



**Response to European Commission
Green Paper on the future of VAT—
Towards a simpler, more robust and
efficient VAT system**

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1. Executive summary

Past experience has shown that it is difficult for the European Commission to obtain agreement from the EU Council for proposed structural changes to European Union (EU) VAT legislation. Since 1977, only two significant sets of legislation (the 1992 so-called “transitional arrangements” and the 2010 so-called “VAT Package”) have been adopted – both of which have reinforced the use of taxation at destination as the underlying principle for the EU VAT system.

Against this background, we would recommend that the European Commission should concentrate in the short- to medium-term on making proposals to improve and modernise the administrative and technical framework within which businesses are required to collect and account for VAT, rather than making proposals to change the system itself. In particular we would recommend:

- ▶ Furthering efforts to simplify and harmonise invoicing requirements.
- ▶ Harmonising the frequency and content of VAT returns and listings using modern computerised technology.
- ▶ Extending the use of the one-stop-shop mechanism for registering and fulfilling VAT obligations with a view, in particular, to incorporating the possibility of deducting input tax.

These three measures alone would contribute considerably towards easing the administrative burden placed on business, and would, in turn, increase compliance across the EU since businesses would have greater certainty in respect of their VAT obligations and their financial accounting systems would require much less tailoring for country-specific obligations.

In addition, in the longer term, we believe that to increase the neutrality of the VAT system, the European Commission should seek to harmonise the rules regarding restrictions on the right to deduct input tax and seek to disassociate formal requirements from the actual right to deduct input tax. With regard to the legal process, we can see benefits to the use of binding Council Regulations rather than Directives and the possibility of adopting implanting provisions by majority rather than unanimity with a view to creating greater legal certainty. We recognise, however, that changes to the legislative procedure would be extremely difficult to achieve. Finally, we would urge the Commission to carry out further impact assessments of the various methods which have been put forward for tax collection procedures, to ensure that new/additional administrative burdens are not created.

2. Introduction

In December 2010, the European Commission published the Green Paper on the European VAT system, which contains a great number of ideas on how the European VAT system could be simplified and modernised. Ernst & Young welcomes this initiative of the European Commission. The VAT system is of great importance for all persons doing business in the single market and it has a significant impact on day-to-day business. No other tax has such a direct effect on the supply chain and the financial systems which businesses have to operate. VAT poses unique challenges to multinational tax functions, since it must be managed accurately and in real time. It can also have significant impacts – on cash flow, absolute costs and risk exposures. It is our hope that the Green Paper will bring simplifications to the VAT system that alleviate the burden on business, and thereby also help to reduce the VAT gap.

In formulating our response to the Green Paper we have analysed and drawn conclusions to the various issues in the following two ways:

1. By setting up a network of VAT specialists in every EU Member State to compare experiences.
2. By widely consulting our clients through an on-line survey and through various face-to-face meetings in different Member States.

With a view to reflecting the issues where we judged our clients are most in agreement, we have limited our response to answering the more technical questions raised in the Green Paper and we have not expressed a view on issues such as tax rates and exemptions. We, therefore, offer our response to Questions 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 27, 28, 29, 30, 31 and 32 in the following report.

About Ernst & Young

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In Europe, we advise numerous clients on the VAT treatment of new and complex transactions and supplies as well as helping them to resolve classification or other disputes with the authorities.

Ernst & Young's global tax policy network has extensive experience of helping to develop and implement policy initiatives, both as external advisers to governments and companies, and as advisers inside government. We have a long lasting relationship with the EU Institutions, providing financial and advisory services to the European Commission, the European Parliament and the European Investment Bank since 1980s.

3. Answers to the specific questions raised in the VAT Green Paper

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 benefits?*

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?*

The European Commission set specific objectives that it wished to achieve in relation to the single market and intra-EU trade, these were:

- ▶ Reducing the complexity of the current system.
- ▶ Making the single market work better.
- ▶ Maximising revenue collection and tackling the system's susceptibility to fraud.
- ▶ Keeping up with changes in technology and the economic environment.

In considering how the current VAT arrangements for intra-EU trade impact upon these objectives and how the VAT system has developed since its beginnings, we conclude that the origin-principle is not suitable for achieving these objectives. This is supported in the responses that we received from the clients who participated in our VAT Green Paper online questionnaire where a majority stated that taxation in the Member State of origin is no longer a relevant and achievable objective. Two thirds of our client respondents think that the current arrangements for intra EU trade are suitable enough for the single market.

There are however a number of fundamental issues that need to be addressed to make the current system less burdensome and facilitate trade; namely:

- ▶ There are still too many exceptions to the basic place of supply of services rule.
- ▶ Taxation of chain transactions.
- ▶ The taxation of B2C supplies is overly burdensome.
- ▶ Perceived cash flow disadvantage regarding domestic transactions.

It has long been known that supply chain complexity is increasing, as suppliers seek to penetrate new markets, while minimising raw material costs and other costs. A simplification measure is needed for transactions involving a non-EU intermediary counter party, or, indeed, involving more than three entities in the supply chain, so as to reduce the need for multiple VAT registrations in multiple jurisdictions.

Regarding B2C supplies, it is clearly far more complex and difficult to make cross border sales than purely domestic sales and this is a severe impediment to a full and proper exploitation of the opportunities offered by the single market for small and medium-sized businesses in particular.

