Delegates will find attached the Draft Summary Record of the Fourth Meeting of the Working Party No. 9 Sub-group on Electronic Commerce.

This note is submitted FOR APPROVAL under Item II of the Draft Agenda of the Fifth Meeting of the WP9 Sub-group, to be held on 7-8 June 2000.

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DRAFT SUMMARY RECORD OF THE FOURTH MEETING OF THE
WORKING PARTY NO. 9 SUB-GROUP ON ELECTRONIC COMMERCE

9-10 February 2000

I. ADOPTION OF THE DRAFT AGENDA

1. The Draft Agenda was adopted without amendment.

II. SUMMARY RECORD OF THE PREVIOUS MEETING

2. The Draft Summary Record of the previous meeting was agreed without amendment.

III. REVIEW OF RELATIONS WITH THE CONSUMPTION TAX TAG

3. The Working Party No. 9 Sub-group on Electronic Commerce (“Sub-group”) expressed its satisfaction with the results of the previous day’s Joint Session with the Consumption Tax Technical Advisory Group (TAG). The meeting had served to confirm the usefulness of an approach based upon the sharing of the Sub-group’s main papers on place of consumption [DAFFE/CFA/WP9/EC/WD(99)3/REV1] and on tax collection mechanisms [DAFFE/CFA/WP9/EC/WD(99)4/REV2]. The TAG’s initial reactions to the two papers had been useful, and their more considered reactions would be reviewed in June 2000.

4. It was agreed that the Sub-group should continue to share new documents with the Consumption Tax TAG. Two documents which could usefully be adapted for this purpose were those dealing with:
   - Defining Normal Place of Residence/Domicile [DAFFE/CFA/WP9/EC/WD(2000)3]; and

5. Concerning the “Simplified Interim Approach” introduced by business members of the Consumption Tax TAG during the previous day’s Joint Session, it was agreed to ask the business representatives to give more substance to this approach (see Annex I for a copy of the rough outline submitted by business). It was agreed that the Chair of the Sub-group would therefore write to the TAG setting out the Sub-group’s understanding of the proposed approach, together with a set of specific questions designed to clarify how the approach might operate in practice. The TAG would be encouraged to reply to this letter before the June meeting.

6. Turning to the technological feasibility of the collection mechanism based upon withholding by financial institutions, the Sub-group asked the Secretariat to review the work of the different TAGs (and of other OECD resources) in order to provide expertise needed for further examination.
IV. UPDATE ON WORK OF OTHER TAGs AND FSM SUB-GROUP

7. The Secretariat reported briefly on the work of the other TAGs and the Forum on Strategic Management (FSM) Sub-group on Electronic Commerce. Overall the picture was quite positive, with all the groups actively engaged in their respective tasks. There were, however, some misgivings about the limited output from the Technology TAG. The Secretariat intended to strengthen its collaboration with the Directorate for Science, Technology and Industry (DSTI) of the OECD. The FSM Sub-group was also drafting a context paper (in order to focus the Technology TAG’s work for the physical meeting of the TAG to be held on 6-7 April 2000).

8. The Secretariat outlined proposals for a major global conference focussing on the tax administration aspects of electronic commerce to be held in May/June 2001. This conference, to be hosted by Canada, would be organised with the participation of other international tax organisations such as CIAT (Centro Interamericano de Administraciones Tributarias), CATA (Commonwealth Association of Tax Administrators), and IOTA (Intra European Organisation for Tax Administrators). Recalling the welcome participation of Singapore in the Sub-group, the Secretariat underscored the valuable opportunity offered by such a co-sponsored approach to reinforce the involvement of non-member economies and other organisations in the OECD’s work on e-commerce.

9. Concerning the J. Meyer’s letter of 5 January 2000 from the Professional Data Assessment TAG, the European Commission Delegate, Arthur Kerrigan, drew attention to the European Commission’s own work (undertaken by a private consultant) on electronic invoicing norms, electronic recording and access to electronic information. The results would be shared with the OECD.

V. UPDATE ON DEVELOPMENTS IN THE EUROPEAN UNION

10. The European Commission Delegate, Arthur Kerrigan, set out the rationale behind the European Commission’s impending proposal amending the current VAT rules. In order to reflect the principles set out in the Taxation Framework Conditions, the EU’s tax rules for services (i.e. all other items other than goods) required some amendment. In particular, the current rules served in some important instances to tax ‘exports’ while failing to tax ‘imports’. Corrective action to rectify the legal position was necessary even if all the ancillary questions had not been addressed. Some compliance issues were especially tricky, but could be solved, it was hoped, in the longer term, by technology.

VI. UPDATE ON DEVELOPMENTS IN THE UNITED STATES

11. The US Delegate, Jeffrey Friedman, provided a summary of the US e-commerce taxation debate. The 1998 Internet Tax Freedom Act had established a moratorium on any new taxes on Internet access and also established an Advisory Commission on Electronic Commerce (ACEC) with a broad mandate to examine the taxation issues associated with e-commerce (including in principle, the international dimension), and to report to Congress by April 2000. The US Delegate concluded that at this stage it looked very difficult for ACEC to reach the majority required (two thirds of the 19 commissioners) on any radical or ambitious proposals. (The ACEC’s sessions are open to the public and all the documents are available on its website: www.ecommercecommission.org.)

