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German Association of Tax Advisers (Deutscher Steuerberaterverband e.V.)

Opinion on the “Green Paper VAT – Towards a simpler, more efficient and robust VAT system”

Dear Madam and Sir,

Deutscher Steuerberaterverband e.V. (DStV), the German Association of Tax Advisers, would like to thank the European Commission for the possibility to comment on the “Green Paper VAT, towards a simpler, more robust and efficient VAT system”. We welcome the effort undertaken by the Commission and would like to encourage the Commission to present a proposal for amendments of the Directive. We are happy to note the openness and wide scope of the consultation and hope that our comments will be considered in the course of the preparation of the proposal.

Deutscher Steuerberaterverband (DStV) unites more than 34,000 members of the tax advising professions in Germany who are voluntarily organised in DStV´s 15 regional member associations. Approximately 4,500 members are also qualified as statutory auditors or sworn accountants.

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A. Introduction

(1) The European Commission launched a questionnaire dealing with the future of the VAT. In the subtitle the authors addressed unmistakeably the goal of this undertaking, the VAT –system should be simpler, more robust and efficient. Simultaneously the Commission released a comprehensive working paper which deserves to be regarded as a well reasoned and excellent compilation of all the problems which currently affects business operators carrying out transactions within the scope of the VAT rules.

(2) DStV will take part and will prepare the most appropriate answers for the benefit of its members with focus on SMEs.

(3) In the explanations we shall also take care of the needs of the different kinds of industries. While the position for the simplification for Pan European groups can easily be championed as an excellent idea, smaller businesses which do not operate pan-European must also benefit from a reform of the VAT system. But one fact which will always be of a mere European nature is the circumstance that a single market should be established by Members using actually 23 and in a not so distant future, possibly more languages. That means 23 or more statutes have to be translated into the different languages always being a source of misunderstanding and an obstacle for a smooth promotion of the single market. No other single market compares to Europe to this extent especially vis à vis to the tax administrations executing European guided law. For our daily work this means our efforts should not too much focus on the solution of complicated technical issues. This means we shall undertake to foster the reduction of compliance exposures and additionally to borrow more efficiently the improving process of the VAT law concerning unified single returns as well as the implementation of what is called a “single window concept” by using all of the electronic means to obtain both a smart compliance and access for the control needs of the tax administration.

(4) Our outlines follow the concept of the questionnaire and the working paper, dividing the list of questions into 16 different chapters.

1.1 Justification of the current system

(5) Complaints about the complexity of cross border transactions are heralded through all of the groups of operators as well as experts round Europe. However, criticism addresses always the same issues as there would be only one disc in the juke box. But until now, nobody appreciates what could be achieved in Europe. The major obstacles are that 27 different administrations using 23 different languages are responsible for administering VAT. Having this in mind, and looking back 19 years, the status of the current system has improved. But there is a need to increase the unification of the system permanently. The easiest undertaking would be to introduce the *triple “Os*” - One language, One legislator and One European administration.

(6) The current system puts most of the obligations and exposures onto the back of the business operators. But it is a logic consequence of their actions. They are acting international, while the administrations are locked in their domestic frames and only few people have international experiences attending the Fiscalis network or are part of an international department. Thus apart from any technical improvements, an enhancement of cooperation of the administrations is a must. A second point is that we have to find a way to overcome the language differences not only as the translations of statutes are concerned. Any document as invoices or VAT returns written in a foreign language becomes a *"non valeur"* for controlling purposes especially for the tax administrations. So we have to think about a technique to harmonize both the format of the returns and maybe to encode subjects of transactions, supplies of goods and services, as well as procedural aspects, as the customs world did. We have to learn to think about how we can make underlying documents more understandable for all of the involved people, irrespective from where they are hailing.

1.2 Concepts of systems

(7) Before the inception of the internal market some of the MS fostered the implementation of the origin system. Any attempt to implement this system was rebuffed by the majority of the MS for good reasons. Already the introduction of an intra-community revenue split system which would have been inevitable to balance the mismatch between net-exporters and net-importers proved an insurmountable obstacle, not to mention the issues of control-sharing among MS and the consequences for the individual budgets of the MS. We believe that such a system has lost supporters and should not be discussed further.

(8) From a practical perspective, the question whether the VAT is paid in the country of origin or in the country of destination is less important than the legal certainty, the reduction of administrative compliance charge and - most important - the protection of the bona fine trader against missing trader fraud.

(9) The taxation of intra – Community supplies in the country of destination is already in place by the either the accounting of the acquisition VAT or the reverse charge in cases of the supply of services. Both concepts are cashless transactions and part of the reporting compliance. This system is favouring missing trader fraud and has forced the Member States to adopt individual measures that increase the compliance costs and the legal uncertainty.

(10) The idea to scrap differences between domestic and intra – Community supplies could be accomplished with a cashless VAT for domestic transactions by introducing a total reverse charge. This concept was thoroughly examined by Germany and Austria five years ago and it is still supported by tax

experts. By establishing a total reverse charge procedure the Directive the taxation of the recipient has to be ensured by means of effective risk control.

