



OECD INTERNATIONAL VAT/GST GUIDELINES

GUIDELINES ON NEUTRALITY

Outcomes of the Public Consultation

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Committee on Fiscal Affairs

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CENTRE FOR TAX POLICY AND ADMINISTRATION

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OUTCOMES OF THE PUBLIC CONSULTATION

1. Background

In December 2010 the OECD published its draft Guidelines on VAT/GST Neutrality for public consultation, with comments due by 22 March 2011. These Guidelines are one of the building blocks of the OECD International VAT/GST Guidelines. The development of these Guidelines is a long term project aimed at providing guidance to governments on applying VAT/GST to cross-border trade, with a view to minimising the potential for double taxation or unintended non-taxation

The Guidelines are being developed in a staged process. As each stage is completed the elements are published for public consultation. When the process of consultation is completed, all comments are carefully considered and the documents are reviewed as appropriate. Work then continues on the basis of the progress achieved. Each document - which constitutes part of the future Guidelines - should be regarded as a building block and should not be considered in isolation. Each building block will be reviewed over time in the light of the subsequent elements in order to form a coherent whole.

2. Comments received

Eleven representations were received in response to the public consultation. Seven representations were made by major business associations: the Canadian Institute of Chartered Accountants; the Federation of European Accountants; the Investment Management Association; Business Europe; the Tax Executives Institute; the British Bankers Association and the European Banking Federation. Comments were also made by three of the largest global advisory firms KPMG; Ernst & Young and PriceWaterhouseCoopers and by one multinational company (Umicore). The business associations that have participated in this public consultation represent a total of more than 7 400 member companies and national business federations with activities in a wide variety of business sectors as well as 580 000 accountants from more than 70 countries.

All contributions support the OECD work on VAT/GST Guidelines and express broad agreement with the neutrality principles set out in the Guidelines. They *“are in full support”*; *“agree with the analysis of the basic principles of neutrality”* or consider that the Guidelines *“do not contain any statement [we] would object to, nor do they leave out [important] aspects”*. The Guidelines are also *“welcome and sensible”*; *“essential to make sure that VAT stays neutral for businesses as tax collectors”*; *“represent a significant and important contribution to global tax policy”* and *“are in line with an effective and fair VAT/ GST system and totally in accordance with our clients' best practices”*.

More generally, international business associations strongly supported the OECD work on VAT/GST, which is considered *“essential”*; *“highly appreciated”* and *“provides a valuable step in designing an international VAT/GST framework”*. The role of the OECD to connect governments and businesses is also acknowledged.

Most responses to the public consultation also stressed that further guidance was needed to ensure proper implementation of the Guidelines on neutrality in practice. These submissions subsequently provided more detailed comments on the Guidelines themselves. They are summarised below.

Guideline 1: The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation.

Many expressed the need for further interpretation of what is meant by “*except where explicitly provided for in legislation*”. Some comments interpret the term “legislation” restrictively, in the sense that the right to deduct input tax can only be restricted by law and not by administrative requirements. In the absence of fraud or abuse, administrative measures (e.g. need to meet formalities on time, joint and several liability with other business in the transaction chain and penalty regimes) should not result in the VAT burden (partly) being borne by a business).

Some also point to the difficulties caused by the exemption (without right of deduction) for financial services, but this issue should be addressed separately.

Guideline 2: Businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation.

A number of contributions consider that the words “*similar levels of taxation*” would need further clarification. In particular, businesses with exempt activities (e.g. financial services) may bear different levels of taxation depending on the way they are structured. For example, they suffer irrecoverable VAT on outsourced services while this is not the case for services provided internally. The same distortion may occur depending on whether exempt businesses are structured in branches or subsidiaries.

Further guidance will be given on what is meant by “*similar levels of taxation*” as part of the work on achieving neutrality in practice. As indicated above, the specific problems created by the financial services exemption should be the subject of separate work.

Guideline 3: VAT rules should be framed in such a way that they are not the primary influence on business decisions.

Many contributions stress that VAT rules (including tax rates) inevitably have a strong influence on exempt businesses’ decisions.

Some suggest the development of further guidance for ensuring that VAT rules are clear, accessible and consistent in practice, e.g. allow for the automation of processes, be available in a “*language common to international businesses like English*” and provide for advance warnings in case of changes. This comment is similar to the outcomes of the business survey made in 2009¹. Further guidance will indeed need to be developed in this area as part of the work on ensuring the application of the Guidelines on neutrality in practice.

¹

http://www.oecd.org/document/47/0,3746,en_2649_33739_44560815_1_1_1_1,00.html

Guideline 4: With respect to the level of taxation, foreign businesses should not be disadvantaged nor advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid.

Guideline 4 is unanimously supported and did not attract specific comments. One comment indicates that “...*international guidance has so far been lacking in this area*” and that “*Guideline 4 [...] is therefore of great value*”.

Guideline 5: To ensure foreign businesses do not incur irrecoverable VAT, governments may choose from a number of approaches.

Guideline 5 is unanimously supported. All comments agree that different approaches can be used, provided that the process is understandable, transparent and provides a level playing field for businesses.

Some point to the issue of the reciprocity, which should “*not lead to a reduction of the tax credit solely because in the other country, input tax credit is generally more limited*”. Further guidance will probably be required in this area.

Guideline 6: Where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses.

A number of respondents consider that Guideline 6 would need further development, in particular as regards the concrete meaning of “*disproportionate or inappropriate compliance burden*” while recognising the need to protect government revenue against fraud. Some added that Guideline 6 should be a guiding principle for all forms of taxation – whether consumption, income or excise tax.

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