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Comments to the OECD INTERNATIONAL VAT/GST GUIDELINES - DRAFT CONSOLIDATED VERSION

Research Committee

"ODIT – Osservatorio di diritto tributario" is an Italian non-profit entity, with the scope to carry on research, also in cooperation with other similar national and foreign associations of tax professionals, on the substantial aspects of direct and indirect taxation.

ODIT partecipates with independent contributions to the cultural and scientific proposals offered to public comments from the European Union institutions and from OECD

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3 May 2013

Dear Piet,

Re: OECD INTERNATIONAL VAT/GST GUIDELINES - DRAFT CONSOLIDATED VERSION INVITATION FOR COMMENTS - FEBRUARY 2013

We welcome the opportunity to contribute to the OECD's updates to the International VAT/GST Guidelines - Draft consolidated version (hereinafter: «the Guidelines»).

We recognise the difficulty in reaching a consensus amongst the member countries of the OECD in consumption taxes and we appreciate the efforts taken to harmonize this tax area in benefit of the international trade and in order to avoid law uncertainty and double or non-taxation issues. We notice that this is a complex topic in which businesses and tax authorities require a higher degree of certainty.

However, we consider that the Guidelines proposed by the consultation document, although representing a good starting point, need to be implemented taking into consideration the knowledge developed in the European Union context. This opportunity to improve and clarify the Guidelines should be exploited to the full in the knowledge that the businesses need to be able to carry on international trade with the certainty of the neutrality principle, given the economic environment and other commitments.

With this regard, we provide some detailed response to the proposed Guidelines raised by the consultation document.

The following comments follow the order of the consolidated version of the Guidelines and deal with specific aspects only in order to focus the main amendments proposed.

Yours sincerly,

on behalf of the rapporteurs' group,

Maurizio Bancalari - Head of VAT research Committee of ODIT

Fabio Tullio Coaloa - President of ODIT

PREMISE

Although not wishing to move, at this stage of formation of the Guidelines, from a formal amendment perspective, it should be noted, from the outset, the real difficulties, due to the same numbering criteria, to distinguish between guidelines, paragraphs and subparagraphs references.

For clarity, waiting for an official amendment, the comments offered will distinguish the three categories using for guidelines the prefix «G.», for paragraphs the prefix «P.» and for subparagraphs the prefix «S.».

CHAPTER 1[1]
CORE FEATURES OF VALUE ADDED TAXES COVERED BY THE GUIDELINES

P.1.2 Overarching purpose of a VAT: a broad-based tax on final consumption

a) Objectives of paragraph P.1.2 of the VAT/GST Guidelines

Chapter 1 of the Guidelines describes the main aspects of the value added tax. As corollary to the principle of neutrality, guaranteed by the right of deduction granted to the taxable persons, the Guidelines suggests the taxation of the final consumption as the VAT main purpose, including between the final consumers any subject purchasing goods out of businesses scope. Finally, therefore, the carring out of an economic activity distinguish a consumer from a taxable person.

Although the private individuals are simply identifiable, in line with the statement above, paragraph P.1.2 of the Guidelines underline the necessity to differentiate between the case where businesses act, purchasing goods and services, as economic operators and the case where they act out of their business purpose. This latter case, where businesses act out of their business purpose, can happen, mainly, in two different occasions, of which the second represent a pathological category of the first: (i) the first, the case where the business owner self-consumes businesses' goods or services for its private purpose (external self-consume); (ii) and, the second, the one in which the goods or services are formally (and fraudulently) allocated to the company but substantially used for the business owner's private enjoiment.

In brief, therefore, paragraph P.1.2 of the Guidelines emphasizes the incidence of the subjective condition on the right of deduction.

