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Ref.: TPG/PKR/PGI

Dear Mr Piet Battiau,

Re: FEE comments on Public Discussion Drafts – Guidelines on Place of Taxation for Business-to-Consumer (B2C) Supplies of Services and Intangibles and Supporting Provisions

- (1) FEE (the Federation of European Accountants, www.fee.be) is pleased to provide you below with our comments in respect of the above named discussion drafts proposing revisions to the International VAT\GST Guidelines.
- (2) FEE represents 47 professional institutes of accountants and auditors from 36 European countries, including all 28 European Union (EU) Member States. It has a combined membership of over 800.000 professional accountants, working in different capacities in public practice, small and big accountancy firms, businesses of all sizes, government and education. Adhering to the fundamental values of their profession – integrity, objectivity, independence, professionalism, competence and confidentiality – they contribute to a more efficient, transparent and sustainable European economy.
- (3) FEE broadly supports the revisions to the Guidelines proposed in the Discussion Drafts that address issues identified from the Report on Tax Challenges in the Digital Economy, produced under Action 1 of the OECD's BEPS project.
- (4) We support in principle the concept that VAT neutrality is generally achieved through the implementation of the "destination principle". In respect of B2C supplies of consumables and intangibles, we support the two general rules recommended for determining the place of supply; namely that on-the-spot supplies should be taxed based on the place of performance and for other supplies that the rule should be based on the customer's usual residence.
- (5) We also support the framework for assessing the desirability of introducing specific rules where it is believed that the general rules described above do not produce an appropriate result under the criteria contained in Guideline 3.7.
- (6) We have a number of specific comments on several sections, as set out in detail below.

Section C3.2 VAT collection where the supplier is not located in the jurisdiction of taxation – para. 3.30 and Annex 3 para. 6

- (7) In paragraph 3.30 and Annex 3 paragraph 6, the draft suggests a simplified registration and compliance regime "without the same rights (e.g. input tax recovery) and obligations (e.g. full reporting) as a traditional regime".
- (8) FEE supports the concept of this simplified registration and compliance regime but has identified circumstances where the compulsory imposition of this regime could produce an unfair result. In particular, there may be situations in which a non-resident provider of services incurs domestic input VAT, both with respect to "on-the-spot" transactions and supplies falling under a special rule, mainly in relation to immovable property.
- (9) As an example, a travelling entertainer touring in various countries and cities may rent venues in which he stages his performances (such as concert halls) in his own name, without using an organising agent. The collected entrance fee will be subject to domestic VAT as an "on-the-spot" supply, but the VAT charged on the rent for the location would not be deductible (but would be recoverable on application of the B²B General guidelines adopted by the OECD in April last year) under the simplified regime as suggested by OECD.
- (10) As another example, take the situation of a non-resident who owns a house in Brussels, divided into apartments, which the owner rents for short-term accommodation. He contracts with local businesses for maintenance and cleaning. The non-resident does not live in Brussels nor has he established a home there (cf. 3.22). However, since maintenance and cleaning of the building may fall under a specific rule (3.53), these services will in principle be charged with the VAT of the country where the property is located. The collected rental payments may equally fall under a specific rule and, taken separately, would qualify for a simplified regime. Under the simplified VAT filing procedure, however, the input VAT would not be recoverable. That would violate the general principle that a business should not be burdened with VAT unless the legislator has decided differently.
- (11) As a result, FEE suggests that a phrase should be added stating that jurisdictions should permit non-resident businesses to opt for the traditional regime (i.e. to register for VAT and file VAT returns in the normal manner), at least if the businesses otherwise would be burdened with non-recoverable VAT despite their taxable transactions in that jurisdiction.

Section C3.1 Determining the jurisdiction of the usual residence of the customer – para. 3.22

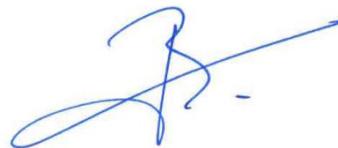
- (12) The operation of the fundamental freedoms within the European Union has led to a considerable mobility in the population and this could lead to practical problems in establishing the usual residence of the customer. It is not unusual for individuals to have residences in more than one Member State in which they spend an equivalent period of occupation. The high degree of mobility of labour also means that it is common for workers to spend short periods of time working in Member States other than that in which they reside.
- (13) Taking the case of travelling workers, they may live temporarily in another country other than that in which they have a home. This may or may not be in connection with a construction site that, under OECD tax treaty rules, qualifies as a permanent establishment. We wonder how such workers would be affected by the second sentence in 3.22 and whether such workers are to be considered "transitory visitors (e.g. as a tourist or as a participant to a training course or a conference)".
- (14) Consequently, we believe that it may be beneficial for the OECD to provide some additional guidance as to how to determine the place of usual residence regarding the treatment of travelling workers. It may also be beneficial if a form of "tie-break" clause could be drafted for inclusion in the Guidelines to deal with situations where individuals could be deemed to be usually resident in more than one country.

For further information on this letter, please contact Paul Gisby, Manager, from the FEE Team on +32 2 285 40 70 or via e-mail at paul.gisby@fee.be.

Yours sincerely,



Petr Kriz
President



Olivier Boutellis-Taft
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