



The Chemical Company

Central Department Taxes and Duties

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Re: Comments on the OECD INTERNATIONAL VAT/GST GUIDELINES as of February 2013

Dear Sir,

BASF is the world's leading chemical company. More than 110,000 employees work in BASF toward contributing to the success of our customers from nearly all sectors and almost every country in the world. BASF posted sales of approximately € 72.1 billion in 2012. BASF has subsidiaries in more than eighty countries and supplies products to a large number of business partners in nearly every part of the world. BASF operates 6 Verbund sites and approximately 380 other production sites worldwide.

Subsidiaries belonging to BASF hold VAT/GST registrations in nearly all the jurisdictions belonging to the OECD (with 4 exemptions). The head company, BASF SE, as single entity is registered for VAT in 21 jurisdictions belonging to the OECD.

BASF supplies its products in a business-to-business environment. As BASF has no supplies to end-consumers, VAT/GST should conceptional be neutral for BASF.

BASF thus highly appreciates the work started within the OECD to develop the "OECD INTERNATIONAL VAT/GST GUIDELINES". This work is particularly important, as VAT/GST systems are tremendously on the rise as the principle source of revenues of governments in nearly all parts of the world. It is exactly the right moment to make significant progress in aligning the VAT/GST-systems globally in order to avoid double taxation or double-non-taxation.

With regard to the on-going public consultation on the "OECD INTERNATIONAL VAT/GST GUIDELINES, Draft Consolidated Version February 2013", BASF would like to comment Chapter 3 "Determining the Place of Taxation for Cross-Border Supplies of Services and Intangibles".

For purposes of Guideline 3.4 et seq., paragraphs 3.17 to 3.30, and paragraphs 3.51 to 3.86 of the OECD VAT/GST Guideline dealing with the "Multiple Location Entity" (MLE), the OECD has based their guideline and comments on the term "establishment".

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The OECD pre-assumes the term “establishment”. A clear definition what the OECD is referring to by using the term “establishment” is missing. Only footnote 28 on page provides for that a registration for VAT purposes by itself does not constitute an establishment for the purposes of the OECD VAT/GST Guideline.

Producers and traders in tangible goods are entitled for full input VAT/GST deduction. Therefore, branch structures cannot be used to take advantage of VAT/GST planning opportunities.

However, the approach to treat transactions between an establishment and the head office or other establishments of the enterprise as transactions subject to VAT/GST might in case of an unintended establishment lead to disadvantages if such transactions are recognised with retroactive effect at a later point of time.

Therefore it is crucial for business engaged in international trade in goods, to have clear and non-ambiguous criteria for the definition of the term “establishment” for VAT/GST purposes.

By defining such criteria, the term “establishment” for VAT/GST purposes should e.g. not include auxiliary activities.

The criteria for defining the term “establishment” for VAT/GST purposes should clarify that only such persons, who are dependent on the enterprise (personnel), will be taken into account. Persons, whose supplies to the enterprise as such are subject to VAT/GST, shall not be deemed to create an “establishment” for VAT/GST purposes.

To mitigate undue VAT/GST burdens stemming from the application of the “recharge method” – particularly if applied retroactively to an unintended establishment for VAT/GST purposes – it might be worth to consider aligning the “Authorized OECD Approach” (AOA) as set forth in Article 7 paragraph 2 of the OECD Model Tax Convention on Income and Capital as of July 2010 with the “recharge method” as proposed in the OECD VAT/GST Guidelines.

The application of the recharge method should be restricted to cases of intended, i.e. previously agreed and stipulated dealings between an establishment and the other parts of an enterprise.

There are business structures in which the application of the “recharge method” in case of MLEs being engaged in international trade in goods might lead to double VAT taxation based on the relationship of the “recharge method” to the rules set forth by the Agreement on Implementation of Article VII for the General Agreement on Tariffs and Trade 1994 (GATT), which have an impact on the levy of import VAT/GST. We will be happy to share our experience in international trade in goods and the related VAT/GST as well as customs issues in future discussion.

Please do not hesitate to contact us for your questions regarding our comment or for further discussions.

Yours sincerely,

Jan Koerner