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Summary Report on the outcome of the public consultation from DG TAXUD

[February-March 2005]

VAT – The Place of Supply of Services to Non- Taxable Persons

1. THE CONSULTATION

On 03 February 2005, DG TAXUD launched an on-line consultation at the TAXUD website. The consultation period officially ended on 04 April 2005, but contributions received during April were also taken into account.

The goal of this consultation was to describe the problem areas the Commission has identified in Article 9 of the Sixth VAT Directive (Directive 77/388/EEC of 17 May 1977) when dealing with services supplied to non-taxable persons (B2C supplies). The document also provided an overview of possible modifications to the rules in order to solve these problems. The Commission was seeking reactions and input on the proposed modification, in order to be in a better position to consider how best to progress the possible revision of these rules.

2. KEY RESULTS

A total of 71 external contributions were received in response to the consultation. Of that total, 47 were from national and European federations or associations, 22 were from business and two were from individuals.

The main industry sectors reacting to the consultation were the telecommunication and e-commerce sectors, the transport sector, consultants and law firms, the restaurant and travel agents sector, car leasing companies, the entertainment and publishers' sector and financial institutions.

The great majority of respondents are supportive of the proposed modifications with respect to the place of taxation of services supplied to non-taxable persons. There are, however, various comments which called for the continuation of the origin system and for maintaining the current general rule.

Most replies related to the part of the proposal that modifies the place of supply of services supplied at a distance which would see these services taxed in the Member State of the customer. An important number of comments opposed the proposed modifications, considering that they will result in additional administrative burdens and practical problems. The respondents who could agree with the proposed changes stated that they could only accept these insofar as, before any changes are made, the one stop mechanism is put into place.

Many comments were also made on the idea of modifying the place of supply for passenger transport services. Although some businesses supported this idea, there was also serious opposition mainly from airline companies fearing that the new rules could encourage Member State to abolish the current exemption. Most replies showed that the place of taxation was not viewed as a major problem. Instead, the real issue is that of the different rates and exemptions applied by Member States and the inequity in VAT treatment between air, sea and road/train transport. Strong emphasis was also put on the practical problems that eventual taxation of these services would entail.

Transport companies, travel agents and tour operators also raised serious concerns about the suggestion to modify the rules governing the place of supply of intermediary services. Reverting to the general rule, as proposed, could encourage traders to relocate

to other Member States or even to third countries. They argued that although sometimes difficult to apply, the current rules best ensure taxation at the place of consumption.

The restaurant and catering sector mainly supported the ideas put forward by the Commission to tax where the services are physically carried out, or, if carried out on board means of transport, at the place of departure.

Car rental companies and leasing companies were strongly in favour of having similar rules for the services they render regardless of whether the customer is a taxable person or a non-taxable person. They also accepted the difference in treatment between long term leasing and short term renting. Various criteria for taxing these services were put forward, e.g. place of effective use and enjoyment, place where car is registered, etc.

3. OUTCOME OF THE CONSULTATION - DETAILS PER QUESTION

We have evaluated **71 replies** which were divided into the following sectors:

Public authority	1
Accountants, consultants, lawyers	12
Trade associations	6
Passenger Transport	8
Transport	3
Goods transport	1
Travel agents	9
Restaurant	2
Car leasing	6
Telecom	7
e-commerce	7
Entertainment	1
Publishers	2
Software industry	2
Bank	1
Other	3

3.1. Question 1. Do you have other problems that have not been identified and which would need to be taken into account when amending Article 9 insofar as B2C services are concerned?

Most of the respondents consider that the Commission has identified all the problems so far, and no new element was put forward. Some replies considered however, that the principle of taxation in the country of origin should be maintained, because they consider that splitting up the rules of taxation would only complicate the system and would lead to legal uncertainty and to lack of acceptance.

3.2. Question 2. Do you agree to maintain the current general rule, which is taxation at the place where the supplier is established, or would you prefer a different general rule and if so, which general rule might this be – place where customer is established, place of actual use and enjoyment or an alternative?

Most of the replies were in favour of maintaining the current general rule of taxation at the place of the supplier. It is practicable, easy to control, and the taxpayer only needs to know the VAT legislation and rates of his own Member State. Derogations to this rule should be restricted to the situations where it is absolutely necessary and should not create additional burdens for businesses involved. Numerous parties stated that changes should not be made unless the one stop mechanism is operational and insofar as they do not result in high additional costs.

3.3. Question 3. Do you have any remarks on the outlined exclusions to the general rule, more specifically for the following services:

3.3.1. Passenger transport

30 statements: 2 very positive, 8 positive, 1 neutral, 3 negative, **16** very negative (5 passenger transport companies).