[1] **Maurizio Bancalari - Giuseppe Pintaudi**

b) About European and Italian VAT Laws and EU Court of Justice's judgements

With reference to previous point (i), please note that Article 16 of Directive 2006/112/EC[i] provides that «The application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible». Similarly, with reference to supply of services, Article 26, par. 1, of Directive 2006/112/EC, provides that «Each of the following transactions shall be treated as a supply of services for consideration: (a) the use of goods forming part of the assets of a business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business, where the VAT on such goods was wholly or partly deductible; (b) the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business». With this regard, in accordance with EU legislation, Italian VAT Law (hereinafter: «d.P.R. 633/1972») provides that the destination of goods and services to the personal or familiar consumption of the business owner or of those who exercise an art or profession is deemed to be a supply of goods or services (see Article 2, par. 2, no. 5), and Article 3, par. 3, of d.P.R. 633/1972) and therefore it is taxable for VAT purposes.

Moreover, with reference to previous point (ii), please note that Article 18, par. 1, lett. a), of Directive 2006/112/EC provides that «Member States may treat each of the following transactions as a supply of goods for consideration: (a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible». With this latter regard, the Italian VAT Law, Article 4, par. 5, last sentence, d.P.R. 633/1972 provides that the ownership and management of recreational craft by companies or commercial entities, if the shareholding permit, in free or for a consideration less than the normal value, the personal or family enjoyment of goods and business assetts, or when that enjoyment is achieved indirectly by the shareholders or participants, under the above mentioned conditions, including the participation in associations, non-commercial organizations or other organizations.

Moreover, about this issue, with reference to Articles 16, 18 and 26 above mentioned, the European Court of Justice have established, with the judgement to case *Vereniging Noordelijke Land - en Tuinbouw Organisatie*[ii], that said rules must be interpreted as «not being applicable to the use of goods and services allocated to the business for the purpose of transactions other than the taxable transactions of the taxable person, as the value added tax due in respect of the acquisition of those goods and services, and relating to such transactions, is not deductible».

The requirement of the taxable person have recenty been approached by

Article 19 of Regulation (UE) No 282/2011. This latter rule provides that «For the purpose of applying the rules concerning the place of supply of services laid down in Articles 44 and 45 of Directive 2006/112/EC, a taxable person, or a non-taxable legal person deemed to be a taxable person, who receives services exclusively for private use, including use by his staff, shall be regarded as a non-taxable person».

c) Comments to paragraph S.1.3

In order to achieve the goals proposed by the subparagraph S.1.3, as a result of what observed above under previous letter b), it should be noted that VAT Guidelines should consider and distinguish the ways in which the purchased goods and services is intended for private consumption of the business owner. In this sense, in fact, the private use may occur as a result of a supply by the company to the business owner or following to the formal allocation of goods or services to the business instead of the business owner's (that substantially enjoy them). In the latter case, in fact, there is a potential problem that affects the right of deduction and, in severe cases (e.g. frauds and tax evasions), the qualification of the company as an economic operator and, as consequence, as a VAT taxable person for lack of economic purpose.

Following to what stated above, therefore, we suggest to amend the text of the subparagraph S.1.3 as follows:

Text offered to public comment	**Amendment proposed**
Amendment 1 **VAT Guidelines - Chapter 1 - Core features of value added taxes covered by the Guidelines** **P.1.2. Overarching purpose of a VAT: a broad-based tax on final consumption - Subparagraph S.1.3.**	
(1.3) In practice, if a business acquires goods or services that are used in whole or in part for the private consumption of the business owners, VAT regimes must determine whether, or the extent to which, the purchase should be treated as acquired for business purposes or for private consumption**.**	(**S.**1.3) In practice, if a business acquires goods or services that are used in whole or in part for the private consumption of the business owners, **including use by his staff, and with reference to supplies of goods, both as an «application of goods for the private use» or as «goods at disposal of» the business owners, also considering the prevention of possibles VAT fraud mechanism**, VAT regimes must determine whether, or the extent to which, the purchase should be

	treated as acquired for business purposes or for private consumption.

P.1.5 VAT and international trade: implementing the destination principle

a) Objectives of paragraph P.1.5 of the VAT/GST Guidelines

The Guidelines proposes the destination principle as the best method to apply VAT to international trade of goods and services as it is generally recognized by different Countries and useful to tax supplies within the jurisdiction of consumption.

