Chartered Institute of Taxation
Excellence in Taxation

OECD international VAT/GST guidelines –
Draft consolidated guidelines
Response by the Chartered Institute of Taxation

1 Introduction

1.1 The Chartered Institute of Taxation (CIOT) presents its comments on the draft consolidated guidelines published in February 2013.

1.2 We received a number of comments from members that the EU VAT system is tried and tested and therefore represents a good basis on which to establish guidelines. It is of course true that the Commission is examining the future of the VAT system and it is likely therefore that there will be further changes, but in essence the principles underlying the VAT system are well established and should not change. We agree with those comments and our response takes this into account.

1.3 We note that the EU system of VAT limits the ability of its Member States to apply at a national, regional or local level turnover taxes or taxes having broadly speaking the same effect as a VAT system[1]. It would appear to us that unless the guidelines make similar recommendations in relation to VAT/GST systems, they could be ineffectual in achieving their aims since the aims could be subverted by other taxes, including local business taxes. It does not matter what the taxes are called – it is the effect of the tax on businesses that needs to be considered.

2 Executive summary

2.1 We welcome the emphasis on tax neutrality. In our submission on 26 September 2012[2], we accepted that total tax neutrality was not possible. Nevertheless we consider that more needs to be done to consider what solutions are possible to achieve the highest degree of tax neutrality possible.

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1 Article 401 of Council Directive 2006/112EC of 28 November 2006 on the common system of value added tax – referred to in this response as the 'Principal VAT Directive'.

2 http://www.tax.org.uk/Resources/CIOT/Documents/2012/10/120926_VAT_neutral_CIOT.pdf

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2.2 We also agree that VAT or GST should normally be levied on a destination basis and indeed this is accepted on an EU-wide basis, but we also recognise that this can impose insurmountable burdens on small businesses seeking to compete in a global economy. Accordingly, we consider that guidelines should encourage countries to provide reliefs and simplifications for small businesses seeking to trade in their territories.

2.3 We appreciate that the guidelines are incomplete and that work remains to be done. Nevertheless, we are concerned that the guidelines only make sense if assumptions are made on a number of terms that have not yet been defined, including:

- The definition of a supply or transaction subject to VAT, ie the subject matter and scope of taxable transactions;
- The concept of taxable amount and whether it is for a single or multiple supplies; and/or
- The concept of taxable person.

In our view, these terms should be defined insofar as possible as soon as practical so that the scope of the guidelines can be read with more precision. It also follows that the guidelines as drafted may need some redefinition once these other matters have been resolved.

2.4 The guidelines broach the complex subject of services that are shared across borders. The recommended solution is a two-stage process that treats what may be a single transaction as two. While in most cases, the two-stage approach may well align with the way multi-nationals allocate costs, there will be cases where this is not the case. Accordingly, the guidelines should deal with alternatives.

2.5 In general terms, we do not agree that there can be a supply between two parts of the same entity – branch-to-branch, head office-to-branch or branch-to-head office. The guidelines can be read to achieve a sensible and neutral approach but our concern is that countries will interpret the guidelines so as to treat a branch as equivalent to a subsidiary or independent third-party. This can generate a VAT cost that should not arise. We comment in detail on this aspect below.

2.6 As noted above, the EU VAT system is well established and has been adopted in 27 countries within the EU as well as by prospective members and some other countries. Because it is long established, many of the problems needing resolution have been dealt with, although we accept that further change is needed to resolve some other issues.

2.7 When published, the aims and status of the guidance should be made clear, possibly using a mechanism similar to the recitals set out at the beginning of the Principal VAT Directive of the EU.

2.8 There will be a need to consider the interaction of VAT/GST with other taxes, eg transfer pricing rules in relation to direct taxes.

3 Draft preface of the guidelines

3.1 We agree with the statement that ‘VAT rules require greater coherence to avoid burdens on global trade’. In this connection, please see the comment at 1.3 above.

