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Opinion Statement of the CFE

on the Draft Consolidated OECD International VAT/GST Guidelines

Prepared by the Fiscal Committee of the CFE

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This is an Opinion Statement prepared by the CFE Fiscal Committee on the on the Draft Consolidated OECD International VAT/GST Guidelines.
The CFE is the leading European association of the tax profession with 33 national tax adviser organisations from 25 European countries representing over 180,000 tax advisers.
CFE is registered in the EU Transparency Register (no. 3543183647-05).

The CFE would like to thank the OECD for the valuable work it is undertaking in the area of VAT/GST Guidelines. We also appreciate the OECD's willingness to discuss its proposals not only with governmental representatives but also with businesses, so that it appreciates the issues and problems faced by both businesses and governments.

The VAT/GST systems in different countries are complex and it is often far from clear how the rules apply to specific situations. The lack of uniformity in the rules also gives rise to problems of double taxation. VAT systems tend to be quite complex and achieving neutrality, so that taxation just occurs at the stage of final consumption is not easy. We therefore strongly support the stress that the OECD is placing on the issue of VAT/GST neutrality.

With the above in mind we would like to point out several issues for potential further review or clarification:

- *Legal context of the VAT/GST Guidelines*

  The title of the OECD work gives the impression that these Guidelines are intended to have similar status, and therefore legal consequences, to the OECD Transfer Pricing (TP) Guidelines. The TP Guidelines are a widely used methodology for establishing prices for transactions between connected entities, and as such they are widely accepted by tax administrations not only of the OECD member states, but practically world-wide (although recently, some states have been considering different principles for transfer pricing).

  We, however, do have concerns that problems will arise if attempts are made to develop similar VAT/GST Guidelines. The TP Guidelines can be freely used and/or adjusted by the state of application. Potential discussions between impacted states can then occur and any disputes can be resolved in accordance with the rules set by the relevant double-tax treaty (or other measures). In the VAT/GST context problems may be currently caused by the lack of any similar procedures. The current model double-tax treaties do not regularly apply to the indirect taxes, so similar alternative procedures would need to be put in place to avoid double taxation.
  The problems of introducing such procedures may be increased by the fact that VAT in the European Union is governed by a directive and it can be very difficult to achieve the consensus needed to make changes to the rules. However, if guidelines are to be introduced it is clearly desirable that steps should be taken to develop a VAT/GST Model Treaty (we are aware that this issue has already been subject to academic debate and review).

- *Anti-abuse rules and provisions*

  While we understand governments' concerns about potential abuse of the rules, we consider that it would be undesirable to incorporate complex general or specific anti-avoidance provisions in the guidelines. We strongly believe that such guidelines are usually used by legitimate businesses in their legitimate transactions and therefore provide relevant guidance in such cases. It should be noted that the principles of abuse of law are generally inherent in the legislation of OECD Member States and their national rules will provide the appropriate tools to fight activities of potential fraudsters.

  We would therefore suggest that the appropriate approach would be for the preamble of any VAT/GST Guidelines to state that they are not intended to apply to abusive transactions. However, we do not consider it would be appropriate to have specific anti-abuse or anti-avoidance measures in the text of the VAT/GST Guidelines. This approach would make the VAT/GST Guidelines a more reliable and clearer source of guidance. Any anti-avoidance measure would, in any event, need to be adjusted to the legal system of the implementing state in question.

- *The recharge method*

  In relation to cross-border use of services purchased centrally for establishments in a number of states, we appreciate the effort by the OECD to avoid the application of the "use and enjoyment" principle, which is currently inherent in the EU directive. However, we do have some concerns about the proposed recharge method. We agree that the "use and enjoyment" rule is a difficult concept to apply. We also appreciate that the proposal is aimed at allocating taxing rights to the relevant state in which "final" consumption of the purchased services (or intangible asset) occurs. However, such rules may, in some cases, encourage governments to claim that there is an actual taxable transaction whenever cross-border services are rendered between two parts of the same entity (person), ie. between the head office-and-branch or between branches. This approach would be inconsistent with the jurisprudence of the Court of Justice of the European Union and the current VAT system in the EU. Particularly in the VAT exempt sector, it may also prevent companies from efficiently administering their affairs because irrecoverable VAT charges will arise if there are cross-border services between establishments in different states.

  Even though the current wording of the VAT/GST Guidelines states that the recharge method shall solely be used for allocation of costs of externally purchased services or intangibles, it is not yet clear how the allocations of internally generated costs will be treated, and the application of the recharge mechanism on externally purchased services may easily lead governments to conclude that they are also entitled to impose charges on purely internal services by reference to internal costs. In this way, transactions will be artificially created where they currently do not exist, which may undermine the neutrality of the tax, add complexity and make it more difficult for some businesses to organise their affairs in an efficient manner. We would therefore recommend considering other possibilities before such a rule is introduced. If such a rule is introduced it will need to take

account of the fact that there may be other internally generated costs which are allocated between establishments in different states but which form parts of the same legal entity.

One final point to note is that it would be desirable if any rules were not just directed specifically at VAT and GST but also apply to other similar taxes. In this regard we note that Article 401 of the European Union Directive 2006/112/EC permits member states to impose other taxes provided they do not result in additional cross-border formalities.