In this sense, it is highlighted the difficulty in implementing this method with regard to services and intangibles as the supplies involved in both of said categories are difficult to control and to trace and the destination principle taxation imply an interruption in the staged collection.

Moreover, a reference is made to the reverse charge mechanism as a possible solution, generally accepted, in order to avoid administrative burdens on the foreign supplier.

b) The destination principle in the European VAT Directives

Having regard to the same intent, since the first VAT directive[iii], the EU legislator established that a commitment was taken for the introduction of a VAT system tailored to the single market and operated across Member States in the same way as within a single country.

The European VAT Directive still stipulates that the current arrangements for taxation of trade between EU Member States are transitional and shall be replaced by definitive arrangements based in principle on the taxation of goods and services in the Member State of origin.

As highlighted in the recent EU VAT Green Paper[iv] , «however, an attempt made in 1987 to honour this commitment based on the physical flow of goods was unsuccessful. An alternative proposal in 1996 based on the place of establishment of the supplier was equally unsuccessful.

The ostensible reasons why taxation at origin has not proven acceptable so far are as follows:

• Close harmonisation of VAT rates would be needed to prevent rate differences from influencing decisions on where to buy, not just for private individuals but also for businesses as the payment of VAT - although eventually deductible - affects their cash-flow. It should be pointed out, however, that in recent years a certain convergence of the standard VAT rates has been ongoing;

• A clearing system would be needed to ensure that VAT receipts accrue to the Member State of consumption. New information technologies - not available at the time of the earlier discussions - have the potential to overcome this obstacle;

• Member States would have to rely on each other to collect a substantial part of their VAT revenue».

In June 2007 the Council invited, in the context of the debate on combating VAT fraud, the Commission to explore again a VAT system based on taxation at departure of the goods.

In the meantime, new Directives laying down the place of taxation for certain transactions[v] have clearly moved away from the principle of taxation in the Member State of origin by stipulating the place of taxation as the place where consumption occurs or where the customer is established.

The main feature of taxation at destination is that VAT revenues accrue directly to the Member State of consumption, according to its domestic rates and exemptions, thereby resolving the main objections against taxation at the place of origin.

A major issue to be resolved in such a system, however, is ensuring that the treatment of intra-EU supplies and domestic supplies is consistent. Equal treatment can be achieved either by taxing intra-EU supplies or by eliminating the effective charging of VAT on domestic transactions via a generalised reverse charge system (whereby the taxable person to whom the supply is made becomes the person liable for the payment of VAT).

Moreover, in order to render more efficient the anti-fraud controls over the intra-EU services, the Directive 2008/8/EC provide that «every taxable person identified for VAT purposes should submit a recapitulative statement of the taxable persons and the non-taxable legal persons identified for VAT purposes to whom he has supplied taxable services which fall under the reverse charge mechanism»[vi].

c) Comments to paragraph P.1.5

With reference to both the subparagraphs S.1.13 and S.1.14, following to what stated above with regard to the controls of the supplies of services and intangibles, considering the lack of harmonization between the OECD Countries' VAT systems, considering the exchange of information on tax matters promoted by OECD[vii], it would be useful to set an «Exchange of Information on Request» method in order to prevent lack of taxation on international VAT supplies of services and intangibles. Moreover, once a new procedure will be expertised, it would be useful to launch a method of exchange of information based on an «Authomatic (or Routine)» procedure.

Following to what stated above, therefore, for a first step of the control system,

we suggest to insert the subparagraph S.1.15 under paragraph. P.1.5 (consequently, the actual subparagraph 1.15, under paragraph P.1.6, will be renumbered at S.1.16).