3.2 However, we are concerned that because VAT is not yet the subject of specific

treaties, it is possible to use the system to discriminate against foreign business. By way of example, some countries with a VAT system have in the past required application of the reverse charge for foreign services but have not permitted a deduction in respect of the input tax generated by the reverse charge even where the business is fully taxable.

3.3 We consider that the guidelines should make clear what its aims are and what its status is. The aims should include, insofar as it is possible, the definition of a VAT/GST system that:

- Ensures the neutrality of the tax;
- Avoids double taxation, ie the situation in which two countries consider that consumption takes place in their territory;
- Provides business with a simple and harmonised system; and
- Minimises compliance burdens and discourages countries from imposing strict compliance rules that make it either impossible or excessively difficult for persons subject to VAT to exercise rights such as the recovery of VAT.

3.4 We think that consideration needs to be given to what mechanism could be created in order to resolve issues of double taxation. In relation to direct taxation this is done via clauses within the model treaty that provide for resolution of disputes and enforcement of the rights to tax. This would not be possible without substantial harmonisation of the structure of VAT/GST. It may be that consideration needs to be given in the future to the development of a model treaty to avoid double imposition of indirect taxes. It appears to us that a neutral VAT/GST system is an essential means of achieving the objectives of the General Agreement on Trade in Services (GATS).

3.5 In regard to paragraph 3.4 above, we were advised that because of the way in which VAT/GST as well as local business taxes having a similar effect to VAT are structured, it can become virtually impossible to avoid double taxation in some circumstances.

4 General VAT concepts

4.1 We recognise that the guidelines need to be generated on a piecemeal basis. However, we are concerned that the guidelines have been developed without dealing with the most fundamental principle in VAT – the concept of a taxable transaction or a supply.

4.2 We agree with the approach taken in the Principal VAT Directive. This involves a three stage process:

- First, the term taxable person is defined;
- Second, the term ‘economic activity’ is defined; and
- Third, there are extensions and restrictions on the term ‘economic activity’, eg the exclusion of certain government services.

It is of particular importance to note that the term taxable person requires that the person be undertaking activities independently – this therefore excludes employees.

4.3 We take the view that it is not possible to understand the destination system fully without first identifying who is subject to its rules.

4.4 While in theory VAT should be a simple tax system, a number of factors militate

against simplicity. These include the fact that political considerations tend to put pressure on governments to provide reliefs that complicate the system. We do not disagree with the provision of reliefs because we recognise that it can be a practical way of reducing costs for the low paid and vulnerable persons. Thus, in some cases, the choice is necessarily between complicating the VAT system and complicating the way in which relief is provided to those groups.

4.5 It follows, in our view, that it is necessary to assume that most VAT systems are likely to be complex. That in turn means that it cannot be assumed that VAT will flow through the system and thereby achieve full neutrality. Accordingly, the system should anticipate and provide for the possibility of some 'cascading' but attempt to minimise its impact.

4.6 VAT is particularly burdensome on small businesses and some governments may also choose to provide reliefs for small business because the cost of managing small business registrations may exceed the revenue generated. However, as has been seen in a European Community context, small businesses can be disadvantaged when countries choose not to provide reliefs to businesses not established in their territories. This goes against the principle of neutrality. Countries should be encouraged to provide reliefs to small businesses on an even-handed basis.

5 The destination principle

5.1 We agree that VAT and GST systems should be based on the destination system so that VAT is payable in the country where the goods or services are consumed.

5.2 However, although exceptions create complications to the VAT system, we recognise that it may be appropriate to provide for some exceptions to the destination principle in order to simplify the tax system and provide relief for small business, eg in the EU, taxable persons who undertake distance selling are effectively permitted to apply an origin-based system for goods below certain thresholds (€35,000 or €100,000 depending on the country concerned). In our view, this is a sensible provision aimed at assisting small businesses trade globally.

