Market' COM (2011) 851 final

Commission, Information Note – VAT Double Taxation – Dialogue Between Tax Administrations (14 October 2015, Brussels) <https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/key_documents/eu_vat_forum/dialogue_tax_administrations_ms_en.pdf> accessed 21 May 2021

Commission, 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an Action Plan on VAT: Towards a Single EU VAT Area – Time to Decide' COM (2016) 148 final

Commission, 'Impact Assessment Accompanying the Document Amended Proposal for a Council Regulation Amending Regulation (EU) No 904/2010 as Regards Measures to Strengthen Administrative Cooperation in the Field of Value Added Tax' SWD (2017) 428 final

Commission, 'Report from the Commission to the Council and the European Parliament Eighth Report Under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures COM (2017) 780 final

Commission, Communication from the Commission to the European Parliament and the Council: An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy' COM (2020) 312 final

European Court of Auditors 'Special Report: E-Commerce: Many of the Challenges of Collecting VAT and Custom Duties Remain to be Resolved' (European Court of Auditors, 2019) <https://www.eca.europa.eu/Lists/ECADocuments/SR19_12/SR_E-COMMERCE_VULNERABILITY_TO_TAX_FRAUD_EN.pdf> accessed 15 April 2021

EU VAT Forum 'Prevention and Solution of VAT Double Taxation Dispute' (2020) <https://ec.europa.eu/taxation_customs/sites/taxation/files/01-2020-executive-note-eu-vat_forum.pdf> accessed 19 April 2021

OECD, *The Sharing and Gig Economy: Effective Taxation of Platform Sellers: Forum on Tax Administration* (OECD Publishing, Paris 2019) < https://doi.org/10.1787/574b61f8-en> accessed 20 April 2021

OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (OECD Publishing, Paris 2021) <https://doi.org/10.1787/51825505-en > accessed 10 May 2021

Legislation

Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation [1977] OJ L 336/15

Council Regulation 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) OJ L 24/1

Council Directive 2003/93/EC of 7 October 2003 amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation [2003] OJ L 264/23

Council Regulation 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 [2003] OJ L 264/1

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L 347/1

Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax [2010] OJ L 268/1

Council Regulation 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia OJ L 158/1

Council Regulation 1286/2013 of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC [2013] OJ L 347/20.

Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union [2017] OJ L 265/1

Council Regulation 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax [2017] OJ L 348/1

Council Regulation 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax [2018] OJ L 259/1

Council Regulation 2018/1909 of 4 December 2018 amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements [2018] OJ L 311/1

Council Regulation 2020/283 of 18 February 2020 amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud [2020] OJ L 62/1

Treaty on the Functioning of the European Union [2012] OJ 326

Table of Cases

Opinions