12. The US Delegate added that on the federal level, both Senate and Congress were considering several proposals on e-commerce and that, at the state level, more than 15 states had adopted legislative amendments in order to simplify or co-ordinate rules related to e-commerce.
VII. REVIEW OF SUB-GROUP WORK PROGRAMME FOR 2000

13. The Secretariat summarised the conclusions of the December meeting of the Working Party No. 9 and the further areas of work identified in the detailed workplan for the Sub-group. He emphasised the need for all members of the Sub-group to make an active contribution to this work programme. The Sub-group welcomed the detailed workplan as approved by the Working Party No. 9 [WD(2000)2].

14. Concerning the possible form of outputs, it was agreed that the United Kingdom, in conjunction with Canada and the Secretariat should prepare a short document which would be a first draft of possible guidelines reflecting the principle of taxation in the place of consumption. This draft would be considered in June, and submitted to Working Party No. 9 as an initial draft.

VIII. CURRENT WORK IN PROGRESS

A. Place of consumption principle

Defining normal place of residence/domicile

15. In reviewing the paper presented by the Delegates of Sweden and Korea [WD(2000)3], the discussion centred on how, for business to private consumer transactions, to select the best criteria to give business and governments reliable information on a consumer’s location. It was broadly agreed that a multiple, non-exclusive approach should be further explored.

16. It was further agreed that the document should be revised by the Secretariat, changing the title to “Verifying Normal Place of Residence/Domicile” and integrating Sub-group comments, with a view to submitting it to the CT TAG for their information and comment.

B. Collection mechanisms options

Other technology-based options

17. Noting the various ACEC papers on technology-based ‘solutions’, it was agreed that Switzerland, the United Kingdom and Canada (with input from the United States and the European Commission) would review this material and prepare a short critical analysis of the different systems for further consideration at the next meeting.

Tax thresholds

18. In reviewing the draft paper prepared by Canada and European Commission, discussion centred on the evaluation of the advantages and disadvantages of thresholds on the basis of competitive equity between domestic and non-domestic suppliers, and the compliance burden imposed on private sector stakeholders. Several Delegations underlined the possible distortions of competition, particularly when there is no taxation in the country of origin. Some Delegates insisted on the fundamental need for simplicity and lightening of burdens for SMEs.

19. It was agreed that written comments from Delegations should be submitted to the Secretariat with a view to revising the paper before then sharing it with the Consumption Tax TAG.
C. Tax administration/simplification

20. The UK Delegate, David Holmes, reported on the January meeting of the informal group (composed of the United Kingdom, Ireland and the Netherlands) charged with examining, in collaboration with business members of the TAG, the “barriers” identified by the business community in their paper [DAFF/CFA/WP9/EC/WD(99)2] and the options available for simplification (such as in the fields of electronic declaration and invoicing). The team would be reviewing the emerging outputs from the FSM Sub-group (to identify any areas where consumption tax issues might not be adequately taken account of); and meeting with business representatives of the TAG to explore practical ideas for simplification.

IX. MONITORING AND MEASURING E-COMMERCE

21. The Secretariat presented the room document issued by Canada [RD(2000)1] setting out the methodology that Canada had employed to estimate the proportion of the tax base (and so of revenue yield) that was potentially at risk in terms of on-line supplies of digitised products to private consumers. Given that this aspect of e-commerce was often cited as the greatest risk to tax yields, such analysis was of great potential value in helping to quantify the risk (e.g. so as to be better able to advise Ministers, etc.) and get a better sense for its proportions. Canada’s initial conclusions were, for example, that this element of the tax base was relatively small, and so that even if there were wholesale ‘on-line substitution’ for domestic purchases the theoretical revenue loss would not necessarily be that great. Rather the distortion of competition might present greater challenges. Delegates were encouraged to experiment with the methodology to see what it revealed for their national circumstances.

X. OTHER BUSINESS

22. The Sub-group approved the following revised schedule for June:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>FSM Sub-Group on Electronic Commerce:</td>
<td>5 June (pm) and 6 June</td>
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<tr>
<td>Joint Session of the FSM Sub-Group and WP9 Sub-Group:</td>
<td>7 June (am)</td>
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<tr>
<td>WP9 Sub-Group on Electronic Commerce::</td>
<td>7 June (pm) and 8 June</td>
</tr>
<tr>
<td>Working Party No. 9 on Consumption Taxes:</td>
<td>9 June</td>
</tr>
<tr>
<td>WP9 Sub-Group on Electronic Commerce::</td>
<td>24-25 October</td>
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(A joint session of the WP9 Sub-group and the Consumption Tax TAG was subsequently confirmed for Tuesday, 6 June.)
ANNEX I: ROUGH OUTLINE SUBMITTED BY BUSINESS ON

SIMPLIFIED “INTERIM” APPROACH

Simplified rules will increase compliance

- Standard/uniform registration and filing -
  Electronic, if possible

- Simple -
  Basic details of business address, etc.

- Simple, clear VAT report
  i.e. revenue x tax

- No fiscal reps / no bonds

- Electronic invoices and records offshore
  Requirements of home countries

- Threshold?

- No recovery of input VAT

- Option to file a full return / full compliance burdens

- Audit / access dealt with by exchange of information

- VAT liability, e.g. “bundles”
  Uncertainty of definition?
  - Aim for common/simple

- Good faith / best efforts expected / respect of business

- Tax authorities to provide necessary information - timely

- Supplier takes reasonable efforts to get customer residence
  - Information available at time of that transaction

- Business to business ➔ reverse charge - if VAT
  No tests for check digit / known partner - “prudent supplier”
ANNEX II: FINAL LIST OF PARTICIPANTS / LISTE FINALE DES PARTICIPANTS

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Groupe de travail no. 9 Sous-groupe sur le Commerce électronique

9-10 February 2000 / 9-10 février 2000

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