5.3 A destination system relies on there being a common definition of where a supply is consumed. The EU approach has been to distinguish between B2B and B2C supplies. This is on the basis that on B2B supplies, the VAT flows through. However, there are exceptions where:

- The recipient of a supply carries on exempt activities and so is unable to recover the VAT incurred;
- The recipient of a supply is not required to be registered as a taxable person and is therefore effectively undertaking an exempt activity; or
- For any other reason, the VAT incurred by a business is not recoverable.

The B2B rule has considerable advantages in simplifying the VAT system for businesses since it means that it does not have to set up accounting systems to recover VAT incurred in a country where it does not make supplies but incurs costs in connection with supplies made elsewhere. It also helps achieve a neutral cash flow and prevent countries from delaying refunds of VAT.

5.4 In the exceptions outlined in 5.3 above, the recipient is regarded as the consumer but problems can arise where, for example, the country where the incoming supply is physically made considers that VAT incurred should be blocked in its territory but the country where the business is established wishes to tax the supply on the basis that it

should receive the blocked VAT in lieu of being able to tax the supply. Blocked VAT is of considerable importance to tax authorities.

5.5 We consider this in more detail below.

6 Neutrality of Value Added Taxes in the Context of Cross-Border Trade

6.1 In this section, we examine each of the guidelines in the chapter entitled 'Neutrality of Value Added Taxes in the Context of Cross-Border Trade'.

6.2 **Guideline 2.1 (as expanded by paragraph 2.4.4)**
The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation.

6.2.1 We agree with the guideline. However, we have concerns that the wording of the exception is too broadly based and should be restricted to those types of inward transactions where VAT is commonly disallowed or restricted, such as those provided for in article 176 of the Principal VAT Directive or that VAT attributable to exempt supplies. A failure to restrict the scope for burdening taxable businesses with irrecoverable VAT would defeat the purpose of the guideline. For example, we understand that there are or have been systems where VAT incurred on capital assets is not allowed as a deduction. In an asset intensive process, this can create a significant cascading effect.

6.2.2 We note that the commentary at para 2.4.4 explains the context more clearly but we do not think the wording brings out the approach suggested. The guideline should specifically discourage states from creating a 'cascade' effect in VAT legislation except in specific circumstances such as where goods or services are used both for business and non-business purposes.

6.2.3 In addition, we received comments that the concept of the 'burden of value added taxes' needs clearer definition to make it clear that it does not refer solely to any VAT that is not recoverable but also to cash flow implications and compliance burdens that can be hugely costly for businesses, eg a delay in refunding VAT due to a business can have substantial effects on its borrowing.

6.3 **Guideline 2.2 (as expanded by paragraph 2.4.5)**
Businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation

6.3.1 We agree with the guideline although we can understand that in countries not bound together by legislation such as the Principal VAT Directive, they might have economic or social reasons for why they do wish to discriminate. A balance does therefore need to be struck between national sovereignty and the need for a system that does not discriminate against foreign suppliers. One mechanism that is used in the EU in relation to VAT refunds is to insist on reciprocal arrangements as a condition for allowing refunds to other countries, although we recognise that this does not always work.

6.3.2 The key issue here is 'what is a similar transaction?'. In our response to the consultation on tax neutrality[3], we distinguished between vertical neutrality (ie the principle that identical types of transaction should be taxed in the same way) and horizontal neutrality (the situation in which transactions having a similar economic

[3] Footnote 2 above

effect should be taxed in the same way). However, as Advocate General Sharpston effectively points out in her opinion in *Deutsche Bank*[4], neutrality may break down where there are exemptions and other exceptions.

6.3.3 While total horizontal neutrality is not always possible, there is scope for ensuring by definition that this is substantially achieved, eg articles 14(1) and 14(2)(b) of the Principal VAT Directive ensure some neutrality in the case of transactions that are legally services rather than goods but have a similar economic effect to a supply of goods.

6.3.4 We observe that what is seen as tax avoidance in many cases is simply the result of businesses structuring transactions to avoid a more tax costly alternative. Tax neutrality is a key tool in preventing what is perceived as tax avoidance.

