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Ref: INTERNATIONAL VAT/GST GUIDELINES – RELEASE OF DISCUSSION DRAFTS OF 2 NEW ELEMENTS FOR PUBLIC CONSULTATION

Dear Piet,

BIAC thanks the OECD for the opportunity to provide comments on its Discussion Draft on the two new elements of the International VAT/GST Guidelines (the Guidelines). Thank you also for the significant amount of effort that you and others have put into this project. Additionally, BIAC has been very pleased to help the OECD in developing the Guidelines through its involvement in the OECD's Technical Advisory Group (TAG). This is a best practice, and we very much look forward to our continued involvement in that forum.

There are several important interactions between direct and indirect taxation across the BEPS Action Items – including the Transfer Pricing and Permanent Establishment proposals. Although we warmly welcome the involvement of the Consumption Taxes Unit and Working Party 9 in the OECD's Digital Economy work, we would welcome similar close involvement in the other relevant direct taxation areas of the BEPS project. Only with close coordination between all actions and between all Working Parties will we be able to reach solutions that are effective, but also proportionate and practical.

We believe that the Guidelines have great potential to provide the practical framework for the consistent application of VAT/GST across the world, and for example, to address many of the specific concerns raised in relation to the digital economy.

In relation to the VAT/GST TAG, I would like to reiterate how grateful we are to be involved in the process, and to be able to provide practical business input early in the development of the Guidelines. We continue to believe that TAGs are an excellent model for business engagement that

could be used more widely across other BEPS Actions. Although the opportunity may have passed in relation to developing proposals, we encourage the OECD to consider whether such an approach could be adopted when developing the detailed implementing guidance for such proposals. Businesses, like tax authorities, will be faced with the challenges of implementing a broad range of OECD proposals, and we are ready and willing to provide our perspective to ensure that proposals are practicable and proportionate.

We very much hope that you find our comments useful, and we look forward to working with you on these important issues.

Sincerely,



Will Morris
Chair
BIAC Tax Committee

Introduction

1. In today's global and highly interconnected economy, business as tax collector, more than ever, requires a global VAT/GST framework which strikes the balance between business and government needs and which looks both at conceptual as well as practical aspects of VAT/GST. The development of the Guidelines by the OECD aims to provide this global framework based on 2 fundamental principles – the neutrality principle and the destination principle.
2. At its meeting in Tokyo in April 2014 the Global Forum on VAT endorsed the Guidelines on the B2B cross-border supply of services as a truly global standard for VAT/GST – a significant milestone for VAT/GST around the world. It also urged the OECD to finalize its work on the remaining chapters of the Guidelines (including the VAT treatment of cross-border B2C supplies) for endorsement at the next meeting of the Global Forum on VAT in November 2015.
3. BIAC and the entire business community supported and welcomed this endorsement as an important basis for further work on VAT/GST issues related to B2C services, thanked the OECD for its inclusive approach and is delighted that WP9 and the CFA approved the 2 new elements of the Guidelines for public consultation.

General comments

Working process

4. BIAC remains highly committed to supporting the OECD TAG process and recognizes that increased time pressure and resource constraints require an efficient working practice and one which also allows the process to remain fully transparent. This means extra effort for all of us – the OECD, Governments and Business - which we need to manage together as a team just as we have done so far with great success.
5. In this environment, a public consultation becomes even more important in order to manage different views and perspectives and to get input on the work from the wider business community.
6. As in the past, BIAC is highly committed to actively supporting the public consultation from the business side and has reached out and encouraged its members to feed their input directly into the OECD.

Discussion draft of the B2C Guidelines (part of Chapter 3 of the Guidelines)

7. As a starting point, we would like to stress that safeguarding VAT/GST revenues and achieving a level playing field is crucial for business, just as it is for governments. For this, clear, consistently interpreted and more uniformly applied rules on VAT/GST across the world, particularly on the place of taxation and on the actual collection of VAT, are of utmost importance. This will improve neutrality for business, as tax collector, while at the same time safeguarding VAT revenues for governments and gaining efficiency for both sides by allowing technology to be used on a broader and more effective basis.