Lastly, the creation of the single market and the regime relating to intra community supplies create a distortion: Businesses purchasing goods and services from EU suppliers do not suffer VAT cash flow. This is also the case when services are purchased from a non-EU supplier, however, when such supplies are purchased within a country there is a negative cash flow impact.

In addition, there are certain aspects of the current arrangements that cause confusion, lead to taxpayer frustration and hinder the smooth operation of the indirect tax system within the single market. These issues in the main fall into three distinct categories:

1. Interpretation of legislation
2. Administration of the tax
3. Adoption of legislation

We have detailed below specific examples:

Interpretation of legislation

The differing interpretations that Member States can adopt, and their sheer number, result in taxpayer confusion. This is compounded by the lack of clear, concise and relevant notification of the differing interpretations of the overarching European VAT legislation. Examples include:

- ▶ The approaches taken by tax authorities in relation to the supply of goods or services where there is a package/bundle of elements, and to those offered in digital format, are not consistent.
- ▶ The recent confusion facing businesses providing training in multiple Member States and what constitutes “admission.” Member States have interpreted the meaning of admission in different ways, which results in increased compliance costs as businesses have to research whether they need to register for VAT in the country where the admission takes place, and, register as appropriate. In addition, a business customer who is charged VAT must file a refund claim to obtain reimbursement of the VAT paid.
- ▶ Member States have interpreted the meaning of the term “intervenes in a supply” differently. This results in a lack of legal certainty for businesses that provide services across borders and operate through a branch structure.

Administration of the tax

The type of issues that businesses have to deal with on a daily basis include:

- ▶ Some Member States require businesses to register for VAT in the Member State of destination of services purely because of domestic reverse charge requirements. This is an administrative burden, particularly where the entity concerned is fully taxable as there is no net tax loss to the Member State concerned.
- ▶ VAT terminology can lead to confusion. For example, a “supply” may be classified as zero-rated in Ireland but as exempt with credit in Germany. This can lead to confusion in the hands of the recipient because the invoice issued by a German supplier relating to services received in Ireland may include advise that the services are “exempt” from VAT. The recipient’s accounts staff can (and have) regarded the services as not liable to a taxable reverse charge on receipt on the basis of the reference to “exempt” on the invoice.
- ▶ The level of data required to complete VAT returns, VIES and Intrastat returns varies from country to country, as do the filing deadlines. This creates additional burdens on business as financial systems (format of reports etc) must be modified to ensure that the business can extract the information needed.
- ▶ The type and form of invoices required by Member States also creates additional burdens on business as invoice templates within financial accounting systems must be tailored to meet the needs of each country.
- ▶ B2B suppliers need to know the VAT liability of their services in all Member States to comply with VIES requirements.

- ▶ The time taken to register an entity for VAT and to issue the respective VAT number is too long; in some Member States, it currently takes in excess of two months from the date of application. Many of our clients are worried that such delays could result in negative VAT cash flow, especially as, with effect from 1 July 2011, the VAT number will be the principal way to determine whether a supply is made to a business or to a private individual.

Adoption of legislation

Existing simplification measures are not consistently applied across all Member States, for example, where there is a triangular transaction. In some Member States, if the intermediary is established/registered in the country of dispatch/acquisition, this cannot be treated as a triangular transaction.

At present there are too many areas where Member States can choose whether to adopt the legislation concerned. This lack of consistency leads to confusion and increased compliance obligations for business, while increasing the risk that the right tax may not be accounted for at the right time in the right jurisdiction.

If it were possible to address some of these issues, it is likely that the overall satisfaction levels in respect of the current system would improve.

We do not believe that taxation in the Member State of origin is still a relevant and achievable objective. This is because VAT is a tax on consumption; therefore, taxation in the Member State of destination mirrors the aim of the tax, as in most cases this is where the goods/services supplied will be consumed. Also, all of the legislation relating to intra-community supplies that has been introduced following the introduction of the single market in 1993 has moved us further and further towards a destination based system. To undo 20 years' work would be nonsensical - not just from a legislative perspective, but also because of the potential significant impact on business.

We believe that the European Commission should continue to move towards a purer destination system and that it should seek to implement changes to this effect. In particular the European Commission should seek to reduce the number of exceptions to the general rule where supplies are made B2B.

In general, our clients believe that the current system combining the destination based principle (to be applied generally for B2B) and the origin based principle (for B2C) works quite well. Many of our clients would welcome a general reverse-charge regime for all intra-EU and domestic B2B supplies. A domestic reverse charge would allow the same cash flow advantage as when a business purchases services from a supplier in another Member State; it is cash flow neutral for both customers and suppliers and no party suffers/gains an advantage from the timing of the transaction. However, if the domestic reverse charge became the "norm" we appreciate that it would place too much reliance upon the collection of VAT at the retail stage which could lead to more avoidance/evasion and leave a large gap in public finances.

We appreciate moreover that implementing such changes can be a long and drawn out process. We would recommend, therefore, that the European Commission give priority to changes that will have a positive benefit to business while having minimal impact on the individual Member States. We have detailed below some suggested changes for consideration that would help to significantly reduce "red tape" and the compliance burden placed on business:

- ▶ Reduce the number of anomalies that arise as a result in differences of interpretation by producing supporting guidance detailing the intentions of the European Commission when the Directive/Regulation was introduced. This is explored in more detail in our responses to Questions 11, 12, 13 and 15.