6.3.5 However, achieving horizontal tax neutrality is probably not possible without specific definition.

6.3.6 We agree with paragraph 2.46, which adopts a functional approach to the issue of tax neutrality.

6.4

Guideline 2.3 (as expanded by paragraph 2.4.6) VAT rules should be framed in such a way that they are not the primary influence on business decisions.

6.4.1 This guideline gives a succinct statement of the principle of tax neutrality as understood by business. We would nevertheless emphasise that the rules need to be applied to all taxes having an impact similar to VAT, including payments such as parafiscal charges made to NGOs.

6.4.2 We agree that there is a need for clarity in legislation and also that the form of business (partnership, company etc) should not normally influence the amount of tax paid. Similarly, compliance requirements should not influence the business decision, and national tax authorities should be encouraged to bear in mind the true impact of the compliance burden imposed on businesses.

6.5

Guideline 2.4 (as expanded by paragraph 2.4.7) With respect to the level of taxation, foreign businesses should not be disadvantaged nor advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid.

6.5.1 Again, we agree with the statement.

6.5.2 We believe that it is of particular importance to ensure that small and medium businesses are not disadvantaged and so excluded from markets through excessive compliance burdens for small volumes of transactions. At present, the Principal VAT Directive discriminates between small businesses established in a country and those that are not (See *Ingrid Schmelz* [5]case). In our view, the compliance difficulties mentioned in that case to justify the existence of that legislation should not exist in a modern tax system with international treaties on co-operation between tax authorities and should be phased out.

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4 *Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG*

5 http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/EUECJ/2010/C9709_O.html&query=schmelz&method=boolean

6.5.3 Discrimination can also exist on other levels, eg in the case of *FCE Bank*[6], the argument by the Italian Government would have compromised business's ability to move staff freely and choose where to establish their business. VAT should not be used by Governments as a tool to achieve objectives that are better attained in other ways, eg by immigration legislation.

6.6 **Guideline 2.5 (As expanded by paragraph 2.4.8)**
To ensure foreign businesses do not incur irrecoverable VAT, governments may choose from a number of approaches.

6.6.1 The key point is that foreign businesses should not be disadvantaged by VAT rules that are different to those applied to local businesses. Apart from normal compliance procedures, there should be provision to ensure that there are adequate dispute resolution procedures for people not easily able to attend a court or tribunal in the country of claim. This could include procedures allowing appeals to be heard on paper or via an electronic portal.

6.6.2 We accept that there may need to be measures to protect the jurisdiction from tax fraud, eg security may be required. However, such measures should not go further than strictly necessary and should ideally take into account reputation, history of dealings within the country and other relevant information.

6.7 **Guideline 2.6 (as expanded by paragraph 2.4.9)**
Where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses.

6.7.1 We agree with the principles set out in this section. We were advised and EU case law bears it out that countries sometimes use minor compliance failures as a reason for denying taxable persons their rights, in particular, the right to deduct. We believe that the approach taken by the Court of Justice is the correct one – ie compliance requirements are only there to enable the authorities to check that the tax is being properly applied and that the neutrality of the tax is more important. Accordingly, we would suggest that it is only where compliance failure is of sufficient seriousness to undermine the audit of the tax that it should result in denial of a taxable person's rights.

7 Determining the place of taxation for Cross-Border Supplies of Services and Intangibles

7.1 In this section, we examine each of the guidelines in the chapter entitled 'Determining the place of taxation for Cross-Border Supplies of Services and Intangibles'.

7.2 **Guideline 3.1 (and paragraphs 3.4 and 3.5)**
For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption.

7.2.1 This states the destination principle, with which, in principle, we agree. However, the guideline is vague because there is not a clear definition of what is meant by 'jurisdiction of consumption'. Thus, an internationally mobile individual may well

[6] Case C-210/04 – http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/EUECJ/2006/C21004.html&query=FCE+and+Bank&method=boolean

consume services rendered by a single supplier in multiple jurisdictions. Accordingly, it will be necessary to develop a clear definition of what is meant by consumption[7] whilst keeping to a minimum any additional compliance burdens imposed upon the supplier.