Text offered to public comment	Amendment proposed
Amendment 2 **VAT Guidelines - Chapter 1 - Core features of value added taxes covered by the Guidelines** **P.1.5. VAT and international trade: implementing the destination principle - Subparagraph S.1.15.**	
None	(**S.**1.15) **In order to promote the cooperation between tax authorities, with the consequent avoidance of possible VAT frauds due to the lack of controls over international supplies of services and intangibles, OECD member countries are invited to follow the «exchange of information on request» system between competent authorities drafted in the OECD Manual on information exchange.**

CHAPTER 3 [2]
subpar. S.3.17 to S.3.30 and S.3.51 to S.3.86
DETERMINING THE PLACE OF TAXATION FOR CROSS-BORDER SUPPLIES OF SERVICES AND INTANGIBLES

G.3.4 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

The correct application of the destination principle to cross-border supplies of services and intangibles[viii], in case of a multiple location entity (hereinafter: «MLE») imply the correct identification of the contractual counterpart who riceive the supply.

[2] **Maurizio Bancalari - Maria Teresa Sutich - Gregorio Zarzana**

a) Objectives of subparagraphs S.3.17 and S.3.18 of the VAT/GST Guidelines

The object of these subparagraphs is to clarify the method of identification of the MLE customer in cross-border supplies of services and intangibles.

The guideline G.3.4, provide that the application of the guideline G.3.2[ix] in case of MLE depends on the place in which the establishment that use and enjoy the related services or intangibles is the one in which the supply is territorially relevant.

This solution is aimed to help the supplier to identify which entity is the real beneficiary of the supply, in order to identify the correct jurisdiction relevant for tax collection for VAT purposes. As a consequence, the taxing rights accrues to the jurisdiction of the place of use, but when the place of use is multiple this rule doesn't work, determining situation of uncertainty of law and possible non taxation consequences.

b) About European VAT Laws

The Council Regulation (UE) No 282/2011[x] implements and clarify the VAT Directive 2006/112/CE. Many rules of the directive have been clarified in binding way in order to provide legal certainty on some complex legal issues as the supplies of services territorial allocation in case of pluri-identified taxable customers.

Article 21, par. 2, of Regulation (UE) No 282/2011 states, as first step, that «where the service is provided to a fixed establishment of the taxable person located in a place other than that where the customer has established his business, that supply shall be taxable at the place of the fixed establishment receiving that service and using it for its own needs».

As second step, once excluded the relevance of the principal establishment of the business, in order to identify the fixed establishment relevant for the identification of the territory of taxation for VAT purposes, Article 22, par. 1, of Regulation (UE) No 282/2011 provide that «in order to identify the customer's fixed establishment to which the service is provided, the supplier shall examine the nature and use of the service provided».

Moreover, a further step of identification's method is provided by Article 22, par. 2, Regulation (UE) No 282/2011, considering that «where the nature and use of the service provided do not enable him to identify the fixed establishment to which the service is provided, the supplier, in identifying that fixed establishment, shall pay particular attention to whether the contract, the order form and the VAT identification number attributed by the Member State of the customer and communicated to him by the customer identify the fixed establishment as the customer of the service and whether the fixed establishment is the entity paying for the service».

In last, Article 22, par. 3, Regulation (UE) No 282/2011 states that «Where the customer's fixed establishment to which the service is provided cannot be

determined in accordance with the first and second subparagraphs of this paragraph or where services covered by Article 44 of Directive 2006/112/EC are supplied to a taxable person under a contract covering one or more services used in an unidentifiable and non-quantifiable manner the supplier may legitimately consider that the services have been supplied at the place where the customer has established his business».

c) Comments to subparagraph S.3.18

Considering the EU VAT common system it is feasible to approach the destination principle, but the Guidelines, to achieve that result, must provide strongest and more detailed criteria to identify the MLE's company which the supply is referred to and, consequently, the place of supply consumption.

It would be remarkable to implement this elements both as an integration of the subparagraph S.3.18 and as two new subparagraphs S.3.19 and S.3.20 of the Guidelines to clarify which subject is identified as contractual counterpart and, as consequence of the subjective identification, in which territory the VAT is due.

Following to what stated above, therefore, the following amendments are proposed.