- ▶ Remove/reduce the number of options regarding implementation that Member States have as to whether or not they choose to adopt a particular piece of legislation.
- ▶ Greater harmonisation of basic compliance information. For example:
 - ▶ A single European-wide format for VAT returns, VIES, Intrastat returns.
 - ▶ A single format (list of required information) for invoices.
- ▶ The wording to be placed on an invoice should refer to EU legislation rather than domestic legislation. This would then minimise the number of queries that suppliers receive from foreign customers when they use a domestic reference.

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?*

Question 4: *What other problems have you encountered in relation to the scope of VAT?*

Question 5: *What should be done to overcome these problems?*

In preparing our responses to questions 3, 4 and 5 we have chosen to focus our attention on the issues relating to holding companies.

We do not believe that the current VAT rules relating to holding companies are acceptable in their current form. This is because all activities of legal persons lead ultimately to some kind of supply; this is not taken into consideration when determining whether a holding company is entitled to recover input VAT, especially where the supply is made by a subsidiary. In addition, anomalies occur where Member States allow VAT grouping and allow holding companies to be included within such groups. We, therefore, do not believe that the current rules are fiscally neutral.

To ensure fiscal neutrality we believe that a holding company should be deemed to be a taxable person (subject to certain conditions) with the right to deduction which reflects the right to deduction of the whole group. We appreciate that a number of factors need to be considered/addressed in this context, including:

- ▶ The definition of a holding company and its activities; this may require agreement as to a minimum percentage of shares that needs to be held by the holding company.
- ▶ Apportionment between economic and non-economic activities is required when there is evidence of non-economic activities. In the absence of such proof, input tax must be treated as having a direct and immediate link with the taxable person's (i.e., in this case the corporate group's) economic activities as a whole. If the group is not fully taxable, strict rules on apportionment should be developed.
- ▶ If the issuing of shares is treated as having a direct and immediate link with the taxable person's economic activity as a whole, the disposal of shares should be treated in the same manner.

The VAT treatment of holding companies is not a new issue. Many countries with a more recently developed VAT system have implemented interesting solutions for holding companies which the EU could consider. South Africa, Canada and Switzerland all allow holding companies to register for VAT purposes and to recover input tax they incur. New Zealand allows the deduction of input tax on costs related to the acquisition of at least 10% of the shares of a company which makes at least 75% taxable supplies, provided the investment allows the investor to influence the management of the business. In Canada, the

minimum number of shares is set at 51%. In Switzerland, the limit is set at a low limit of 10%. To benefit from this rule however, in Canada, the holding company must hold shares of a fully taxable operating company.

Question 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?*

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?*

Question 8: *What should be done to overcome these problems?*

Given that we are a professional services firm, these questions are not of direct application.

Question 9: *What do you consider to be the main problems with the right of deduction?*

Question 10: *What changes would you like to see to improve the neutrality and fairness of the rules on deduction of input VAT?*

From a business perspective the main problems related to the right to deduction are as follows:

- ▶ The form of evidence required to enable a business to recover input VAT is not consistently applied throughout the EU with many Member States requiring different or additional forms of evidence. This inconsistency can result in delays to repayments and in some cases refusal by the tax authorities concerned to repay the sums claimed. In addition, businesses suffer increased costs associated with complying with the different rules.
- ▶ Restrictions on the right to deduction are not uniform. This leads to confusion as to what can be claimed in which Member State. Once again, businesses suffer increased costs associated with complying with the different rules.
- ▶ Businesses that undertake both taxable and exempt supplies are required to carry out a pro rata calculation in order to determine the amount of input tax to be deducted in relation to general business overheads. Many Member States take quite a relaxed approach to these calculations, allowing businesses to perform a simple high level calculation, while others take a more rigorous approach.

For example, Poland¹ simply applies the standard pro rata method as per the directive, with little room for manoeuvre. Some Member States, by contrast, are more flexible in allowing businesses to use alternate methodologies, yet others, such as the UK, have introduced additional legislation to combat perceived abuse. These differences in approach can result in businesses that are established in different Member States being able to recover significantly different percentages of input VAT, even though their activities are fundamentally the same in each jurisdiction. This factor could, in turn, influence where the business chooses to make investments. It also leads to distortions in competition as the cost base will be different for businesses established in different jurisdictions. Lastly, the burden on business can be significant. For example the UK tax authorities vigorously police the methodologies that partly exempt businesses adopt and

¹ In Poland the turnover is the only indicator taken into the consideration for the purposes of the pro rata calculation.

for some businesses it can take years to agree a methodology, and they must start the process from scratch if, in the meantime, the circumstances of the business have changed.