7.2.2 We note that there is a special rule for multiple jurisdictions – see guideline 3,4.

7.3 **Guideline 3.2 (and paragraphs 3.6 and 3.7)**
For the application of Guideline 3.1, the OECD has adopted the following Guideline:

For business-to-business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles.

7.3.1 The wording of this paragraph needs to be tightened up since a business can be located in multiple jurisdictions. Further, in rare cases, some businesses may not be located in a specific jurisdiction so that a fall-back rule similar to that in the Principal VAT Directive may be needed. This provides for the place of supply to be defined by reference to the place where a person is resident.

7.3.2 There is also a problem with certain types of transactions, eg property related transactions where the country where the property is located may insist on the transaction being taxed in its jurisdiction. To allow for this, while at the same time ensuring business certainty, the main rule should be modified to provide that in specified transactions the country where a transaction physically takes place may be defined as the tax jurisdiction and in such cases that rule takes precedence.

7.3.3 However, we would strongly countenance against too many exceptions and alternative provisions which would simply introduce greater complexity and further areas of potential dispute.

7.4 **Guideline 3.3 (and paragraphs 3.8 to 3.16)**
For the application of Guideline 3.2, the OECD has adopted the following Guideline:

The identity of the customer is normally determined by reference to the business agreement.

7.4.1 While we agree that the business agreement will normally determine the identity of the customer, we would stress the need to take account of the whole agreement and the economic reality of the situation (para 3.13). Further, there may be complications determining both who the supplier is and what supply is being made in tripartite agreements as has been seen in UK case law[8].

7.5 **Guideline 3.4 (and paragraphs 3.17 to 3.18)**
For the application of Guideline 3.2, the OECD has adopted the following Guideline:
When the customer has establishments in more than one jurisdiction, the taxing rights accrue to the jurisdiction(s) where the establishment(s) using the service or intangible is (are) located.

7.5.1 We note that there have been problems in EU jurisdictions where in certain cases 'use and enjoyment' determine the place of supply. This guideline begs the question of

[7] See also our comments on use and enjoyment in 7.5 below.

[8] See for example *Commissioners of Customs and Excise v. Redrow Group Plc [1999] UKHL* 4, *Customs and Excise Comrs v Reed Personnel Services Ltd* [1995] STC 588 and *P&O Ferries* – although the cases did not deal with place of supply they emphasise the difficulty of identifying the customer.

what constitutes 'use' of a service.

7.5.2 First, it is necessary to decide whether or not use refers to some perceived actual use, eg fixed property is used where the land is located or economic use. Second, as the EU term 'use and enjoyment' implies, it is possible that there will need to be some form of 'tie-breaker' clause although even this term has not yet been clearly defined. The fact that 'use' can be determined in different ways suggests that the term 'use' needs to be defined more clearly.

7.6

Guideline 3.5 (and paragraph 3.19 to 3.86)
For the application of Guideline 3.4, the OECD has adopted the following Guideline:

In those cases where the services are used by one or more establishments other than the establishment that entered into the business agreement, the taxing rights are allocated in two steps. In the first step, taxing rights are allocated to the jurisdiction where the customer establishment that enters into the business agreement is located. In the second step, taxing rights are allocated to the jurisdiction where the customer establishment that uses the service or intangible under a recharge arrangement is located.

7.6.1 We agree that the two stage approach may be needed to ensure that the cost components of a transaction are taxed in the jurisdiction where they are used so as to fulfil the requirements of a destination system of VAT. However, we note that this is only possible where a central part of the business receives charges and makes onward charges. The two charge approach should not prevent a business asking a third party supplier to allocate its charges under a global agreement to the establishments where the services are used. As noted in 7.5 above, the term 'use' has not been defined with any precision so the guideline might be open to inconsistent interpretation unless the principles are better defined.