8. Key elements for business are simplicity, consistency, flexibility and proportionality – both when it comes to determining the place of taxation (i.e. evidence and indicia for the customer’s usual place of residence) and also when it comes to collecting the VAT/GST at stake (i.e. a simplified registration and compliance regime for non-resident suppliers).
9. Annex 3, developed jointly by business and governments in the TAG, is a hugely significant piece of work, which covers the main features of a simplified registration and compliance regime for non-resident suppliers and builds in further detail on current government best practices and earlier OECD work in this area. BIAC endorses the approach outlined in Annex 3 and we believe it will be a useful tool for governments seeking to enact legislations consistent with these guidelines. Business would therefore highly appreciate and recommend the inclusion of annex 3 in a separate chapter in the Guidelines to give it the importance it deserves. If this is not possible, annex 3 as it plays a key role in the future work on implementation packages, should be incorporated there.
10. In annex 3 the OECD recommends a simplified registration and compliance regime primarily in the context of B2C supplies of services by non-resident suppliers. Business greatly appreciates such an approach, since in B2B scenarios, the reverse charge regime, which is the collection mechanism recommended by the Guidelines for B2B scenarios, is a clear win–win solution for ensuring simplicity for business and enforceability for governments.
11. We have also seen developments in some jurisdictions around the world, which try to extend the B2C simplified registration mechanism to B2B scenarios. Business is of the view that this extension is not the appropriate way forward, it complicates systems and increases business compliance costs.
12. At the same there are best practices (i.e. Norway) which clearly show that giving business the required flexibility, ensures simplicity for business and enforceability for governments, which leads to efficiency gains for both sides. We, therefore, suggest looking at this whole aspect in more detail as part of the future work of the Consumption Taxes unit, to determine the pros and cons of both approaches.
13. On a different matter, regarding services connected with movable property supplied in a B2B context, the application of the general rule based on customer location generally leads to an appropriate result and fosters the practical application of the 2 fundamental principles – destination and neutrality. Therefore, business would like to endorse the statement referred to in paragraph 3.62.
14. Finally, BIAC would like to stress the importance of footnote 24 of the Guidelines, which highlights that a registration for VAT purposes does not, by itself, constitute a permanent establishment. In effect, the destination principle in the Business to Consumer guidelines results in VAT taxing rights allocated to the destination country even when the seller has no local presence or PE. BIAC believes that footnote 24 should go further by indicating that a PE determination for a remote seller with no local presence is contrary to the guidelines. As developments in practice show, more and more tax authorities around the world are now

trying to reclassify a mere VAT/GST registration as a PE for corporate (or other) tax purposes. There is a risk that this tendency may lead to increased revenue losses for governments on VAT/GST, as businesses become discouraged from acting as tax collector for VAT/GST given the potential wider tax implications at stake. In turn, this will also lead to increased distortions of competition for businesses.

The draft Supporting Provisions (draft chapter 4 of the Guidelines)