Most of the comments agreed that the existing rules governing the determination of the place of taxation of passenger transport are difficult to apply. Nevertheless, most of them disagreed with the proposal for shifting the place of taxation to the place of departure. This would move away from the place of actual consumption and is not really necessary. Air transport companies were very happy with the current rules (mainly because of the exemptions they currently enjoy) and considered that they operate smoothly, efficiently and without practical difficulties. Also, Rail Companies considered that the current rules did not create much in the way of problems and that accounting and payment was not problematic. Today, VAT is paid in the different Member States according to the distance covered ensuring a proper attribution of the VAT receipts. Finally, the coach companies mentioned that they have come to terms with the present system, even though taxation according to distance covered can be problematic.

Most opponents emphasised that the place of departure is not a suitable solution as it would also be difficult to apply and could lead to distortion of competition caused by the different VAT rates and exemptions applicable in the various Member States. Possible distortion of competition with 3rd country operators was also pointed out. Furthermore, it was suggested that the proposed changes would conflict with the International Train Transport Convention and with the Chicago Convention for cross border air transport.

On the other hand there were comments which were very supportive of the idea of taxation at the place of departure. They pointed out that this rule was necessary and would be a simplification but they were concerned about the possibility of tax avoidance using a different starting point to reduce or eliminate VAT charged on the supply. In any event, there would be a need to clarify the concept of "place of departure", for example in cases of return journey on circular tours, multi-sector journeys, flexible ticketing arrangements, etc. They also insisted on the need for simplified obligations, if the rule of taxation at the place of departure were to be introduced.

A large majority of the respondents considered that the place of taxation was NOT the major problem, but the different rates and exemptions in the respective Member States

and the inequality in VAT treatment between land, sea and air transport. Therefore, a mere modification of the place of supply rules would not be enough. An overall review of the rules applicable to transport is needed and this should be supported by an assessment of the potential consequences of the existing EU-wide exemption for intra-EU and international air transport.

Some suggest extending the tax exemption currently applicable for cross border passenger air transport to bus and train transport. Other comments requested taxation of passenger air transport at the first place of entry in the Community. A further suggestion was to shift the place of taxation to the Member State where the customer has his VAT identification number (on the lines applicable for intra-Community commercial transport) or where the customer is established in case of non-taxable customers.

Finally, different replies asked for harmonised rules concerning the practical application of VAT. They also asked for a unique VAT rate in all EU Member States and some suggested that all passenger transport services should be zero-rated.

3.3.2. Restaurant and catering services

Most of the comments concerning the proposed taxation at the place where the services are physically carried out were very positive. The majority of the respondents also agreed with the Commission's proposal to apply this rule for supplies of restaurant or catering services to all types of customer. A number of parties commented in this context on the need for the one stop mechanism to avoid high administrative costs.

Many respondents agreed that the place where the service is physically carried out should not apply to supplies on board ships or trains during an intra-Community passenger transport service. Restaurant and catering services on board should be taxed at the place of departure, as it is the case for on-board supplies of goods. Nevertheless, similar concerns to those mentioned for passenger transport services in relation to the determination of the place of supply on cruises and circular trips, etc were raised for supplies of restaurant services on board these means of transport. Finally, there was also the issue of other services rendered on board, usually during cruises, such as music performers, hairdressers, cinema, etc and the difficulties encountered in determining the place of supply for these services.

3.3.3. Hiring of means of transport

The differentiation between short and long term hiring was generally accepted.

Almost 2/3 of the comments agreed with the proposal to treat on equal terms the B2B and B2C short term hiring of means of transport. Accordingly the place of taxation should be where the means of transport is actually put at the disposal of the customer.

For long term leasing, various concerns were raised by the sector in relation to the current rule that determines the place of supply to be the place where the supplier is established. This leads to relocation of car rental companies to Member States that apply low VAT rates to the leasing of cars. They also disagree with the Commission's view that long term leasing of means of transport involves costs which are generally prohibitive to private customers. On the contrary, their view was that this market was constantly increasing. Therefore, the taxation rules should be modified in order to tax at the place of consumption. For practical reasons, the place where the customer is established would be the easiest to manage. Further comments asked for more clarification of concepts such as

"short term", "actually put at the disposal of the customer" and of the consequences of shifting from short to long term hiring for determining the place of supply of the service rendered.

3.3.4. Exhibitions, fairs, cultural events etc.

Almost all of the respondents on this point agreed with maintaining the current rules. Even for distance teaching, there was no request for a change. Existing difficulties could be solved by applying of the one stop mechanism.

3.3.5. Services capable of being supplied at a distance

24 statements: 2 very positive, 4 positive, 5 negative, **13** very negative (5 telecom, 3 e-commerce).

The majority of the comments received reflected opposition to amending the place of supply for these services. The telecommunication sector reacted the most strongly. Five out of the seven statements received were very negative to the Commission's proposal. In contrast, the statements from the e-commerce sector were more evenly balance as four of them were (very) negative whereas three of them were positive about the suggested changes.

The need for a change from the place of the supplier to the place of the customer was generally questioned and considered to create disproportionate administrative burdens. Moreover, it was indicated that it would be very difficult to identify the effective place of consumption. Domicile, residence and place of consumption are often not at the same place. They insisted that, in any event, clarification of the concept and clear common rules between the Member States would be indispensable. Finally, if the rules are changed, the need for a one stop mechanism was stressed as a pre-condition.