- ▶ The influence of out-of-scope transactions on pro rata calculations. Some Member States insist that two calculations be performed, business/non business, while others are happy for there to be a single calculation. This inconsistency of approach leads to confusion, particularly when a business expands within the EU, and can often result in disputes with tax authorities, increased compliance costs etc.
- ▶ Application of claw back provisions where there is a change of use. A common issue is that goods and services purchased by a taxpayer who intends to use them for given activities (taxed, exempt, etc.) are actually used for other activities or the use of the goods and services changes over time. The question arises whether the change of use impacts on the taxpayer's right to deduction. Generally, the issue raised is to some extent covered by a capital goods scheme, but it should be noted that this situation may also concern goods and services that do not fall under these schemes because of their small value (e.g. low-value tools, machines, licenses), or because the terminology used in the legislation is outdated. For example, in the UK, a capital goods adjustment may be triggered if there is a change in use of computer equipment where the value of any single item is more than £50,000. However, the term "computer equipment" was introduced many years ago and it has not kept pace with technological advances; today, any form of equipment can be IT-enabled, which may lead to uncertainty about the application of the adjustment. Therefore, it seems that there may be a need for the application of claw back provisions to be broadened to encompass a change of use of goods and services other than those covered by a capital goods scheme.

To improve the neutrality and fairness of the rules on deduction of input VAT we recommend that consideration be given to implementing the following changes:

- ▶ Form of evidence – reach agreement on what is acceptable evidence to support input VAT recovery, not allowing Member States to insist on additional evidence over and above that required by the legislation.
- ▶ Restrictions on the right to deduction:
 - ▶ Clearly define use for business purposes and draw a clear line to private use.
 - ▶ Agree on the list of expenditure for which VAT is not deductible.
 - ▶ Develop the concept of "abuse of law" (criteria and consequences should be clearly stated in the law).
 - ▶ Provide guidance regarding the concept of "good faith."
- ▶ Partial exemption:
 - ▶ Clearly define turnover for the pro rata calculation and develop possible criteria for apportionment of input VAT (implementation of other than turnover criteria, e.g. headcount, office space etc.).
 - ▶ Clarify how out-of-scope transactions should be included/excluded from the pro rata calculation. If they are to be excluded, clarify how such activities should be taken into consideration when determining the amount of VAT to be recovered.
 - ▶ Clearly define the incidental transactions and capital goods (to be excluded from pro rata).
- ▶ Adjustment of deduction:

- ▶ Provide for a consistent definition of capital goods and intangible assets in respect of which the adjustment (recalculation) of deduction is required.
- ▶ Implement strict rules for the adjustment (not only for capital goods and intangible assets) for cases of the change of usage – the period/time limit for making the adjustments.
- ▶ Provide for the deadline for the execution of the right to deduction to be aligned with the deadline for the execution of VAT liability.

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?

Question 12: What should be done to overcome these problems? Do you think that more coordination is needed at international level?

There are a number of issues concerning the current VAT rules relating to international services. These issues vary and some are dependent upon whether the supply is B2B or B2C. We have outlined below some of the main issues that we have identified and provided some suggestions as to how these issues could be addressed.

Non-EU supplies of telecommunications, broadcasting and electronic services supplied to non-taxable persons

There is a perception that, notwithstanding the one-stop-shop registration facility, there is significant non-compliance in relation to supplies of telecommunications, broadcasting and electronic services supplied to non-taxable persons by businesses established outside of the European Community (B2C). The absence of any effective controls or sanctions leads to an unfair distortion of competition. In addition, EU businesses are generally subject to stricter controls compared to non-EU businesses as, at present, there is no system to validate or audit the figures declared by non-EU-businesses whereas it is possible to audit EU businesses more thoroughly, thus resulting in increased compliance costs.

It is therefore imperative that the European Commission seeks to improve compliance in this area. We recommend that there should be an amnesty period; this would encourage compliance by non-EU businesses that already have an obligation to register and account for VAT. They should be given the opportunity to regularise their VAT affairs without the requirement to pay tax that may be due on historical transactions. They should also be given a chance to become EU VAT-registered without fear of the imposition of interest and penalties.

Consideration should be given to how the compliance burden of non-EU businesses can be reduced, so as to encourage compliance still further. For example, a streamlined and more efficient single VAT registration system should be implemented. Also non-EU businesses should be given the right to offset input VAT incurred within the EU against the value of any output VAT that is due. This measure would increase efficiency and ensure the fiscal neutrality of the supply chain.

At present, penalties for non-compliance by non-EU business are unclear. We believe that, for the future, there should be a uniform/single penalty for non-compliance and that this should be of a size/scale that represents an effective deterrent. For example, the penalty could be set at 50% of the tax due, provided that there are efficient and effective means to enforce such penalties.

The collection of VAT directly from customers should not be discounted. This approach has, for example, been adopted by both Switzerland and Canada. In those countries, recipients (including private consumers) of imported services and intangibles are required to self-assess VAT/GST and to pay the tax due to the authorities. However, in Canada, provided the

imported services or intangibles are used in the commercial activity of the recipient, the obligation to self-assess is waived. In Switzerland, this rule applies to private consumers only if they acquire such services and intangibles for more than CHF10,000 (€8,000) per year. Such rules could also be considered in the EU if the compliance by non-EU businesses continues to be a problem in this area.

Lastly, this is an area that requires a greater level of co-operation between EU and non-EU tax authorities, particularly in relation to the sharing of information. On an international level, the place of taxation rules in respect of services are not harmonised, this can lead in some cases to double taxation or non-taxation, and, as such to distortions in competition. The Organisation for Economic Cooperation and Development (OECD) has been working on uniform VAT/GST guidelines for some time and it has achieved some promising first results². We would recommend that the European Commission plays an active role in this work and develops consistent rules together with the OECD.