15. Business would like to stress that prevention is the best way to minimize disputes – the more consistently the Guidelines are interpreted and implemented at a global level, the less disputes on neutrality and place of taxation issues should occur. However, being realistic, there will of course be instances where jurisdictions will implement or interpret the neutrality or place of taxation principles in different ways. We would hope of course that such instances are rather the exception, but it is clear that chapter 4 is vital in trying to resolve disputes when they occur in practice.
16. Mutual cooperation and the exchange of information between governments is key not only to aiding the resolution of disputes regarding the Guidelines but also when it comes to making compliance as simple as possible for business and creating efficiencies on both sides – business and governments – when managing VAT/GST in practice.
17. Together with the principles of good tax administration developed by the FTA as a solid foundation, taxpayer services (e.g., provision of local guidance, creation of points of contact, the WP9/TAG process as a platform for engagement on implementation issues and best practices) are highly important and welcomed by business. They are crucial for making the fundamental principles, which the Guidelines are based on, work in practice for both business and governments.
18. The Guidelines have been developed with the proviso that the parties involved act in good faith and that all transactions are legitimate and with economic substance. BIAC would like to stress and endorse the importance of this point. At the same time BIAC understands that proportionate measures need to be taken by governments in the context of the Guidelines to protect against evasion and avoidance, which also create distortions of competition for business.
19. We urge the OECD and governments to apply these measures responsibly and proportionately in line with the principles of these Guidelines, particularly the principle of neutrality.
20. In addition we would like to highlight that VAT/GST is a mass transaction tax, often with thousands if not millions of incoming and outgoing transactions. In this environment genuine mistakes that have nothing to do with evasion or avoidance can happen in the complex day to day commercial and VAT collection process, and quite often these mistakes have no impact on governments' VAT/GST revenues, particularly in B2B transactions where the parties involved have full input VAT recovery. Therefore, any sanctions, applied in such a context should be proportionate, based on the gravity of the mistake, and take into account whether there is any

negative impact on governments' VAT/GST revenues. The OECD Lucerne Communiqué dated September 9th/10th 2009 also refers - tax administrations are encouraged to ensure that penalties for genuine mistakes made by business have regard to the net amount of revenue lost.

General BEPS related aspects

21. We would like to highlight that several corporate tax related BEPS action items (see below) also have potential impacts on VAT/GST. We would, therefore, like to encourage the OECD Consumption Taxes Unit and WP9 to reach out on these aspects to their colleagues in the relevant OECD Tax Units and Working Parties in order to consider and discuss the potential effects of these action items on VAT/GST. From a business perspective it is critical to further bridge the silos that often exist between corporate (and other) tax and VAT/GST in order to align the taxes more closely together where possible. BIAC is very happy to support the OECD on this matter and encourages the OECD to do further work on the Guidelines — in particular the B2B guidelines to address issues that the broader BEPS agenda will raise.

22. Corporate tax related BEPS actions with potential impacts on VAT/GST include:

Transfer pricing

- Transfer pricing adjustments
- In the absence of an alignment between governments on how TP adjustments are treated for VAT/GST - increased risks, including double taxation and unintended non-taxation and increased legal uncertainty.

Permanent establishment

- Increased VAT compliance obligations for business through the increased potential of the 'force of attraction' rules
- Increased risk that conflicting "establishment" definitions for VAT create double taxation and unintended non-taxation – particularly if the Guidelines are not implemented and applied consistently (general rule, specific rules) across the world

Corporate restructuring

- Acquisition and reorganization costs – the different approach between corporate taxes and VAT/GST.

Conclusions and Next Steps

23. Once finalized and provided they are consistently implemented by governments across the world, the Guidelines should help resolve many of the VAT/GST issues identified in the BEPS discussion draft on the digital economy. This shows the great value of the Guidelines developed by the OECD.

24. Business is highly committed to continuing its support on the further development of the Guidelines and encourages governments across the world to implement the Guidelines on a consistent basis.
25. Having promoted this public consultation within the wider business community, BIAC through the well-established OECD TAG process, would be pleased to assist in helping to capture and group the comments received by the OECD from the wider business community for further discussion and approval in WP9 and the CFA.
26. Additionally BIAC is highly committed to supporting the OECD on future work on VAT/GST such as work on implementation packages, exemptions for low value goods, or on any other areas of future focus.
27. BIAC would like to thank the OECD for the work started on the Guidelines in 2006 and would like to congratulate the OECD on the great outcome achieved to date. This is an excellent foundation on which to build future work on VAT/GST.
28. With the global outreach on VAT/GST to non-OECD countries, particularly through the setting up of the Global Forum on VAT, the OECD has started a new and very important chapter by raising the profile of and attention on VAT/GST as a truly global tax. BIAC is already very much looking forward to the 3rd Global Forum on VAT in Paris in November 2015 and would be pleased to support the OECD through providing input and assisting with the organisation from the business side.