(11) Another concept that has lead to lively discussions is to make no difference between domestic and intra-Community transactions by charging VAT in any case at the rate and under the rules of the Member State of destination. This would indeed restore the principle of fractionated payment for cross-border transactions and deal with the current system's endemic vulnerability to fraud on goods. The option to follow the movement of the goods leads to major complexities and difficulties in registration in Member States where a business has no presence at all in such Member States and therefore it is disconnected from the accounting procedures. On the contrary, taxation of intra-community supplies of goods and services following the invoices, i.e. at the customers' place of establishment would deserve special attention. Such a system would build on existing concepts of establishment and identification and could be introduced without major structural changes. This system could be monitored by the existing recapitulative statement and would not require additional VAT identification procedures. In addition, the taxation of intra-community supplies would reduce the risks of the bona fide trader of being involved in missing trader frauds. However, this concept presupposes enormous advanced techniques and a one stop shop, or like customs a single window feature is established.

(12) Furthermore it is likely that taxation of intra-community operations at the rules and the rates of the country of destination will impose extra burdens on business, especially if substantive VAT law is not completely harmonised. These extra burdens may in turn discourage intra-community trade. It is even questionable how far such a change will reduce fraud effectively. The Green Paper is based on the assumption that fraud is generally caused by customers' immediate suppliers. Indeed he is often many chains of transactions away.

1.3 Technical mismatches which currently are at stake

(13) Many technical obstacles are hampering smart operations in the single market. The reasons for that are simply different perceptions created by language, administrative, historical traditions, the continued use of legal structures that were in place before the creation of an internal market in a new technical and legal context. The following list is not complete but *highlights* the needs for improvement:

- determination of the person liable for the payment of the tax,

- VAT registration formalities of operators in another Member State,

- prefinancing costs when buying local advice in another MS are so significant that it constitutes a trade barrier,

- danger of missing trader fraud and the exposure for honest market participants,

- uncertainty to be eligible for VAT exemptions,

- administrative costs in order to prove zero rating for intra – community supplies and exports,

- different treatments of the requirements for the deduction of input VAT.

1.4 Question 1

Do you think that the current VAT arrangements for intra-EU trade are suitable enough for the single market or are they an obstacle to maximising its benefits?

(14) The arrangement needs permanent improvements, but to make the system safer and more reliable, it can be not only accomplished by revamping the system partially, achievements have to be sought as well by introducing standardized returns and to a certain extent to encode transactions and procedures to mitigate language constraints.

Furthermore there is jeopardy of double tax due to the VAT package that is not in accordance with extra Community VAT rules regarding the different legal places of performance. Operators suffer furthermore from extended compliance and anti-fraud rules, with the undesirable consequence that extra Community trade might in some cases be favoured because of better legal certainty. In the latter the physical movement of goods is confirmed by the custom office so there is a simple proof of a zero rated cross border business.

1.5 Question 2

If the latter, what would you consider the most suitable VAT arrangements for intra-EU supplies? In particular, do you think that taxation in the Member State of origin is still a relevant and achievable objective?

(15) Taxation in the MS of destination can be a solution. At first glance, it should be implemented hand in hand with a European system of a VAT portal, as it will in place in not so distant future for customs purposes. The question is why cannot VAT be the part of the single window concept? But the question should be raised which impact taxation in the Member State of destination would increase the amount of compliance challenges.

(16) Some experts have concerns that the suggested harmonisation of customs and VAT procedures will impose extra burdens on businesses, in particular small business that would be required to make investments in technology. It is widely feared that imposing such burdens will discourage rather than encourage intra-community trade. Inter-state trade within the Community is twice the level of trade

with third countries. Procedures that may be appropriate in one context may not be appropriate in the different context. While they see no problem in saying that there may be opportunities to adopt or adapt customs procedures, this needs to be done on a basis that does not impose significant extra burdens on small and medium sized businesses.

(17) It has also been observed that small business probably prefers a system where all cross-border B to B supplies are zero-rated and all B to C supplies are taxed in their country of establishment. As a simplification measure, thresholds might be imposed so that there is only a need to register in a different state if supplies in that state exceed a threshold and below those thresholds tax should be payable in the country of establishment.

2 Neutrality, public entities, holding companies and charities

2.1 General reasoning

(18) Neutrality on the process of production of goods and services is a characteristic of the VAT system, but this has nothing to do with the entities listed above. The vast majority of these organisations act always on the edge between being engaged in business activities and “non-business activities”.

Holdings are a slightly different issue since the court decisions does not give a total clear guideline (Polysar C-60/90, ECR (1991) I-2187; Sofitam C – 333/91; ECR (1993) I-3513; BLP C-4/94 ECR (1995) I-0983; Welcome Trust C- 155/94 (1996) ECR I-3013; Floridienne Berginvest C – 142/99, ECR (2000) I-9567; Cibo Participations C-16/00, ECR (2001) I-6663; KapHag C-422/01, ECR (2003) I-6851; Kretztechnik C-465/03, ECR (2005) I-4357; Securenta C-437/06, ECR (2008) I-1597).

