



Software Finance & Tax Executives Council

www.softwarefinance.org

May 3, 2013

Via Email

Mr. Piet Battiau
Head, Consumption Taxes Unit
Organization for Economic Cooperation
And Development
piet.battiau@oecd.org

Re: OECD International VAT/GST Guidelines

Dear Mr. Battiau:

The Software Finance and Tax Executives Council (SoFTEC) is pleased to respond to the invitation for comments on the draft consolidated version of the OECD's International VAT/GST Guidelines (the "draft guidelines"), exposed for public comment in February, 2013. SoFTEC generally supports Working Party No. 9's efforts on the International VAT/GST Guidelines and we appreciate its willingness to allow business input into that work on an ongoing basis. SoFTEC strongly supports direction taken in the draft guidelines with regard to cross-border business-to-business supplies of services and intangibles, especially with regard to the "neutrality principle," whereby VAT is a tax on final consumption that should be neutral for business and the "destination" principle whereby internationally traded services and intangibles should be subject to VAT in their jurisdiction of final consumption.

SoFTEC is a trade association providing software industry focused public policy advocacy in the areas of tax, finance and accounting. Because our member companies include multinational firms engaging in cross-border transactions involving services and intangibles that give rise to VAT and GST compliance burdens, SoFTEC has an interest in providing comments on the draft guidelines.

SoFTEC strongly supports the efforts to craft international VAT/GST guidelines in general and believes having business input with regard to their development will enhance their quality and credibility not only amongst OECD member countries but other countries as well. We firmly agree value added taxes should ultimately be borne only by consumers and not by businesses. The only burden on business with respect to value added taxes is an administrative one with successive businesses effectively paying tax only to the extent their liability for the tax on the value of their outputs exceeds the tax on the value of the goods and services used as inputs for their production of goods or supply of services or intangibles. We strongly concur that the work on neutrality guidelines will not become final unless and until final agreement is reached on the guidelines as a whole; in other words "nothing is agreed until everything is agreed." We also applaud OECD's efforts to socialize the draft guidelines with governments from non-OECD

countries, especially undeveloped countries seeking guidance respect to the establishment of VAT systems.

One area where the draft guidelines specifically asks for comments is with regard to determining the place of taxation with respect to cross-border supplies of services and intangibles where the business is established in more than one jurisdiction (so-called “multiple location entities or “MLEs). The draft guidelines entertain three possible methods for allocating taxing rights where the supply acquired by an establishment in one jurisdiction will be further used by establishments in other jurisdiction. One method considered by Working Party 9 and the Technical Advisory Group (TAG) is the internal “recharge method” where internal recharges by the customer are treated as supplies within the scope of VAT. The second method is the so-called “direct use” method whereby the supplier would be required to ascertain the various jurisdictions where the customer will be using the supply and apply VAT accordingly. The third method considered is the so-called “head office” method under which the place of taxation would be based on the location of the customer’s head office.

SoFTEC strongly supports the use of the “recharge method.” We believe the recharge method has the advantage of using business information readily available to the customer and would impose tolerable administrative and compliance burdens at the time of the supply and later when business conditions should change or at the time of any audit. The direct use method would require the transmission to and retention by the seller of information regarding the various jurisdictions of use by the customer of the supply that might be unavailable at the time of the supply, creating difficulties in VAT compliance and administration. The head office method would undermine the principle that such supplies should be subject to VAT only in the jurisdiction of final consumption. We strongly prefer the “recharge method” over the other two methods.

SoFTEC also appreciates the opportunity to participate in the ongoing work with respect to the development of additional chapters for the guidelines addressing place of taxation of business-to-consumer trade in services and intangibles, anti-abuse provisions and dispute resolution. SoFTEC 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 place the supplier in the middle and magnify the likelihood of double taxation. Consumption taxes are unlike direct taxes where two countries claim the right to tax income. In the direct tax context, the dispute usually is not over which country has the right to tax the income as the taxpayer may be subject to tax in both countries; the dispute is over how much of the taxpayer’s income is taxable in each country, with procedures available for the two countries to work out how much income each is entitled to tax. In the income tax context there are mechanisms available to reduce the likelihood of double taxation.

In the VAT context however, the transaction is subject to VAT in one country or the other and there is no in-between. There is no procedure available for resolving the conflict when one country claims taxing rights under the main rule and other country claims taxing rights under a specific rule. Without any procedure for resolving such a conflict, the result will be double taxation. We believe the guidelines should include a provision encouraging countries to adopt

into their national law a rule providing in cases where one country applies the main rule to a supply and other country applies a specific rule to the supply, the country applying the specific rule (or the main rule, we don't care which) will have VAT taxing rights with respect to the supply.

We thank the OECD and Working Party 9 for the opportunity to provide these comments on the draft International VAT/GST Guidelines. I can be reached at 1 (202) 486-3725 or mnebergal@softwarefinance.org with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark E. Nebergall". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark E. Nebergall
President
Software Finance & Tax Executives Council