Text offered to public comment	**Amendment proposed**
Amendment 3 and 4 **VAT Guidelines - Chapter 3 - Determining the place of taxation for cross-border supplies of services or intangibles** **Guideline G.3.4 - Subparagraph S.3.18**	
(3.18) In such a case, the location where the customer establishment uses the service or intangible, in whole or in part, is the jurisdiction that has the taxing rights over the service or intangible. "Use of a service or intangible" in this context refers to the use of a service or intangible by a business for the purpose of its business operations. It is irrelevant whether this use is immediate or continuous or is intended to take place in the future. It is also irrelevant whether this use is directly linked to an output transaction or supports the business operations in general	(**S.**3.18) In such a case, the location where the customer establishment uses the service or intangible **and where the nature of the service provided or the intangible supplied can be referred to a specific customer establishment**, in whole or in part, is the jurisdiction that has the taxing rights over the service or intangible. "Use of a service or intangible" in this context refers to the use of a service or intangible by a business for the purpose of its business operations. It is irrelevant whether this use is immediate or continuous or is intended to take place in the future. It is also

	irrelevant whether this use is directly linked to an output transaction or supports the business operations in general
None	[*] **(S.3.19) Where the nature and use of the service provided or of the intangible supplied do not enable the supplier to identify the fixed establishment, part of an MLE, to which the service is provided, the supplier, in identifying that fixed establishment, shall pay particular attention to whether the contract, the order form and the VAT identification number attributed by the OECD State of the customer and communicated to him by the customer identify the fixed establishment as the customer of the service or the purchaser of the intangible and whether the fixed establishment is the entity paying for the service or the intangible**.
None	[*] **(S.3.20) Where the customer's fixed establishment to which the service is provided an to which the intangible is supplied cannot be determined in accordance with the subparagraphs S.3.18 and S.3.19 and where services or intangibles are supplied to a taxable person under a contract covering one or more services or intangibles used in an unidentifiable and non-quantifiable manner the supplier may legitimately consider that the services have been supplied at the place where the customer has established his business.**

[*] Consequently, to the proposed amendments, actual subparagraphs that follow new subparagraph S.3.20, have to be renumbered. For reasons of clarity, the following references will consider the original non-modified numeration.

G.3.5 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.

a) Objectives of subparagraphs S.3.19 - S.3.23 of the VAT/GST Guidelines

As provided for intra-group transfer pricing issue, it is intention of OECD to provide a method in order to pre-determine the VAT taxable amount, attested at the normal value[xi] and ruled in a recharge arrangement[xii], in order to avoid intra-group fraudolent tax policies.

To give effectiveness to this guideline, looking for a feasible solution, the OECD has proposed a two steps method, named «recharge method», that is aimed to determine the internal recharge of the supplies of services and intangibles carried on between the company, part of a MLE, that entered into the business agreement with the external entity and other companies forming the MLE that profit of the same services or intangibles.

b) About EU Court of Justice's judgements

From the EU point of view, the operations between an MLE are relevant (or not) for VAT purposes depending on the qualify with which the subjects involved acts.

With this regard, in a first case, considering that the subject involeved act as a permanent establishment of the foreign parent company, the Court of Justice has confirmed, with the judgement in case *FCE Bank*[xiii], the subjective irrelevance for VAT purposes of supplies concluded between the parent company and the permanent establishment, thus excluding the relevance of a supply between two parts of the same entity.

In a different case, where the controlled company act as a separate entity, the Court of Justice has stated, in the *AB SFK*[xiv] case, the VAT relevance (although, in the case, exempt from VAT) of supplies between two taxable persons belonging to the same group but acting as an independent company for their own purposes and not as a permanent establishment of the parent company.

In order to distinguish between the two different cases, the one where a controlled company act as an independent company and the other where the same controlled company act as a permanent establishment of the first, the EU Court of Justice have provided, in the judgment to *DFDS*[xv] case, that the only aspect to be

considered, in order to determine the quality with which a company act, is «the actual economic situation (that) is a fundamental criterion for the application of the common VAT system». In this latter sense, the EU Court of Justice judgment to *Daimler–Widex*[xvi] case state that the structure of the taxable person (e.g. the owning percentage) is not the decisive element determining the rule of taxation.

c) Comments to subparagraphs S.3.19 - S.3.23

Considering both the system of the recharge method applicable following to OECD guideline G.3.5 for MLE and the considerations sub the above letter b), the following amendments are proposed.

