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Comments on the OECD International VAT/GST Guidelines

Dear Mr Battiau,

The Confederation of Swedish Enterprise (Svenskt Näringsliv) is Sweden's largest and most influential business federation representing 49 member organizations and 60 000 member companies with over 1.6 million employees.

The Confederation of Swedish Enterprise highly appreciates the work OECD is doing in the indirect tax area and warmly welcomes the opportunity to comment upon the draft consolidated version of the OECD International VAT/GST Guidelines.

General

VAT and other indirect taxes have become a much more important revenue source for governments worldwide during the past 10 years. Since VAT and other indirect taxes are levied on transactions, it is important to have clear rules stating in which tax jurisdiction a certain transaction shall be taxed in order to ensure that VAT is taxed in right tax jurisdiction.

For the sale of goods, it is usually fairly easy to determine the country of taxation. This since the destination principle is often used to decide the tax jurisdiction for cross border sale of goods. For services, however, this is not always clear since it could be difficult to determine the nature of a specific service. A broader use of the destination principle for all kinds of services would thus make it easier to determine the tax jurisdiction also for services since the nature of the service will become less important to determine.

Please find below our comments on the draft consolidated version of the International VAT/GST Guidelines:

Preface

Even though it has taken a while for the OECD to bring forward the draft consolidated version of the International VAT/GST Guidelines, we would like to stress that we highly appreciate the structured way OECD has chosen to administer the work with these Guidelines. We also believe that putting together Government representatives with people from the business as well as from the academics, in the way OECD has done, truly has proven to be a fruitful way to bring the work forward in a good manner.

Chapter 1

1.10 We agree with the conclusion that the destination principle is preferable to the origin principle.

1.14 The use of the reversed charge mechanism, allowing the buyer to report output VAT on a transaction instead of the seller, is a very important rule since the rule, among other things, ensures that non-resident companies do not have to register for VAT in the country of the buyer.

Countries that do not apply the reversed charge mechanism could create a huge trade hurdle. Business opportunities could therefore be lost if the business is considered to small volume vise for registering a company for VAT purposes abroad. But it could also lead to a situation where no VAT will be reported on transactions.

The importance of the reversed charge mechanism and the consequences of not implementing such a rule justify a further elaboration on the proos and cons with implementing the reversed charge mechanism. A further elaboration will provide some extra insight on the importance of such rule. This could be helpful for countries that have not yet introduced such a rule yet or who are about to introduce a new VAT regime.

Chapter 3

3.87 We believe it is of outmost importance that the use of a specific rule is limited as much as possible and thus that the main rule is used for services and intangibles in general.

3.104 The first part of the first sentence [“*it is not sufficient that a connection with immovable property is merely one aspect of the supply]* seems to be unfinished, i.e. some words seem to be missing in the sentence. The sentence should preferably be rephrased.

The second sentence [*The connection with immovable property must be at the heart of the supply and must constitute its predominant characteristics*] is not so easy to put in to context in a good way. We therefore suggest that this part of the clause is rephrased and that some examples are included in the sentence.

3.105 It seems somewhat contradictory to first state that the terms “transfer”, “sale”, “lease” and “right to use”, “occupy”, “enjoy” or “*exploit*” should not be understood narrowly within the meaning of national civil laws and in the next sentence state that these supplies fall under these Guidelines only when they are not considered supplies of services or intangibles under national law.

3.107 In this section it is stated that the specific rule should be adopted only when it has a high potential to be manageable and enforceable in practice. Even though this wording will limit the use of the specific rule, all kinds of cross border services connected to immovable property will initially be in scope for taxation in the country where the immovable property is located. This is not a preferable situation.

In our view so called intellectual services and remote services, provided cross border, which could be deemed as closely connected to immovable property, should preferably be taxed in the country where customer is located rather than in the country the immovable property is located. This since the use of the specific rule will become an unnecessary obstacle for businesses to overcome when providing intellectual services and remote services cross border, when the customer is located in another country than the country where the immovable property is located. A pure destination based principle for all kind of intellectual services and remote services, performed cross border, is therefore to prefer since this will lead to a more understandable and a more compliance friendly VAT legislation.

The above view could be elaborated a bit further with the following example: Today it is quite common that a Group of Companies set up service companies located in different time zones providing remote services on a 24/7 basis. In addition to this, it is also quite common that business flows are routed via one or a few companies within a Group of Companies, normally via the company financing R&D activities, who often also are the owners of patents and other IPR´s.

Further on, it is also quite common that a large Group of Companies establishes a centralized procurement company, who will be the main or the only interface towards the suppliers, i.e. all the suppliers routes their business transaction from its Group of Companies via the customers centralized procurement company who thereafter provides the purchased products/services to the end using Group Company.

Due to the above described business structures, it is not uncommon that remote services and intellectual services are bought and resold 4-5 times before they are finally sold to the end using customer, who maybe the only company in the chain of transactions that is established in the same country as the immovable property the services in question are closely connected to. We therefore believe it will be difficult in many cases to tax cross border remote/intellectual services, deemed as closely connected to immovable property, in the country where the immovable property is located.

The statement that the specific rule should only be adopted when it has a high potential to be manageable and enforceable in practice should limit the use of the specific rule. In our view, however, this is not good enough. We believe it would be much better if the OECD explicitly recommends that the destination principle should be the main principle to use for all kinds of remote and intellectual services performed cross border, i.e. even in cases when these services could be considered as closely connected to immovable property.

References to the comments from BUSINESSEUROPE

The Confederation of Swedish Enterprise is an active member of the BUSINESSEUROPE VAT group. Finally we also want to refer to the views and comments presented by BUSINESSEUROPE.

Kind regards,

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Svenskt Näringsliv / Confederation of Swedish Enterprise