Vouchers and different forms of payments

There is increasing complexity and inconsistency across the EU in the treatment of vouchers and similar instruments. A lack of harmonisation is becoming a growing concern as the volume of cross-border transactions increases. The Commission is due to publish its proposals for a new Council Directive that will provide the basis for common rules in the future. There has already been extensive consultation with industry representatives and other interested parties in developing the proposals and it is essential that this consultative approach be continued as the rules are further refined and finalised.

The need for harmonised, efficient and practicable rules will become all the more important in 2015 with the introduction of the changes to the place of supply rules for B2C supplies of telecommunications, broadcasting and electronically supplied services, since vouchers in these markets will have increasing economic significance. Without a harmonised and efficient regime for vouchers, serious anomalies and distortions of competition could arise. These in turn could potentially undermine the application of the new place of supply rules.

We accordingly urge the Commission to attach considerable urgency and importance to these proposals, and, in particular, not to delay further work on account of anticipated developments in the European Court of Justice (ECJ) (notably the case of Labara).

Place of supply rules for services supplied to business customers

As discussed in our response to Questions 1 and 2, we believe that there are still too many exceptions to the basic place of supply rule. They result in businesses having to register for VAT in multiple jurisdictions and to customise accounting systems to deal with differing place of supply rules, leading to increased compliance costs. Customers suffer negative VAT cash flow while waiting for refund claims to be processed. Indeed some business fail to claim VAT that they are entitled to recover, as the administrative burden often outweighs the value of the tax at stake. This calls into question the fiscal neutrality of the tax. We believe that, in particular, the following exceptions should be reviewed with a view to including them within the general rule:

- ▶ The supply of all cultural, artistic, sporting, scientific, educational, entertainment and similar services, including admissions to events.
- ▶ Land-related services, including hotel accommodation.

Place of supply rules for services supplied to non business customers

The proposed changes in 2015 for B2C supplies of telecommunications, broadcasting and electronically supplied services present some major commercial and practical issues for affected businesses. In particular, such businesses will be obliged to identify each customer's country of residence, which will present a significant challenge particularly where such information is not currently collected for commercial purposes, or where it is impracticable

² http://www.oecd.org/department/0,3355,en_2649_33739_1_1_1_1_1,00.html

(anonymous online purchasing) or illegal (under data protection or consumer protection regulations). We have already commenced consultations with the Commission about these issues and will continue to work closely with the Commission with a view to producing Council Regulations that contain clear, harmonised, efficient and workable rules, well ahead of the 2015 implementation date.

Possible solution regarding place of supply rules for services supplied to non business customers

We believe that new Council Regulations and the one-stop-shop simplification is the best solution in relation to the problems that we have identified above – please see our responses to Question 27.

“Use and enjoyment”

The 2010 changes to the place of supply rules for services have not addressed the inconsistent and sometimes over-zealous application of the “use and enjoyment” rules. In particular, there is growing evidence that such rules are being extended in some Member States to apply to local VAT to services supplied to non-EU business customers. This can, at best, lead to cash flow disadvantages for those customers who are reliant on the acceptance and processing of 13th Directive refunds; in some cases, can result in an absolute cost where such claims are refused or simply not entertained on the principle of reciprocity.

The provisions are intended to address situations where the operation of the mainstream place of supply rules gives rise to double taxation, non-taxation or distortion of competition. However, the lack of Regulations or even guidelines setting out the circumstances where such provisions may legitimately be used, has led to considerable uncertainty and potential costs. While services supplied by non-EU operators to non-taxable persons resident in the EU would clearly represent legitimate targets for such provisions, local VAT should only be applied to exports of services in very exceptional cases (e.g. VAT avoidance). Indeed, one of the key principles behind the 2010 changes was to minimise the incidence of cross-border VAT. Moreover, the EU should be setting a good example to non-EU countries which routinely apply VAT, GST or other forms of consumption taxes to non-residents, often to the detriment of EU businesses seeking to compete in global markets.

We, therefore, urge the Commission to consider new Council Regulations to govern the application of the use and enjoyment provisions in a consistent, fair and equitable manner. If these are not considered possible, EU VAT Committee guidelines should be developed.

Issue regarding services rendered outside the EU

On an international level, the place of taxation rules in respect of services are not harmonised and this can lead in some cases to double taxation, non taxation, and distortions of competition. In particular, significant costs may be incurred when services are purchased from suppliers in non-EU countries who are obliged to charge local VAT or GST, which almost invariably is irrecoverable.

As the OECD has already highlighted, the ideal indirect taxation model in relation to the international provision of services should follow the same principles as for goods: services should be taxed on import or receipt by way of the reverse charge mechanism, while exports of services should be exempt (with refund).

Possible solution regarding services rendered outside the EU

We would urge the Commission to continue to pursue the development and implementation of Guidelines of “best practice” that all countries could use (see OECD VAT/GST Guidelines on international services and intangibles). These Guidelines should cover not only entities located in a single country but also multinational organizations with multiple establishments (e.g. operating under a branch structure).

Question 13: Which, if any, provisions of EU VAT law should be laid down in a Council regulation instead of a Directive

A clear majority of our clients that responded to our questionnaire stated that they see a need for laying down certain basic principles of the EU VAT system in a Council Regulation.