Text offered to public comment	**Amendment proposed**
Amendment 5 **VAT Guidelines - Chapter 3 - Determining the place of taxation for cross-border supplies of services or intangibles** **Evaluation of guideline G.3.5 - Recharge method** **Amendment to guideline G.3.4 - Subparagraph S.3.17**	
(3.17) When a supply is made to a legal entity that has establishments[28] in more than one jurisdiction (*a "multiple location entity", "MLE"*), an analysis is required to determine which of the jurisdictions where this MLE has establishments has taxing rights over the services or intangibles acquired by the MLE. [28] Registration for VAT purposes by itself does not constitute an establishment for the purposes of these Guidelines	(**S.**3.17) When a supply is made to a legal entity that has establishments[28] in more than one jurisdiction (*a "multiple location entity", "MLE"*), an analysis is required to determine which of the jurisdictions where this MLE[**29**] has establishments has taxing rights over the services or intangibles acquired by the MLE. [28] Registration for VAT purposes by itself does not constitute an establishment for the purposes of these Guidelines. A permanent establishment [**29**] **A company acting as a permanent establishment is not to be considered as part of the MLE in consideration of the fact that represent the same entity of another company that is already part of the MLE**

CHAPTER 3 [3]
subpar. S.3.87 to S.3.107
DETERMINING THE IMPLEMENTATION OF SPECIFIC RULES

G.3.6 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.

a) Objectives of guideline G.3.6 of the VAT/GST Guidelines

Following to the endorsement ensured to the destination principle by the Guidelines, once approached to the problems described sub amendment proposed sub No 5, the guideline G.3.6, as exception to the guideline G.3.2, is addressed, through specific rules, to the regulation of the territoriality of some particular services and intangibles that, following to the principles listed sub letter a) of guideline G.3.6, are not to be located in the territory of establishment of the foreign customer.

First of all, the guideline underlines some criteria that have to be respected in order to establish that the customer location does not lead to appropriate results.

Said criteria are to be applied through the two-step approach described at subparagraph S.3.88.

As intended, the scope of said guideline is to allow OECD Member States to reach a uniform application of the territoriality special rules.

b) About European VAT Laws

In order to achieve the harmonization within EU Member States, Article 395[xvii] of VAT Directive 2006/112/CE provides a special procedure that lead to a single entity (EU Council) the power to decide whether, or not, a special measure is

[3] **Maurizio Bancalari - Fabio Tullio Coaloa - Claudio Romanelli**

proposed (and adopted) respectfully of the harmonization purpose.

The derogation measure adopted are listed in a document (**attachment No 1**) that allow Member States and the taxpayer to know if treatments different to those provided by EU Directive are in force in the other States.

c) Comments to subparagraphs S.3.87 - S.3.107

Following to what stated above, therefore, we suggest to insert the subparagraph S.3.97 under guideline G.3.6 (consequently, the following subparagraphs will be renumbered).

Text offered to public comment	Amendment proposed
Amendment 6 **VAT Guidelines - Chapter 3 - Determining the place of taxation for cross-border supplies of services or intangibles** **guideline G.3.6**	
None	(**S.**3.97) **In order to grant a higher level of harmonization between OECD countries, a special rule adopted in respect of the principle described in letter a) of the guideline G.3.6 have to be announced to OECD in order to be listed in a document available for consultation.**

ATTACHMENT

1) Derogation schedule

[i] Directive 28 November 2006, on the common system of value added tax (OJ L 347 dated 11.12.2006, pag. 1-118).

[ii] Judgment 12 February 2009, case 515/07, *Vereniging Noordelijke Land - en Tuinbouw Organisatie*, Racc. 2009 pag. I-00839.

