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Febelfin comments on the OECD public consultation on VAT/GST guidelines.

This note contains a few comments from Febelfin about the OECD Draft consolidated Guidelines available on
http://www.oecd.org/tax/consumption/ConsolidatedGuidelines20130131.pdf

Febelfin welcomes the opportunity to comment the public consultation on the OECD international VAT/GST guidelines.

Febelfin would like to deal with two particular issues which are of a great importance for the financial industry.

1. VAT neutrality

Even if Chapter 2 of the consultation about VAT neutrality is not under comment, Febelfin wants to stress that, for the financial industry, VAT is one of the heaviest tax levies they suffer, while VAT is a tax on the final consumption of goods and services and not on the businesses.

It must be stressed that the possibility for banks to compete on a level playing field among together or with other players in the financial sector who are not exempt is even more important today in a globalized world with high-tech IT solutions. We therefore strongly believe that - if the general exemption for financial services is to be kept - there is a need for changes in the current VAT framework in order for banks and others to be able to decrease the costs they have for irrecoverable VAT today.

We believe the current situation could be improved if there was a general possibility to opt for taxation or that financial services were zero-rated. An option to tax would unblock VAT expenses currently blocked within the transaction trail.

Zero-rating the supply of financial services to other taxable persons would in the same way solve the problem of non-deductible VAT for the economic sector concerned. It would also give the financial sector the possibility to make full use of the possibilities of increasing their competitiveness thru, for example outsourcing and pooling.

Making cross-border VAT-grouping mandatory as well as clarifying and elaborating the current rules for cost-sharing arrangements are two other options which would make the situation for the financial sector more similar to that of non-exempt businesses.

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Febelfin will support all efforts of the OECD to increase the VAT neutrality for the financial industry.

2. Transactions between establishments of multiple locations entities (MLE's)

Febelfin agrees with the principle that the place of consumption of external services received by MLE's should be the place of the establishments that really use and enjoy the services. Nevertheless, Febelfin has some concerns about the methodology proposed by the OCDE in order to allocate the services to the establishments.

The FCE Bank case[1] says that a fixed establishment, which is not a legal entity distinct from the company of which it forms part, established in another Member State and to which the company supplies services, should not be treated as a taxable person by reason of the costs imputed to it in respect of those supplies. For the EUCJ, the services supplied the case at hand are out of scope of VAT as it is impossible for a single legal person to supply services to itself.

The OECD draft guidelines breach this principle when submitting to VAT the recharge arrangements between MLA's. Even if the OECD agrees explicitly that the recharge method applies only to external services received by the MLE's, Febelfin thinks that it will be very difficult practically to dissociate external and internal costs without using very complex activity based costing systems.

The potential risk of the recharge method is that the tax administrations will ask that the taxpayer prove the distinction they make between recharges of external versus internal costs and that all recharges would be taxed if the distinction cannot be sufficiently demonstrated. This distinction will be extremely complex to make when complex services are supplied: for example if an establishment uses IT hardware + external consultants + internal staff in order to provide a full IT service to the other establishments of a MLE.

Therefore **Febelfin proposes that the guidelines explicitly confirm that only external costs recharged as such (namely without addition of any internal services which would transform - even slightly - these external services) should be subject to the recharge arrangement mechanism.**

For the mixed or exempt VAT taxpayers, the recharge arrangements will be VAT neutral only if the recharging entity has a full right of deduction of the VAT on the recharged inputs. Therefore **Febelfin proposes that the guideline explicitly mention that a full deduction of VAT based on the actual use of goods and services should always be guaranteed by the tax authorities in case of recharge arrangements.**

[1] European Union Court of Justice case C210/04