At the current level of integration it is inevitable that Member States want to retain some autonomy in the application of VAT in their national legislation. However, there are several features of the VAT system that require a more uniform approach from the perspective of business and international trade. This need is especially pressing when (substantial) distortions of competition or obstacles to the free movement of goods and services are involved. When these occur as a result of differing VAT regimes, businesses that operate internationally can not only be confronted with double taxation or non taxation but also with high compliance costs, for example, as a result of having to understand the rules in all of the jurisdictions that they trade in, customization of ERP systems on a country-by-country basis etc. In our view, the following provisions should be laid down in a Council Regulation:

- ▶ Provisions regarding invoicing requirements. Although new rules were adopted, Member States are still permitted to prescribe their own rules in certain areas. Uniformity is essential for businesses and country specific rules be limited as much as possible.
- ▶ Rules regarding the place of supply (including the permanent establishment) to avoid the double- or non-taxation which results from differing interpretations of a Directive.
- ▶ Rules regarding deduction of input VAT.

For the sake of clarity we feel that these issues should be dealt with preferably by Council Regulations that have a similar status as the VAT Directive, they should not be implementing regulations.

Even where the European VAT legislation is harmonised, inconsistencies often apply in the practical implementation of the VAT legislation. Therefore, any changes to the legislation should also be accompanied by uniform Guidance issued to the tax authorities operating in the Member States. This Guidance should also be made available to businesses. This would much provide greater likelihood that legislation will be implemented in the same way across the EU. In addition, both tax authorities and businesses will have a clear understanding of the European Commission's intentions when the legislation was being drafted and enacted.

Lastly, consideration should also be given to the publication of EU-wide interpretive leaflets. This would remove the need to find and rely on published guidance in individual Member States. In addition, information such as minutes of the VAT Committee meetings should also be published so that businesses can understand how Member States view and interpret different provisions.

Question 14: Do you consider that implementing rules should be laid down in a Commission decision?

Implementing rules must often be issued at short notice to avoid differences in interpretation between Member States.

If implementing regulations from the Council cannot be issued at short notice, we agree that a Commission decision may be a better alternative, because it can be done more quickly; moreover, we expect the Commission to play a more neutral role (than the Member States and Council) in explaining provisions of the VAT Directive,. Our clients agree with this conclusion, the majority of our respondents think that such implementing rules could improve understanding and compliance of the VAT system.

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 to issuing such guidance?*

Guidance on new EU VAT legislation may be useful, although as mentioned by the Commission it is not legally binding. In addition to our comments in respect of Question 13 we also believe that consideration should be given to providing a detailed preamble to directives. The Court of Justice uses the preamble as a means to explain provisions of that directive. If the preamble were to be expanded and used to clarify certain articles and notions, that might be more powerful than guidance by the Commission.

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)?*

We believe that taxpayer engagement is key to delivering an efficient and effective indirect tax system. Stakeholders should be involved at the outset not only on an EU level (e.g., European business associations) but also at a national level (e.g., national business associations etc.). This is important to ensure that all the options are considered, that the benefits are understood and that any issues can be proactively addressed. We do not believe that this would hinder the legislative process given that the VAT Directives are used as a legislative instrument; therefore, Member States would still have considerable scope to choose which option they ultimately wish to adopt. Which options are available in the Directive is also an important part in the legislative process, and this has considerable impact on VAT at a national level. This would also link in to the idea of streamlining and coordinating the national implementation process at an EU level.

We recommend the establishment of a permanent platform to discuss new proposals. The elements for discussion should not only include the benefits of the proposal, but should include an assessment of the administrative burden for businesses arising from new proposals and what - if any - actions could be taken to alleviate these issues. When subsequently a proposal is submitted to the Council, the issue of administrative burden should also be specifically addressed. If, for example, the conclusion is that considerable administrative burdens would arise for businesses, it should be explained why they cannot be avoided.

To increase transparency, further consideration should be given to publishing the meeting notes of the ECOFIN council on the Directives. This would provide something akin to a parliamentary legal history at the national level.

Question 17: *Have you encountered difficulties as a result of derogations granted to Member States? Please describe these difficulties.*

Question 18: *Do you think that the current procedure for granting individual derogations is satisfactory and, if not, how could it be improved?*

Given that we are a professional services firm, these questions are not of direct application.

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 business?*

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 rates list in the EU notably in order to address specific policy objectives as laid out in particular in “Europe 2020”?*

Given that we are a professional services firm, these questions are not of direct application.

Question 21: *What are the main problems you have experienced with the current rules on VAT obligations?*

Question 22: *What should be done at the EU level to overcome these problems?*

VAT obligations are different in each Member State and in some cases Member States have implemented obligations that go beyond EU legal requirements. For European businesses that trade on a pan-European basis, this inconsistency results in a significant administrative burden and increased costs. In practice, pan-European business must be familiar with the details and practical implementation of the legislation in all 27 EU Member States in order to be able to operate within the EU. The issues that businesses face on a day-to-day basis are numerous, examples include:

VAT registration

- ▶ Rules and documents needed for registering a company for VAT purposes are not harmonised, this can lead to confusion when applying for a VAT registration and can often result in delays, especially where information has been omitted etc.. In some countries, such as Portugal and Spain, the tax administration or other public entities involved in the process request that a fiscal representative be appointed before registering EU companies. Furthermore, in Portugal, the person who obtains the VAT number must be a lawyer.
- ▶ The tax administration of some Member States (for example Portugal or Spain, among others) request that all the documents needed for the registration must be certified and must bear the Hague Apostille. In many cases these documents must also be translated by a sworn translator into the language of the relevant State. These extra obligations should be eliminated, as they create delays, complexity and extra costs for European businesses.
- ▶ In some countries, the rules and documents needed for registering a company are not clearly defined and they change depending on the particular person or tax office that is in charge of the procedure.
- ▶ The obligation to register in respect of certain transactions is not always consistent. For example, some Member States require businesses to register for VAT purely because of domestic reverse charge requirements.