[iii] Directive 11 April 1967, on the harmonisation of legislation of Member States concerning turnover taxes (OJ 71 dated 14.4.1967, pag. 1301-1303).

[iv] Document SEC(2010) 1455 final.

[v] Electronically supplied services provided from third countries to EU private individuals

(Directive 2002/38/EC), supplies of electricity and natural gas (Directive 2003/92/EC), supplies of services (Directive 2008/8/EC).

[vi] Article 262, par. 1, lett. c), Directive 2006/112/EC provides that: «Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following: (omissis); c) the taxable persons, and the non-taxable legal persons identified for VAT purposes, to whom he has supplied services, other than services that are exempted from VAT in the Member State where the transaction is taxable, and for which the recipient is liable to pay the tax pursuant to Article 196».

[vii] http://www.oecd.org/tax/exchange-of-tax-information/.

[viii] Paragraphs 3.1. to 3.16 and 3.31 to 3.50 approved by the CFA for public consultation in January 2010; Paragraphs 3.17 to 3.30 and 3.51 to 3.107 approved by WP9 for public consultation in November 2012 before coming to any final conclusion on the recommended approach.

[ix] «For business-to-business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles»**.**

[x] Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (L 77, 23.3.2011, p. 1–22).

[xi] As stated in subparagraph S.3.26 and S.3.27 «(S.3.26.) Further, those elements should establish the link between the price of the initial supply and the amount of the recharge without requiring a recharge on a transaction-by-transaction basis. (S.3.27) In line with normal audit policies, tax administrations will need an audit trail that enables them, when necessary, to review the various elements of the recharge arrangement down to the transaction level, in order to identify the nature of the individual service that is recharged and so determine its place of taxation and the applicable rate

[xii] As stated in box 3.2 «The recharge arrangement is the arrangement that undertakes the role of the business agreement for internal recharges that are treated as supplies within the scope of VAT under the recharge method. The recharge arrangement consists of elements that identify the parts of the MLE that make and receive an internal supply that is within the scope of VAT and the internal rights and obligations with respect to this supply».

[xiii] Judgment 23 March 2006, case 210/04, *FCE Bank plc*, Racc. 2006 pag. I-02803.

[xiv] Judgment 29 October 2009, case 29/08, *AB SKF*, Racc. 2009 pag. I-10413, point 52: «In the present case, the sale of shares by SKF is more than a mere sale of securities because it constitutes an involvement by SKF in the management of the subsidiary and the controlled company. Moreover, it is apparent that the sale of shares at issue in the main proceedings is also directly linked to and necessary for SKF's taxable economic activity. It follows that that transaction is exempt from VAT pursuant to both Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112».

[xv] Judgment 20 February 1995, 260/95, *DFDS*, Racc. 1997 pag. I-01005, point 25 and 26: «(25) In order to determine whether, in circumstances such as those of this case, the travel agent actually has such an establishment in the Member State in question, it is necessary first to ascertain whether or not the company operating in that State on behalf of the agent is independent from him. (26) The fact, mentioned by the VAT Tribunal, that the premises of the English subsidiary, which has its own legal personality, belong to it and not to DFDS is not sufficient in itself to establish that the subsidiary is in fact independent from DFDS. On the contrary, information in the order for reference, in particular the fact that DFDS's subsidiary is wholly owned by it and as to the various contractual obligations imposed on the subsidiary by its parent, shows that the company established in the United Kingdom

merely acts as an auxiliary organ of its parent».

[xvi] Judgment 25 October 2012, joint cases 318/11 and 319/11, *Daimler AG* and *Widex A/S*, Racc. not published.

[xvii] (1) The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. Measures intended to simplify the procedure for collecting VAT may not, except to a negligible extent, affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption. (2). A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required. Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States. (3) Within three months of giving the notification referred to in the second subparagraph of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections. (4) The procedure laid down in paragraphs 2 and 3 shall, in any event, be completed within eight months of receipt of the application by the Commission.