

OPINION OF THE VAT EXPERT GROUP

ON CROSS-BORDER RULINGS

31 MARCH 2015

Background

In practice, national VAT laws often deviate from the VAT Directive either through issues of local interpretation or implementation of the rules. Where there are differing and contradictory views across Member States, this leads to a lack of legal certainty in respect of EU cross-border transactions. There is furthermore the danger of international double taxation or double non-taxation.

Legal certainty is of utmost importance for business and tax administrations

Business and tax administrations have common goals – business want to pay, and tax authorities want to receive, the right amount of tax at the right time in the right country.

Legal certainty is important for business and tax administrations alike particularly in cross-border scenarios in order:

- to determine the correct place of taxation – to eliminate double taxation or non-taxation
- to avoid VAT costs arising due to assessments and penalties (underpaid/over-recovered VAT)
- to ensure the proper functioning of the single market and provide a level playing field

Cross border VAT Rulings test case in 15 Member States

Within the framework of the EU VAT Forum, 15 EU Member States have agreed to participate in a test case for private VAT ruling requests relating to cross-border situations.

Taxable persons planning cross-border transactions between two or more of these participating Member States (Belgium, Estonia, Spain, France, Cyprus, Lithuania, Latvia, Malta, Hungary, Netherlands, Portugal, Slovenia, Finland, Sweden and the United Kingdom) can ask for such a ruling with regard to the transactions they envisage. The relevant tax authorities will then consult each other with a view to delivering a common view of how the VAT rules apply to the transaction.

The test case started on 1 June 2013 and was scheduled to last till the end of 2014. We understand that it has been recently decided to extend the test case until 2018, which we as VEG highly welcome.

VEG Statement

Since the CBR pilot started in 2013, it has become evident by the cases submitted for consideration that situations of double taxation exist within the EU. This outlines that the application and interpretation of the common EU VAT System need to be better coordinated, since in a Single Market in which the same EU VAT regulations apply, the same transaction can only be taxed once.

There is an urgent need to resolve this shortcoming, as it leads to double taxation violating the neutrality principle inherent in the EU VAT system and also to significant compliance costs (foreign VAT registrations, foreign VAT refund claims, etc.) for business as well as high administrative costs for tax authorities.

This illustrates that the CBR initiative launched by the Commission is an important initiative to resolve the above mentioned aspects. It is a first step to better cooperation and discussion between Member States at tax administration level on real life cross-border VAT technical issues. Establishing processes and identifying competent officials that are accessible for the business community regarding cross-border issues is a novelty that reflects the need for close cooperation between tax authorities and businesses in the tax collection procedure. The CBR pilot is therefore highly welcomed by the VEG members.

Developing this initiative further and making it a success requires more time and engagement from various stakeholders – Commission, Member States and business. This is why the VEG highly welcomes the recent extension of the test case until 2018. For its success it is of utmost importance that:

- 1) as many as possible business and Member States join the initiative
- 2) an efficient and timely information exchange and communication process between tax administrations of various Member States themselves and business is developed and established
- 3) an agreement is achieved by the Member States at the end of the process on the VAT treatment of a specific transaction

The VEG strongly supports this very important initiative and is very happy to actively contribute to its success.

The VEG calls for:

- 1) Business to make use of the test case and support developing it further.**
- 2) The 13 Member States who are not participating to join the test case as soon as possible and support developing it further.**
- 3) Member States to engage in open and constructive discussions in order to achieve agreement on the VAT treatment of submitted cross-border fact patterns.**
- 4) Commission to publicise CBR cases on an anonymous basis (fact pattern, the Member States involved) to provide clarity and transparency for business and Member States and allow other Member States to recognise and apply them.**

5) Commission, Member States and business to explore avenues in circumstances where Member States struggle to find agreement in order to come to a common position at a later stage (e.g. EU VAT FORUM, VAT Committee, etc.).

6) Member States, Commission and business to improve and promote the process – regular evaluation by the Commission.