Mr Piet Battiau
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Rotterdam, 2 May 2013

Dear Mr Battiau,

I refer to the public consultation on the OECD international VAT/GST guidelines published in February 2013 and would like to make various comments.[1]

General comments

I have read the OECD international VAT/GST Guidelines (hereafter: the Guidelines) with great interest and congratulate you sine the Guidelines reflect a proper understanding of the indirect tax challenges businesses face in terms of global contracts and complex international services. Furthermore, the direction taken by the Guidelines generally makes sense from a fundamental VAT/GST perspective whilst at the same time accommodating the needs of business. Hence, the Guidelines should be considered a great achievement and an excellent foundation for further expansion.

In general, it would be highly appreciated if the OECD would continue to focus on VAT/GST and further develop the Guidelines. There could be a slight concern that Members with a relatively complex VAT/GST system (e.g. Turkey, Mexico, Chile, Canada, and Japan) may potentially be less enthusiastic to embrace the Guidelines. Hence, I would suggest that you engage with such countries closely and seek their input pro-actively when developing or discussing Guidelines. The co-development of the Guidelines in partnership with these countries might may increase their buy-in and encourage a much higher degree of acceptance. This will further support business needs as more and more extend to supply/purchase arrangements in jurisdictions with non-traditional complex VAT/GST legislations.

I would recommend that you include a Section with definitions of the key items (e.g. neutrality principle, destination principle, single location entity, multiple location entity, intangibles, etc). This will make the Guidelines even more reader friendly and could also help with reducing some repetition.

[1] Please note that my comments are made in a personal capacity and they do not reflect the position of Unilever.

Specific comments

International trade goods

According to the Guidelines, the implementation of the destination principle with respect to international trade in goods is relatively straightforward in theory and generally effective (1.12). They also mention that implementing the destination principle with respect to international trade in services is more difficult than with respect to the international trade in goods (1.13).

Although I appreciate the challenges faced with cross-border services (e.g. since Customs controls are not in place), the international trade of goods still has significant challenges of its own which should not be underestimated. Due to increasing globalisation, supply chains are getting ever more complex e.g. with involvement of more entities in the chain. Implementing the destination principle in this respect also needs to be addressed and should not be left to one side. It would therefore be highly appreciated if this topic would also be addressed by Working Party 9 on Consumption Taxes at a certain point in the future.

Definition 'establishment'

A key element of the Guidelines relates to services supplied to businesses that have *establishments in* more than one jurisdiction.

There could potentially be some confusion in terms of the word 'establishment'. It would therefore be appreciated to further define and describe this term, e.g. specify whether this includes branches, fixed establishments, sales offices, etc. as well as subsidiaries.

Initially, I assumed that having only a subsidiary abroad would not qualify a Head Office as a multiple located entity. However, the example in Annex 2 and facts stated on Page 61 seems to imply that having a subsidiary could also qualify a Head Office as a multiple location entity ("Company E is a multiple location entity located in **four** different countries").

Recharge arrangement

If services are (also) used by other establishments than the one that entered into the business agreement, the taxing rights are in the second instance allocated to the jurisdiction where the customer that uses the service is located via the so-called recharge method. This internal recharge is treated as consideration for a supply within the scope of VAT (3.61). The guidelines recommend that the establishment of use would be liable for any tax due on the recharge (reverse charge mechanism) (3.75).

Although the recharge arrangement in combination with the reverse charge mechanism seems a good approach, this may potentially trigger significant compliance (reporting/ERP) obligations for businesses. This may place a disproportionate administrative burden on companies merely involved in VAT-taxable transactions which would on balance not have to pay VAT due to the reverse charge mechanism. Hence, it could be considered to relieve fully VAT-taxable businesses from the application of the reverse charge mechanism in case of cross-border services between the Head Office and its establishments (and services between establishments).

Alternative methods

As alternatives to the 'recharge method' the 'direct use method' and 'head office method' have been considered (page 5). The direct use method would likely often result in practical challenges for businesses. The head office method would also be unsuitable as it ignores use of the service and hence not be in line with the destination principle. Therefore, applying the recharge method as starting point makes sense.

In order to reach uniformity and consistency I would recommend the recharge method to be clearly endorsed and encourage Governments to agree on this method rather than to allow flexibility to choose between the three methods or a combination of the three.

No recharge

If no recharge is made, VAT will in principle be applied as if a recharge arrangement were effectively in place to ensure that taxing rights accrue to the jurisdiction of use (3.21). Further guidance would be appreciated in this respect, e.g.:

- how would the taxable basis/taxable amount be calculated in this respect;
- how would the establishment of use in practice know when to report the purchase of the service.

One may also consider whether it is in line with the fundamental principles behind a VAT system to identify a recharge through fiction.

Internal services

The Guidelines focus on externally purchased services, i.e. they do not address the VAT treatment of internally generated or developed services (3.23). In practice bought in services can be internally recharged together with internally generated costs (e.g. salary expenses, internal IT, etc).

Further guidance in this respect would be useful. Please also bear in mind there may be conflicting interests between industries, e.g. businesses which are fully VAT taxable may appreciate from a practical perspective that both internally generated costs and external costs are treated as one single service whereas companies with a limited right to recover VAT may prefer to exclude internal costs from the recharge.

Evidence

The supplier/recharger will need to hold relevant information to demonstrate the nature of the supply and identity of the customer. Tax administrations are encouraged to provide guidance on required evidence (3.57). It is recommended to set out in detail examples of relevant evidence. In order to assist business needs, a fully harmonised set of evidence applicable for all countries would be appreciated.

Specific Rules

The Guidelines recognise that the Main rule may not give an appropriate tax result in every situation which could justify the allocation of taxing rights to a proxy other than customer location (3.87). Although the proposed 2-step approach to justify a specific rule seems the right way forward, it needs to be safeguarded that specific rules are merely the exception and can only be used in a pre-defined limited number of situations.

If you have any questions regarding the above, please do not hesitate to contact me (rishi.gainda@unilever.com, + 31 625035651).

Kind regards,

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