The VAT group taxation follows the concept that in case of existence of all elements of the statue group taxation between all respective entities is automatically in force. This fact causes from time to time legal uncertainty since the jurisdiction still remains unclear regarding some elements. We propose to introduce an option for the operator to apply for group taxation to avoid undesired results.

(19) As far as public entities are concerned the MS do not pursue uniform concepts. Concepts applied vary, according to objective circumstances or political priorities. Public bodies also produce goods and services that cannot be produced in an efficient way in a market context (i.e. the “public goods”) because they are not fitted to be supplied individually against a payment (such as a lighthouse) and therefore should be subject to an appropriate VAT treatment. In the essence the system has to make sure that activities which compares substantially to ordinary business operators shall be taxed like an ordinary market actor for distortion reasons.

But there are some activities missing like the disposal of sewage and waste disposal. Consequently, these services are in some MS outside of the scope of VAT in some MS they are taxable.

2.2 Question 3

Do you think that the current VAT rules for public authorities and holding companies are acceptable, particularly in terms of tax neutrality, and if not, why not?

(20) MS have different systems in place how public entities have to be compensated for VAT suffered. While in UK, Scandinavian countries, The Netherlands, France, public entities are directly reimbursed , some MS, like Austria and Germany, in which counties and communities get their share from the VAT revenue, no further compensation is in place.

(21) The principle of neutrality is violated to a minor extent, in case those entities do not perform business activities. Many of the MS pursue different concepts which in the essence do not substantially create distortions of competition.

(22) Many bodies governed by private law are performing activities that are not of a commercial nature and beneficial for the general public and therefore should be encouraged (such as assistance to disabled persons, social care, operators of cemeteries) and for this reason are receiving financial support from the public authorities and other organisations.

2.3 Question 4

What other problems have you encountered in relation to the scope of VAT?

(23) Services constituent to the performance of exempt or organisations outside of the scope of VAT are not clearly benefiting from the application of Art 132 f RVD. The problem is that many of the public entities are outsourcing services which they are statutorily obliged to provide, for reasons outside of the scope of tax law, mainly to escape from the rigid regulations related to public service labour law. The requirement to form a group of persons limits opportunities to form outsourcing vehicles, despite the fact that this mechanism is extremely important in many sectors such as the health sector, social security, education, insurance and trade unions. In addition, it creates substantial compliance costs.

2.4 Question 5

What should be done to overcome these problems?

(24) The scope of Art 132f should be reassessed to prevent distortions of competition. On should recognise that today there just few examples of public care which has to be run by a public (tax exempted) body. The Directive should continue the restrictive prerogatives as the compensations on

cost basis and the necessity to conduct services directly produced for the activities of the principal entity.

3 Exemptions

3.1 General Reasoning

(25) Neutrality is deemed to be a main conceptual principle of the VAT system. In an ideal single market exemptions should not be applied. But no market can produce a perfect world simply by lacking perfect market participants either on the demand side or the supply side. Nearly all jurisdictions follow the concept by granting exemptions or reduced rates. The only difference is that exclusions to deduct input VAT and reduced rates, if in place, are fully harmonized. We suggest a full harmonization within Community.

3.2 Exemptions for certain activities in the public interest

(26) The list contains more or less those services which historically were provided by the public sector. Postal service's today are outsourced in companies and no longer public operators. Additionally, strong private competitors are in the market. Therefore it cannot longer be continued with these kinds of exemptions (TNT Post C-357/07, ECR (2009) I-3025) even with regard to the fact that organisations like Royal Mail or Deutsche Post have obligations to provide a universal service. Some legislators see some force in arguments that the exemption can be justified as a quid pro quo for those obligations that other private competitors do not assume.

(27) The entire healthcare services are mostly provided by the public sector. Even though in Europe private providers win more and more ground, especially in Germany where the public sector is still dominating the market. But nevertheless privates are also obliged to take care for publicly funded healthcare treatment to a significant extent in order to be eligible for the tax exemption (Para 4 (1)(14) of the German Vat code). Other MS require even private operators to comply with rules for charitable entities in order to be eligible for the exemptions (e.g. Austria). The compensation for the suffered VAT is mostly organised as a refund for the market participants (Art. 33 VATA). Germany does not grant extra compensation payments for input VAT.

(28) To comply with the character of exemptions regulating provisions have to be interpreted strictly (Pflegedienst Kügler, C-141/00).

(29) Definitions which person or entity is eligible for a exemption pursuant Art 132 RVD are rather vague, especially the term "social wellbeing", and entrusted to be determined by the national courts in the light of the MS`s law (Kingscrest C-498/03, ECR (2005) I-4427). Real distortions of competitions

became visible in the area of services linked to sport or physical education by non – profit making organisations.

