NATIONAL FOREIGN TRADE COUNCIL, INC .

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Mr. Piet BATTIAU
Head of Unit
CTP/TPS
OECD
Annexe Delta 7138
2 rue André-Pascal
75016 Paris
France

RE: NFTC COMMENTS ON THE OECD DRAFT INTERNATIONAL VAT/GST CONSOLIDATED GUIDELINES

Dear Mr.Battiau:

The National Foreign Trade Council (the "NFTC") is pleased to provide written comments on the Draft Commentary published in February 2013, and referenced above. The NFTC, organized in 1914, is an association of some 250 U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the OECD in developing guidelines that provide certainty to enterprises conducting cross-border operations, and we commend OECD Working Party No. 9 for providing the opportunity for business input on this important project.

The NFTC recognizes that the VAT/GST Guidelines are a work in progress and are included as part of a broader effort to develop meaningful guidance for the tax treatment of cross-border trade in services and intangibles. The NFTC strongly supports the development of the Guidelines and believes that they provide for reasonable tax administration. The objective that the VAT/GST normally flows through business, and the acknowledgement that the administrative requirements imposed on foreign businesses should be balanced and not an additional burden not imposed on domestic businesses is to be applauded.

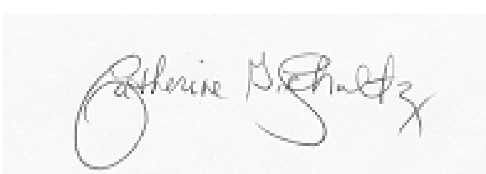
The draft Guidelines outline three possible methods for allocating taxing rights where the supply acquired by an establishment in one jurisdiction will be further used by an establishment in another jurisdiction. The three methods provided for in the Guidelines include: 1) the recharge method, 2) the direct use method, and 3) the head office method. Under the "recharge method," internal recharges by the customer are treated as supplies within the scope of

VAT/GST. Under the "direct use" method the supplier would be required to ascertain the various jurisdictions where the customer will be using the supply and apply the VAT/GST accordingly. Under the "head office" method, the place of taxation would be based on the location of the customer's head office. The NFTC strongly supports the recharge method and believes that it has the advantage of using information readily available to the customer and the administrative burden on business would be nominal. While the recharge method is clearly preferred as a solution for supplies the enterprise acquires from third parties, it should not necessarily mean that such an approach is valid as regards internal value add. Notable that the Guidelines don't address internal value add. That will be important future work as the lack of a consistent approach will result in significant exposure to double tax in an industry where the tax will cascade and thus negatively impact not only exempt sectors but their downstream business and consumer customers.

We do have a concern with an issue not addressed as part of the Guidelines, and is slated for future work. The NFTC appreciates that the work of Working Party 9 on the Guidelines is an on-going project and that the work is not yet completed. However, we would like to take this opportunity to advocate for the inclusion in the final Guidelines of a procedure for resolving conflicts between countries where one country would apply the main rule to a cross-border supply and the other country would apply a specific rule. Such conflicts could result in double taxation for the companies involved. Consumption taxes are not covered by double tax treaties, and are unlike direct taxes in providing for negotiating authority to relieve double taxation when it occurs. There is no procedure for alleviating tax conflicts when one country claims taxing rights under the main rule, and another country claims taxing rights under a specific rule. Unless the Guidelines provide a rule for resolving these disputes and a procedure to insure the parties reach an agreement, then disputes will not be resolved and double or multiple-taxation could result.

We appreciate the opportunity to comment on the Draft International VAT/GST Guidelines and applaud the commitment of Working Party 9 to working with business and other interested parties and believe this will enhance the value of the final product for everyone.
We look forward to working with the OECD on these issues in the future.

Sincerely,



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