Invoicing requirements

- ▶ Invoicing rules are excessively complex and differ from country to country. Some countries have imposed extra invoicing requirements that are difficult to fulfil for companies involved in cross border trade. For instance, in Portugal it is compulsory to mention on invoices that the software used has been certified by the tax administration.
- ▶ Moreover, in some countries, where an exemption is involved it is not clear if the reference to the appropriate provision of the Directive is enough to be compliant with this requirement, or if, the reference to the appropriate national provision must appear on the invoice instead.

- ▶ Rules regarding how to issue rectifying invoices (credit notes and corrections) are not harmonised in all Member States. In addition, sometimes the procedure to deduct the VAT in these cases is very complex. For instance, in Portugal, rectifying invoices cannot have negative values, while in other countries they can.
- ▶ Furthermore, in Portugal, Poland or Czech Republic, when a rectifying invoice is issued the supplier must obtain written confirmation from the purchaser (if it is a taxable entity) whereby the latter acknowledges receipt of the credit note with the VAT adjustment, otherwise the VAT deduction is disallowed.
- ▶ Rules for archiving invoices are not harmonised. Each Member State determines the retention period for which taxable persons must store invoices. Furthermore, rules regarding the place where invoices can be stored also differ and, in some cases, it is necessary to obtain the authorization of the tax administration to store invoices abroad.
- ▶ Further, we observe diverging practices in the Member States regarding electronic invoicing. For example, a business that issues an invoice by electronic means does not need an electronic signature if the issuance takes place in Germany or in the UK, but it does need an electronic signature if the invoice is issued in Spain. This discrepancy significantly increases compliance costs for businesses. The upcoming Invoice Directive (that will have to be transposed from 2013), does not solve this lack of harmonization.

Filing deadlines

- ▶ Rules regarding tax periods and deadlines for filing VAT returns are different in each Member State. This lack of consistency creates confusion, increasing the risk of possible penalties for failing to comply with deadlines. For instance, in some countries (such as Spain) returns are due in the month following the tax period to which they relate, while in other countries (such as Portugal) returns are due in the second month following the tax period to which they relate.
- ▶ Rules regarding how to submit VAT returns to the authorities also differ between Member States. For instance, some Member States (e.g., Italy and Spain) require special electronic certificates for submitting returns by electronic means in some cases. These certificates are often difficult to obtain for companies that are not based in these countries. In other cases, for instance in the case of Portugal, the person submitting the VAT return for must be a chartered accountant.

Bad debts

- ▶ Rules regarding the regularization of VAT paid in relation to bad debts are also different in each Member State and, in many cases, these rules are very complex. For instance, in Portugal, there is often a requirement to have a certificate of a statutory auditor to be able to adjust the VAT. In other countries, such as Spain, the procedure is subject to strict deadlines and formalities which make it difficult to comply with in practice.

Penalties

- ▶ Penalty regimes differ greatly between Member states; which creates uncertainty for those businesses involved in cross-border trade.
- ▶ In some countries, the rules regarding penalties are not objective or concrete, giving considerable power to the tax administration to determine and quantify the amount of penalty applicable. This creates juridical uncertainty and often leads to a double punishment since often the readjusted VAT may not retrospectively be transferred to the client. The business therefore actually faces two penalties: the VAT itself and the penalty.

There is a need for greater harmonization of the rules regarding compliance and administrative obligations. We would like to make the following recommendations:

- ▶ Rules and documents required for registering European companies for VAT purposes in any Member State should be the same, avoiding the administrative need to appoint a fiscal representative and avoiding the need to certify and translate these documents.
- ▶ A standard VAT return should be available in all languages which businesses could use in all Member States.
- ▶ It would also be useful to have a unique IT tool for compliance with VAT obligations. This would facilitate the compliance with VAT obligations EU-wide. For instance, it would avoid having to enter into the websites of 27 tax administrations (with different languages, structure, etc) for submitting electronic VAT returns, and also in some cases it would avoid having to have different electronic certificates to enter these websites and submit VAT returns.
- ▶ The rules on how to access advice from the tax authorities in each Member State and the timing for granting this advice should be harmonised to reduce the VAT complexity that multinational companies encounter and to increase legal certainty.
- ▶ EU-wide reports and standard EU deadlines for submitting periodical and summarizing VAT returns, EU sales and acquisition listings and Intrastat should be considered.
- ▶ Penalties for non submission or late submission of VAT returns should also be harmonised to provide more certainty to European businesses. Rules on invoicing and record-keeping should also be simplified and harmonised. To this end, no additional invoice requirements should be incorporated into other areas of domestic law.
- ▶ A standard EU procedure should be adopted for bad debt relief.