(30) Services listed in Art 132 RVD, except postal services, are not easily to be converted in taxable ones. Maybe some of them, like medical care, education welfare and social security work, as well as museums should be eligible for zero rating, since in the most of the MS concepts of reimbursement of suffered VAT exist and it does not matter for the treasury departments whether compensation has to be paid out of funds collected previously or to reimburse inputs directly. The German refuse of reimbursement for tax exempt organisations is sometimes called a "cardinal error", especially in case when the operator needs preliminary taxable goods and services which increase the costs that have to be paid by the consumers.

3.3 Questions 6

Which of the current VAT exemptions should no longer be kept? Please explain why you consider them problematic. Are there any exemptions which should be kept and, if so, why?

(31) Contrary to what could be understood on the basis of a reading of the preparatory documents of the Sixth VAT Directive, the VAT exemptions are derived from the activities that were not within the VAT scope under the Second VAT Directive i.e. activities that had at that time little or no impact on the intra-community trade, mainly at retail level and some operations for which the free circulation was at that limited by regulatory or physical constraints (banking and insurance services, as well immovable property services were initially excluded from the list of the VAT exempt/outside of the scope activities).

(32) As a rule, VAT exemptions without right of deduction of input VAT should be restricted to small business activities (with a threshold) and be optional. Activities that should be encouraged from a social or political perspective should be entitled to a reduced VAT rate.

(33) VAT exemption with right of deduction should be maintained or extended as long it is strictly necessary in order to fight against fraud or to deal with specific types of business (such as for example, financial services).

(34) The exemption for postal services is at stake to be deleted. Any further exemption might be scrapped under the condition that they do not create higher costs for private consumers.

3.4 Question 7

Do you think that the current system of taxation of passenger transport creates problems either in terms of tax neutrality or for other reasons? Should VAT be applied to passenger transport irrespective of the means of transport used?

(35) Passenger transport is an inconsistent area and might produce unfair competition from a VAT perspective. While any ground transport, especially domestic transport is levied with a number of charges, excise taxes, insurance premium taxes, registration taxes and VAT, air transport is left off with levy constraints. Additionally, many countries provide exemptions for international passenger transport. Since taxation of international passenger transport cannot be solved by the MS themselves, it is a European issue which offer the opportunity to impose a European tax, which can be divided by the MS and the institutions.

(36) However, substantial merit can be seen in zero-rating transport, too. It avoids the complications of apportionment that otherwise arise. Furthermore flight transport is widely charged with other taxes (like airport/airtravel tax) and government fees.

3.5 Question 8

What should be done to overcome these problems?

(37) Since changes of the concept of exemptions will interfere significantly with national formats of VAT, input tax compensation, other taxes and fees we see currently no benefit in changing the existing rules.

4 Deductions/reimbursement

4.1 General remarks

(38) Art. 167 RVD provides that the deduction is timely and a right thing to do at the time when the deductible tax becomes chargeable - irrespective of whether the supplier has paid VAT due or not. Chargeability refers to a neutral coherent event for the purpose of the right of deduction and does not require any payment by the purchaser. From a lawful perspective the concept is correct, since the principle of neutrality relies on the honest behaviour of all participants and should not be lost over risks of the misbehaviour of the recipient of the supply.

(39) This mechanism is used by purchasers who deduct immediately VAT while they systematically pay the invoices much later. In this case the supplier has paid the VAT to the authorities and has not been refunded by the purchaser: the later payer obtains a free credit from his suppliers. It has been observed that such a mechanism of “free credit” has been systematically used by large purchasers who have a strong market position. Currently there is no solution in the pipeline. A similar problem occurs when the purchaser does not pay and the supplier has to perform complex formalities in order to recover VAT on unpaid receivables. This is another example where the current VAT system supports dishonest traders against bona fide traders.

(40) Further uncertainties derive from the different exclusions to deduct input VAT. Mainly input VAT for cost of cars, entertainment cost, accommodation and restaurant services are differently treated in the MS. These disharmonised areas in the VAT field creates not only difficulties for residents business operators, but - more important - for non-residents when they apply for recovery in other MS.

(41) It may also be worth noting that problems may be caused by the decision in Case C-97/09 Schmelz v Finanzamt Waldviertel. This is because a business may have to account for VAT on supplies in other Member States even though it is not registered in the country where it is established because it is a small enterprise. The fact that it is not registered in the country where it is established may impact on its ability to recover input tax in the country where it is established that relate to the supplies that are taxed in the other member state.

(42) To avoid this problem we see a huge merit in having an EU wide exemption for small enterprises.

(43) The method of recovery of foreign VAT is now decentralised (while it was possible to centralise before the VAT package) and suffers major technical deficiencies (in particular regarding the communication of the invoices on electronic way).

4.2 Question 9

What do you consider to be the main problems with the right of deduction?

(44) The **main problems** with the right of deduction are:

- absence of harmonisation of VAT exemptions combined with total freedom of different rules of determination of the deductible VAT left to the appreciation of Member States is a clear violation of the principle of neutrality of the VAT on the production of goods and services,

- limitations of right of deduction should be strictly limited to private consumption,

Therefore VAT becomes partly a tax on production and brings in danger the qualification of VAT as consumption tax.