7.6.2 We agree in particular with paragraph 3.79, which provides that:

> 'Where the recharge of a service or intangible purchased from an external supplier is bundled with a wholly internal cost charge (e.g. salary expense of wholly internally supplied services), it is for the MLE to separate the cost of the externally purchased service or intangible from the other costs and to evidence the internal character of these other costs if this is necessary to ensure that the recharge method is only applied on the cost of the externally purchased service or intangible.'

Taxation of internal costs would be contrary to the principles of free trade.

In particular, in the case of branches, we consider that it is conceptually wrong to treat the different establishments as separate persons simply because they are in different countries[9].

7.6.3 This needs to be made clear earlier than paragraph 3.79 since otherwise paragraph 3.21 might not be clear. We see the two stage approach applying as follows:

> A plc has branches in Countries X, Y and Z. Its head office in X enters into a global agreement with B plc to provide services to each establishment. It is permissible but not mandatory to treat the supply as made in X and then supplied from X to the branches in Y and Z. In that case, even if the Head office in X were partly exempt, it should be able to deduct in full the VAT

[9] We agree with the Court of Justice reasoning in *FCE Bank* – see Footnote 5 above.

referable to the onward supply made to its branches in Y and Z.

BUT –

In the same case, A plc employs staff that it uses in its own head office as well as seconding staff to Y and Z. Since there is no independent supplier there cannot be a transaction by the head office to the branches in Y and Z.

If the Head Office in X makes a global supply to Y and Z (ie including both third party supplies and internal supplies), they should be treated as separate transactions and only the cost of third party supplies should be treated as potentially taxable.

If a supply is invoiced to the Head Office in X but is wholly for the use of its branch in Y, then it should be possible for the supply to be treated as received directly by Y branch and for no tax to arise in country X.

We note that a single agreement may specify how the consideration is to be allocated and may require the supplier to invoice the other establishments directly. It follows that there will be instances where the two stage approach is not appropriate. It is of course quite common for global charges to be made that may encompass both supplies on which VAT should be payable and charges for internal services on which, in principle, VAT should not be payable.

7.6.4 Particular issues arise in respect of intellectual property (IP) including, eg software and corporate marketing etc. Here the IP may have been developed internally or partly internally and partly using external suppliers. In such a case, it might be correct to ensure that the VAT is charged on the external cost according to its use but no charge is made in respect of that part of the charge that is referable to internal costs.

7.6.5 For the reasons stated above, we disagree that the amount recharged should automatically be used as the basis for determining the amount of tax. In the first place it is conceivable that there will be no recharge. It is also possible that a recharge may contain elements of internal services, eg the services of directors and managers that should not be treated as part of the value of the supply. In our view, the amount subject to VAT should not exceed the relevant proportion of the cost of acquiring the services from the third party supplier.

7.6.6 Within the EU VAT rules a distinction is made between the place where a person has established his business and a fixed establishment from which a business might make supplies. A business can have an establishment or location in a country but it may not have the resources there to constitute a fixed establishment[10]. In such cases, the existence of a branch in a country does not mean that a supply is treated as made to that branch if it is, for example, simply a cost centre of an operation based elsewhere.

[10] See for example *Daimler AG and Widex A/S v Skatteverket* (Case C-318/11)

7.7

Guideline 3.6 (and paragraphs 3.87 to 3.07)
The taxing rights over internationally traded services or intangibles supplied between businesses may be allocated by reference to a proxy other than customer location as laid down in Guideline 3.2, when both the following conditions are met:

a) The allocation of taxing rights by reference to customer location does not lead to an appropriate result when considered under the following criteria:
   - Neutrality
   - Efficiency of compliance and administration
   - Certainty and simplicity
   - Effectiveness
   - Fairness.

b) A proxy other than customer location would lead to a significantly better result when considered under the same criteria.

7.7.1 The guideline appears to be widely drafted whereas we think that exceptions to the general rule should be narrowly drafted. We agree that in some cases it is appropriate that the taxing rights be allocated on a basis other than where the business customer is located, eg some services relating to land may be more appropriately taxed where the land is located[11]. However, particularly in those cases where the service is made to a business customer those exceptions should be limited and clearly set out in the guidelines.