3.3.5.1. Telecommunication services:

Most of the respondents were very negative. They emphasized the increased administrative and bureaucratic expenditures, the large one-off conversion costs and the increased obligations the modification would imply for the supplier. Applying the VAT rules of 25 Member States for each telecommunication service would be unduly onerous for businesses to implement (price system, invoicing, maintenance). Taxation at the place where the customer is located would leave the supplier entirely reliant on information provided by his customers. Identifying costumers to keep account of the location would be hard to fulfil.

A number of persons further noted that taxation at the place of consumption was not ensured by changing the current rules. In a number of cases, where telecommunication services can be freely used regardless of location, this rule would be unworkable.

This change would lead to a competitive advantage for third country established suppliers; it would limit and hamper competition between Member States; and curtail the freedom for citizens to make cross border purchases of services.

According to these comments, the shifting of the place of taxation would be disproportionate to the perceived failure of the current rules and the problems would only partly be overcome by the one stop mechanism.

Few comments suggested that, for suppliers of services to customers in another Member State below a certain threshold, VAT of their Member State of establishment should apply. To this extent the current €35,000/100,000 distance selling threshold for supplies of goods or the €150,000 global threshold contained in the One Stop proposal would be appropriate.

The few positive comments mentioned the above problems too, but they could accept the need for a modification in order to ensure a level playing field. They insisted that the one stop mechanism was an absolute prerequisite for such a change. Some have suggested that the taxation should take place there where the service is effectively used or enjoyed.

3.3.5.2. E-commerce services:

Some comments required that third country established suppliers and EU-established suppliers should receive equal treatment, something what is not ensured by the current rules. Also the distortion of competition by relocating business in Member States applying lower rates is seen as a reason to change the current rules. For some respondents, it was important that the place of effective use or enjoyment would be introduced. Supporters of the proposed changes considered the one stop mechanism a prerequisite for the modification.

On the other hand the objectors considered that it would not be advisable to change the current rules, even if the one stop mechanism was operational. There would still remain the problem of additional administrative complexity and expenditures as well as increasing obligations. Maintaining the existing rules was seen as a much more positive signal.

3.4. **Question 4. Do you have any other comments regarding the review of the place of supply of services that you wish to make?**

3.4.1. *Immovable properties*

None of the replies suggest modifying the current rule. Taxation at the place where the immovable property is situated is considered reasonable. One comment asked for clarification concerning services connected with immovable properties and asked if the services of architects would also be taxed where the immovable property is situated. Services of intermediaries should also be covered by this rule and perhaps some additional services could be added such as hire of safes and assembly of goods becoming part of immovable property.

3.4.2. *Intermediaries*

Views on changing the place of supply of services rendered by intermediaries were divided.

On one hand some of the respondents agreed with the proposal to tax these services at the place where the intermediary is established, independently from the kind of service, because it would be simple to apply.

On the other hand all comments received from the transport sector, travel agents and tour operators were completely against amending the current rules and preferred a general determination of the place of supply as the place where the main transaction is carried out. Taxation at the place of the supplier would create distortion of competition because

it could encourage traders to relocate to other Member States or to third countries. In addition, agents services in Article 9(2)(e) supplied to a principal outside the Community would be taxed in the future. In this context travel agents considered that a modification of Article 9 for their sector should be linked with a thorough review of Article 26.

4. CONCLUSION

The consultation on modification of the rules governing the place of supply of services to non-taxable persons was successful and the European Commission is grateful to all those who took the time to make a submission. It is clear from the number of responses received that this is an area of importance and one deserving our attention.

While the majority of respondents support the direction of the Commission's work to date on this matter, which is to maintain the current general rule (taxation where the supplier is established) and to modify the place of taxation for certain services, the consultation has identified a number of issues warranting further consideration.

It has also highlighted a number of other interesting issues such as for example the harmonisation of rules applicable to transport services, the one stop shop as a precondition for modifying the B2C rules and the implementation of the B2B rules. These elements will be taken into consideration by the Commission during its ongoing and future planning.

Annex – Respondent Data

RESPONDENTS

Associations - Organisations	47
Business Respondents:	22
Individual Respondents:	2
Total Number of Respondents:	71

ORGANISATIONS

Responses from EU Organisations:	13
Responses from National Organisations:	34
• UK	7
• France	7
• Germany	7
• Belgium	2
• Italy	2
• Sweden	1
• Austria	1
• Hungary	1
• Netherlands	1
• Portugal	1
• Spain	1
• Switzerland	1
• Greece	1
• Malta	1

BUSINESS

Origin of Submissions from Businesses:	22
• UK	8
• France	2
• Germany	3
• Belgium	1
• Sweden	1
• Austria	1
• Netherlands	2
• Portugal	1
• Spain	2
• Luxemburg	1