(45) Deduction of the VAT in another EU member State is still a problem. It has been observed that the current electronic refund procedure does not function properly and that the tax authorities require systematically a copy of the invoices;

(46) One of the greatest problems in VAT is the formalism of the invoice as the document which needs to be produced totally correct with an enormous list of items to put on for the purpose to have the right

to deduct VAT. No other evidences are accepted and requirements have been tightened. In other parts of the Community law, e.g. customs or export refund, the Court was more open to accept substituting documents for the benefit of business operators (Huygen, C-12/92, ECR (1993) I-6381). This strict requirement does more harm than good especially for small businesses.

Question 10

What changes would you like to see to improve the neutrality and fairness of the rules on deduction of input VAT?

(47) We suggest a full harmonization of reimbursement rules.

(48) We would you like to see the neutrality and fairness of the rules on deduction of input VAT improve as follows: An one-stop-shop mechanism whereby business could offset the input VAT incurred in a Member State against the VAT due in another Member State, combined with an advanced harmonisation of the procedures regarding VAT returns.

5 International Services

5.1 General remarks

(49) The OECD opened a consultation about international services. To some extent payments for royalties may result into double taxation in cases in which they are taxed by the country were the licensee is located and the royalties are additional subject to importation VAT due to the rules of customs valuation. In cases in which the recipient cannot recover VAT or importation VAT it has a negative effect. The medical industry is partially hit by such a phenomenon.

5.2 Question 11

What are the main problems with the current VAT rules for international services, in terms of competition and tax neutrality or other factors?

(50) The issue comes up more in cases where one VAT/GST concept pursues a legal approach for branches while others follow the economic approach (Switzerland, Australia, New Zealand and South Africa).

5.3 Question 12

What should be done to overcome these problems? Do you think that more coordination is needed at international level?

(51) The OECD initiative is valuable for a more coordinated system of indirect taxation.

The main problems with the current VAT rules for international services in terms of competition and tax neutrality are:

Double taxation issues and danger of absence of recovery in case of dispute, because of difference of national procedures regarding recovery period.

6 Degree of harmonisation

6.1 General remarks

(52) It is right, and mentioned in this opinion, that a Directive does not provide a full coverage for harmonisation. But the way even harmonisation regulations do not solve the problem which originates from translation constraints as well as interpretation based on previous knowledge acquired under the influence rather of domestic circumstances within the European Union. As we have learned from customs, MS tend to fix the most of the necessary explanations in the implementation code which contains now more than 1.000 articles. This is evidence that MS tend to exaggerate and are not behaving carefully with their capacity to have the power of a legislator.

(53) One solution could be to establish an administrative authority, but not a court, in which all MS are entitled to appoint VAT experts. The decision of the authority must be binding for the parties and in cases of interpretation for all MS. Any decision should be accessible for the public. Business operators shall be entitled to bring questions to the authority to solve intra-community problems. Any MS shall have the right to bring questions up. Decisions made by the authority should be challengeable at the ECJ after going through the instances responsible at the seat of the challenging party. However, the authority shall be qualified as tribunal in order to be able to forward questions to the ECJ in cases of unsolved inputs (Art 267 TFEU). The most important prerogative is that the authority has to react in an appropriate time frame (three months). Such a concept helps to make MS more cooperative and can be used to learn from each other.

6.2 Question 13

Which, if any, provisions of EU VAT law should be laid down in a Council regulation instead of a directive?

(54) The entire VAT law can be eligible to be set out in a regulation. But this will not solve the problems as outlined above at all.

However, we consider that there must be some benefits in measures being implanted by a binding regulation even if this does not solve completely all the problems that arise.

To decrease the high costs of the administrative changes and the necessity of uniform implementation and interpretation across the EU, the following provisions of EU VAT law should be laid down in a standardise and binding Council regulation instead of a directive, such as:

- one sole VAT registration for SMEs,
- homogeneous VAT returns and recapitulative statements and
- an establishment of European office for best practice of VAT.

6.3 Question 14

Do you consider that implementing rules should be laid down in a Commission decision?

(56) Decisions in which the representatives of the MS are not involved will not have the effect the business community would expect.

6.4 Question 15

If this is not achievable, might guidance on new EU VAT legislation be useful even if it is not legally binding on the Member States? Do you see any disadvantages issuing such guidance?

(57) Soft law concepts are very common in the Community law. The guidelines for the "Authorised Economic Operator" (AEO) are as well soft law as to a more important extent the most of the frames released by the DG Competition in the area of state aid law. It could be helpful.

Authorities derogating from the guidance would probably feel obliged to motivate their position. This could also offer to the CJ a reference in order to adopt interpretations in line with the principle of the VAT system and the Treaties. Such guidance would be very useful for new member States having little guidance of their own.