7.7.2 Indeed, it is only in those circumstances where the recipient of a service would not be able to recover the VAT on the service received that it is likely to make any difference, for example:

> Country P does not allow a deduction of the VAT incurred on hotel costs and restaurant meals. Taxation on the basis of the main rule would allow a foreign business to avoid a VAT costs on meals bought by its staff while visiting business customers in P and therefore potentially put local businesses at a disadvantage. Thus supplies of this nature should be treated as made in the country where supplied.
>
> Conversely, if the country of the supplier disallowed VAT on such supplies, the foreign supplier would suffer a VAT cost in his own country if the main rule was supplied even if otherwise he might get a deduction in P.
>
> In both cases above, the foreign business should be treated in the same way as a local business might be treated.

7.7.3 It must be noted however that where taxing rights are allocated to a country other than that where the customer is located, all other VAT consequences of that allocation should be the same as those applying to local businesses, in particular the right to deduct.

7.7.4 We note that the draft guidelines seem to assume that recharges are made but this may not be the case and indeed it appears from recent comments in the media concerning direct taxes on foreign businesses with establishments in the UK that this may not be the case in all situations.

[11] For example, the guidelines might adopt some or all of the rules in articles 46 to 59b of the Principal VAT Directive.

7.8 **Guideline 3.7**
For internationally traded business-to-business supplies of services and intangibles directly connected with immovable property, the taxing rights may be allocated to the jurisdiction where the immovable property is located.

7.8.1 This is a necessary corollary to 7.7. Land is an obvious instance of where the supply should be taxed in the country where the land is located. We repeat though that there should be no discrimination between how a local resident business is taxed (and allowed to deduct VAT) and how a foreign business is taxed.

7.8.2 We also note that within the EU generally, and in the UK in particular, problems arise as regards to how to define what is a service relating to land[12], Other problems may arise, eg which of the following is a service relating to land:

- Warehouse facilities[13];
- Rent collection services;
- Architects' services where they relate to a design concept rather than a specific property; and/or
- Accounting services to a property owner concerning a specific property.

It may be necessary to provide a clearer definition of what a service relating to land is to limit the possibility of double taxation or indeed unintended non-taxation.

7.8.3 The difficulty with taxing B2B services in the country where land is located is that it can create administrative difficulties for the business which uses those services to make supplies in respect of which VAT is deductible, including supplies outside the country where the land is located. As was seen in the case of *Daimler*[14], disputes can arise where the country where the land is located takes the view that there is an establishment for VAT purposes that requires registration to recover what may be relatively small amounts of VAT. Thus, the rights of a taxable person to recover VAT charged must be borne in mind when finalising the guidelines.

8 General comments

8.1 While not directly an issue in relation to the VAT/GST system issues raised in the consultation, we received some general comments on the way in which rules are applied.

8.2 A member commented that language was often a barrier to doing business in a foreign country. We are also aware that some countries within the EU rigidly enforce the requirement for business to be done in the official language(s) of the country concerned. Another member advised that in one country which has two official languages there was not even a choice as to which language could be used.

8.3 The objective of having international guidelines is to remove barriers to trade through greater harmonisation. While countries may not be able to deal with multiple languages they should take a more pragmatic view to ensure that businesses and in particular small businesses can operate in their jurisdictions by applying any rules with a reasonable amount of common sense.

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12 See for example *RCI Europe v HMRC* (Case C-37/08)

13 See for example *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. z o.o.* (Opinion) (Case C-155/12)

14 See footnote 8 above

8.4 We received comments about other issues not covered by the current state of the guidelines largely about the deduction system. These emphasised the fact that the VAT system has to be seen as a whole and accordingly that these guidelines may need further revision once other aspects of VAT/GST systems are considered.

9 The Chartered Institute of Taxation

9.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 16,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
10 May 2013