6.5 Question 16

More broadly, what should be done to improve the legislative process, its transparency and the role of stakeholders in the process, from the initial phase (drafting the proposal) to the final phase (national implementation)?

(58) As long as an initiative is in hands of the Commission the process can be carried out more transparently. If the proposal starts to be processed by the Council, then the business community loses track of progress and the final result contains provisions that are sometimes unexpected, obscure and therefore are not understood by business or sometimes, even by many Member States. The current

legislative process at Council level does n o t allow to discuss major economic issues that can only be clarified in an open and face-to-face debate.

7 Derogations and the ability of the EU to react quickly

7.1 General remarks

(59) Currently, derogations for the purpose of fighting tax fraud might be successful in this matter from time to time. Nevertheless they mostly increase the complexity of VAT system and compliance. Therefore especially SMEs' (cross border) business is harmed substantially. Furthermore anti-fraud rules often don't follow a unique concept that makes it even more difficult to follow them.

7.2 Question 17

Have you encountered difficulties as a result of derogations granted to Member States? Please describe these difficulties.

(60) One problem is the partially introduction of reverse charge procedure just for some trade or service (constructions works, delivery of selected goods, cleaning of real estate). The details of the rules often remain unclear and so the operators have to deal with a high risk of acting wrong.

7.3 Question 18

Do you think that the current procedure for granting individual derogations is satisfactory and, if not, how could it be improved?

(61) The Legislation of the Counsel is not transparent at all and gives little opportunities for tax experts to provide with profound opinions.

8 Rates

8.1 General remarks

(62) For reasons which have been elaborated above for exemptions, we believe that reduced rates may facilitate the regressive effect of the VAT. But reduced rates have also a negative input in cases in which they are not applied at the same level for the same products. Differences for the supply of services (e.g. tourism in some MS) do not have the same effect as reduced rates for the supply of goods. For example the imposition of the reduced rate of 5.5% in France on restaurant services did not simultaneously led to a significant reduction of prices in the menus. Price elasticity means that operators try to optimize their calculation and react only after consumers' protests, irrespective how high tax rates are.

(63) Therefore we consider most exemptions should be removed, some reduced rates can be justified by social reasons.

8.2 Question 19

Do you think that the current rates structure creates major obstacles for the smooth functioning of the single market (distortion of competition), unequal treatment of comparable products, notably online services by comparison with products or services providing similar content or leads to major compliance costs for businesses? If yes, in what situations?

(64) There are some areas in which distortive effects can be identified. Harmonisation on VAT rates within member states would be the best solution to ensure that competition is focussed on the quality of the goods and services supplied and not solely on price. Nevertheless it has to be considered that different social and economic situations in member states may justify differences.

But the major problems do not occur with regard to differences of VAT rate rather than on derogations regarding i.e. the different tax exemptions, options, reverse charge rules and compliance.

8.3 Question 20

Would you prefer to have no reduced rates (or a very short list), which might enable Member States to apply a lower standard VAT rate? Or would you support a compulsory and uniformly applied reduced VAT rates list in the EU notably in order to address specific policy objectives as laid out in particular in 'Europe 2020'?

(65) A pan European strategy would be more appropriate especially for cross border business. In case of a total cancellation of all VAT exemption compensation has to be discussed for people with low income.

9 Reducing red tape

9.1 Preliminary remarks

(66) Practically speaking the outcomes of the High Level group are rather overdrawn than helpful. The issuing of the annual return is to certain extents helpful, especially in parts of businesses which have complicated VAT driven record requirements in place, so in the construction industry or smaller tour operators. Having concepts in place in which accountants have to watch closely whether a contract creates more than 10 invoices on advanced payments and in the final invoice have to reflect all of them, mistakes are inherent, especially if the business is established in a jurisdiction in which it is required to take care of a reverse charge mechanism for the construction industry depending on whether the customer is a principal constructor or a final consumer (Art 199 (a) e.g.: The Netherlands).

(67) An annual report helps to reconcile the figures for VAT purposes again with the results of the financial statements. The listing is as well not an issue since it is an incomplete controlling instrument as long as no corresponding records are in place for VAT purposes.

(68) More important are the requirements to provide evidences for zero rated transactions, either intra community supplies or exports. In the case an ex-work clause (Incoterms 2010) is stipulated, the buyer has the obligation to arrange the transport as well as apply for the export customs clearance. However, many MS require traders to provide the original customs or transport documents which will never come into the hands of the seller and will be needed by the buyer for its own records. The same happens in the case the DAP clause (Delivered at place, replaces DDU, delivered duty unpaid) is stipulated.

(69) Smaller businesses have to pay disproportional more fees to comply with the rules since special international VAT networks are not affordable and mostly local accountants or tax advisors are seldom part of a transeuropean tax network with the appropriate access to the correct solution. The mandatory application of standardized returns would help to have visible comparable in place and facilitate language and cultural weaknesses.

However, it is observed that for many small businesses, there is no non-VAT reason to produce monthly or quarterly accounts.

9.2 Question 21

What are the main problems you have experienced with the current rules on VAT obligations?

(70) The annual return is helpful since it is used as a controlling tool to reconcile VAT numbers with the numbers of the financial statements. More important is that the power of attorney once accepted in one MS will also be valid for any other interventions on behalf of the client. In cases of exports automatic information of the responsible customs authority (customs office of export) shall be forwarded to the responsible tax office of the seller, if the latter can be identified by his VAT-ID.

(71) One important amendment could be to standardise VAT returns, as it is utilized by customs. This would be helpful to overcome language differences, as well to improve controlling routines.

Any change in formalities implies huge costs in adaptation of computer programs. Difference in formalities is not compatible with the current way of doing business.

9.3 Question 22

What should be done at EU level to overcome these problems?

(72) Cooperation between tax authorities, customs, Eurostat (intrastate) and business operators is the most appropriate initiative to do, because of obligations which have to be carried out twice or more times.

(73) Major attention should be deserved on full harmonisation of formalities, or at least definition at EU level of a maximum set of standardised VAT obligations that may be imposed by the Member States in such a way that IT systems could more easily handle a predefined range.

9.4 Question 23

What are your views particularly on the feasibility and relevance of the suggested measures including those set out in the reduction plan for VAT (N° 6 to 15) and in the opinion of the High Level Group?

(74)Some recommendations of the high level group are too much desk top driven. Since any monthly return normally is based on the obligatory monthly accounting work, which is required to be done by other legal constraints, like the obligation to prepare proper accounting for the purpose of controlling we do not expect substantial relieve by cancelling this duty. The same applies with the annual return.

10 Small businesses

10.1 General Remarks

(75) In the single market small businesses are exposed significantly by either compliance obligations, as well as by weaker access to appropriate solutions due to cost constraints and professionals having lesser experiences how to deal with single market projects.

Microbusinesses with less than EURO 100.000 revenue should be eligible for an option towards a total exemption. There could be merit in having an EU wide threshold below which an individual does not need to register in any EU jurisdiction. Any steps that reduce the need for small business to have to register in a number of jurisdictions would be welcomed.

10.2 Question 24

Should the current exemption scheme for small businesses be reviewed and what should be the main elements of that reassessment?

(76) A review of the exemption concept is essential when programming a more generous exemption concept. Simultaneously Commission shall elaborate whether a flat rate system may also be a substantial improvement to bring down compliance costs.

10.3 Question 25

Should additional simplifications be considered and what should be their main elements?

(77) Additional simplifications could be set out by reducing the frequency of filing returns and recapitulative statements. Special facilities for small value invoices could be increased up to a ceiling of a gross sum of EUR 500.

10.4 Question 26

Do you think that small business schemes sufficiently cover the needs of small farmers?

(78) Farmers are well positioned in the Directive. We do not see any need for substantial amendments of the Directive.

11 One stop shop

11.1 General Remark

(79) E-government of customs is by far more advanced than in the field of VAT. A one stop shop can be part of the single window concept which is currently in place of some of the MS. This means such a portal can be used to follow electronically any intra community transaction. Any export and import is recorded and immediately controlled by the system from the perspective of a risk assessment procedure. Once in place it does not matter how the VAT will be charged, ever in the country of destination with an automatic imposition of the right rate, or in the country of origin.

11.2 Question 27

Do you see the one stop shop concept as a relevant simplification measure? If so, what features should it have?

(80) The one stop shop is a solution which starts to work in the customs administration and will help to bestow more trust by the tax administration towards the better techniques.

12 Pan – European businesses

12.1 General remarks

(81) Group advantages have to be supported in order to bring down efforts for senseless controlling routines. Any of the bigger groups have risk management tools in place embracing any kind of charges and applicable for the entire jurisdictions in which the group operates. Conceptual the AEO (authorized economic operator) would be an answer, but customs administrations have limited themselves to

certify business operators country by country instead of group by group. Here again the limited will to cooperate waves opportunities and creates wasted times. A group concept, which is controlled by representatives of MS involved enhance automatically the learning of useful coordination.

12.2 Question 28

Do you think that the current VAT rules create difficulties for intra-company or intra-group cross-border transactions? How can these difficulties be solved?

(82) Any of the transactions which has to be necessarily underpinned by returns which are not uniformed, by evidences which have to be provided differently as well as different recording compliances are often hardly manageable but at least expensive due to compliance costs. A system in which operators can streamline their controlling efforts will be better. However, smaller businesses which never can achieve a comparable standard and remain in the territory of exposure should not be left aside. Therefore group simplifications shall be implemented hand in hand with a single window concept for VAT, which is affordable and can also be designed to mitigate compliance constraints.

13 Synergies with other legislations

13.1 Question 29

In which areas of VAT legislation do synergies with other tax or customs legislation need to be promoted?

(83) As mentioned above, a single window concept helps mostly, since one portal is enough for VAT, customs, import and export licences as well as export refunds and additionally for excise tax purposes.

14 VAT collection

14.1 Question 30

Which of these models looks most promising in your view and why, or would you suggest other alternatives?

(84) At first glance, payments splits would possibly be the most effective concept in order to achieve a pull out of the cash produced by VAT due of the gross amount of an invoice. The split payment model is highly dependent on the rapidity of the exchange of information and this may be problematic in the EU context where each Member State has one or even more systems. Promoters may have underestimated the major practical difficulties in the EU context and their impact on the fact that within a group of companies many operations do not lead to effective payments.

The split payment model in the EU context still has many unanswered concerns and questions, such as: How to deal with the exchange risk? How will non-EU suppliers and purchasers be informed and convinced to step into this split payment system and new complexity? How to treat barter trade or more in general absence of monetary payment in a split payment model? What is the liability of the supplier if the client doesn't pay in the blocked bank account (in time)? How will split payment deal with in-house banking of multinationals where bulk payment (i.e. one payment for multiple invoices) and netting is daily practice? Who will pay the implementation cost? Are the credits on that blocked account interest bearing? However such a system will not work in the area of small businesses, since cash transactions are rather frequent than seldom.

The scepticism about the merits of a split payment methodology is widely shared by tax experts. Instructions will have to be given to the bank on a payment by payment basis, given exemptions, different rates and the fact that some payments do not relate to taxable supplies. If suppliers remain liable for VAT, they are also likely to require safeguards (for example notification to the tax authority that it has been paid) before they feel safe about the idea of making the supply. We are also sceptical about it having any impact on fraud. We also have concerns about the cost implications especially for small businesses where it faces the problem that a lot of supplies may still be paid for with cash.

(85) The central VAT monitoring database model and the data warehouse model offer an IT gate for the authorities in the accounting systems. The problem is that at the same time this gives access to highly sensitive information such as invoices that contain names of suppliers, prices, timing etc. The danger of the access through the databases of the tax authorities is that the hackers can less easily be unmasked by the nature of the information they are looking for than this would be the case for decentralized storage of data by individual business. The intrinsic danger of such system should be carefully taken into consideration.

(86) The certified taxable person model is a model wherein a taxable person's VAT compliance process and internal controls are certified. However, it is questionable if this is useful in order to protect himself against fraudulent suppliers and fraudulent clients.

15 Protecting bona fide traders

15.1 Question 31

What are your views on the feasibility and relevance of an optional split payment?

(87) An optional split system does exist in some MS. However we do not discuss this matter under this issue of protecting operators in good faith as we are convinced that the split procedure will impose more problems than fiscal improvements (see our answer to question 30).

(88) Operators need in fact more legal certainty, especially with focus on cross border business, rather than new bureaucratic compliance obligations. A central enquiry office is needed that provides suppliers and customers with simple but essential information for example about the status of the contractual partner (business or private person). At least one person at local offices in the MS should be able to speak fluent English to overcome intra Community barriers.

(89) We suggest further major improvements by measures that could possibly see as questions of detail, but that may have important practical consequences:

- Online consultation of local VAT position (current account) in the national database like a bank account consultation. Outprints of extracts have authenticity status. Taxpayers don't have to harass the tax collector for a certified extract anymore. The same applies for online availability of certificates of 'tax statuses with authenticity status.

- Upgraded VIES (VAT information exchange system) with the possibility to check the links between bank accounts and VAT numbers. A supplier could demand to be paid from the bank account linked with the VAT number before granting a VAT exemption. The payment would be the ultimate proof that the one claiming to be the real owner of the VAT number he shows. In the reverse case, a client could insist to pay only to the bank account that is officially linked to the VAT number of the supplier. In both cases VAT number hijacking is prevented.

- Updated VIES database with information about whether a given taxpayer is "certified" and the date of certification data available on VIES.

16 An efficient and modern administrating of the VAT system

16.1 Question 32

Would you support these suggestions to improve the relationship between traders and tax authorities? Do you have other suggestions?

(90) Any effort to foster a climate of trust and cooperation will contribute to a better result. The problem which has to be addressed is that while international operators are acquainted to cope with problems linked to deal with global activities, tax administrations do not have the opportunity and the focus to obtain the same level of experience. This creates distrust a sentiment which has to be inherent

in this professional environment. Therefore cooperation has to be designed in a way to help to sort out the honest from the fraudsters. Commission should put more efforts to make understandable for both sides where the limits of the cooperation are in the light of the needs born by the duties and obligations of which each side have to comply with.

17 Other issues

17.1 Question 33

Which issues, other than those already mentioned, should be addressed in considering the future of the EU VAT system? What solution would you recommend?

(91) As addressed in the answers above, the strongest efforts have to be put into more cooperation between tax administrations, the Commission and business operators. The best to do is to establish an administrative body (authority) in which every MS is represented by local VAT experts. Businesses need quicker access to solutions since compared to the other single markets Europe limits itself by keeping its backbones too long in uncertainty.

We trust that the above is comprehensive but should you have any questions on our comments, please do not hesitate to contact us.

Kind regards

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