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?*

In our opinion, the most feasible and relevant suggested measures set out in the reduction plan for VAT and in the opinion of the High Level Group are as follows:

- ▶ Abolishing intra-community acquisition listings.

We understand that this obligation could be easily abolished, as the information on this listing can be obtained from other sources (such as the intra-Community sales listing and the VAT Information System (VIES)).
- ▶ Abolishing nil intra-community sales listings.

This obligation could also be easily abolished, as tax administrations do not gather additional insights from such nil-listings.
- ▶ Exempting enterprises that fall below certain thresholds from the obligation to draw up intra-community listings.

By introducing a threshold, enterprises with very limited intra-community operations would be exempted from this obligation. For enterprises falling below these thresholds, the information on those transactions entered into their periodical returns should be considered as sufficient.
- ▶ Introducing simple, easy to use, time-saving e-government solutions to file returns and listings.

- ▶ Harmonizing EU-wide the frequency of VAT returns based on the turnover of the enterprises and introducing the option for shorter periods in case of companies with high input VAT claims.
- ▶ Simplifying proof of export. In all Member States the export document should be considered as sufficient proof of the exportation and no other documents should be requested to this end, as the export document is an officially certified document from a public authority and there should be interoperability between customs and tax authorities that ensures that the goods dispatched were exported.
- ▶ Integrating the VAT registration into the general process of business registration and providing one electronic portal for all registration purposes.
- ▶ Facilitating the use of the power of attorney for the submission of VAT returns and listings.

Question 24: *Should the current exemption scheme for small businesses be reviewed and what should be the main elements of that reassessment?*

Question 25: *Should additional simplifications be considered and what should be their main elements?*

Question 26: *Do you think that small business schemes sufficiently cover the needs of small farmers?*

We have no specific comments on these questions.

Question 27: *Do you see the one-stop-shop concept as a relevant simplification measure? If so, what features should it have?*

We agree that the one-stop-shop concept is a relevant simplification instrument, especially with regard to B2C transactions. This is because:

- ▶ Currently, businesses may have to be registered in several different EU Member States and comply with differing national VAT regimes.
- ▶ Businesses engaged in cross border trade suffer increased administrative costs. There is a perception that these businesses are less competitive due to administrative constraints and that the obstacles they face could even dissuade them from expanding into new countries.
- ▶ Lastly there is a perception that non-EU businesses do not comply with the current regime leading to distortions in competition.

In the long run, it might be desirable to implement a one-stop-shop for all transactions of a business, e.g. in the EU Member State where the business has its seat. This view is unanimously shared by the clients who responded to our questionnaire.

Countries such as India, Brazil or Canada face the same problems as the EU when it comes to applying a less than fully harmonised VAT system to a single market. An interesting approach to reduce compliance costs for businesses in such systems was found by Canada: The participating provinces (British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Ontario) harmonised their provincial sales tax with the GST to implement the harmonised sales tax (HST) in those provinces. If a business is registered for the GST, it is also registered for the HST. A GST/HST registrant has one single point of contact for all participating provinces where it remits the collected HST and claims input tax credits.

An effective one-stop-shop regime should have the following features:

- ▶ The business should be entitled to offset input VAT against output VAT due and, if appropriate, obtain a repayment from the tax authorities concerned.
- ▶ The regime should apply to both supplies of services and supplies of goods.
- ▶ There should be harmonised provisions in particular with regard to:
 - ▶ Registration documentation.
 - ▶ The day to day administration of the tax. In this regard uniformity of how the rules are applied and enforced is critical; Member States should not be given the opportunity to require additional information etc. Examples of this would include the form and type of evidence to support input VAT recovery, document retention, and access requirements in relation to business documents, to name but a few.
 - ▶ The format of returns and level of information required.
 - ▶ Reporting currency requirements.
 - ▶ Submission protocols (electronic) as well as submission and associated payment deadlines.
 - ▶ The penalty regime in cases of non compliance.

Due consideration must also be given to process enablement (standardization) when implementing a one-stop-shop concept. The IT implications must be taken into account to avoid the issues that were encountered when implementing the VAT refund platforms, e.g. the inability of some Member States to meet the timeline for implementation due to IT difficulties; options with regard to implementation (number of lines which can be submitted via the online platform, availability of xml-files, possibility to enclose documents etc.).

In addition, clarity is needed with regard to what happens if a company is registered for VAT in one Member State, through which it complies with all of its B2C supplies, and how that registration would impact upon other VAT registration obligations.

Lastly, equality of treatment in respect of VAT audits, penalties etc .is required. Consideration needs to be given to whether a company registered under the one-stop-shop would be audited by the revenue authority in the country where the business has registered, with multiple revenue authorities, or through some form of revenue collaboration entity. There should also be clarity as to the applicable penalty regime. This approach could also stimulate non-EU suppliers to comply with their EU VAT obligations and would result in less distortion of competition between EU and non-EU suppliers (as the latter also would fulfil their obligations and charge VAT).

The following could potentially hamper the successful implementation of one-stop-shop concept:

- ▶ Scope of one-stop-shop: the scope is unclear; will it only apply to B2C transactions (e.g. services, distance selling etc) or could it be extended to B2B where the general rule is not applicable and the recipient is not established in the Member State where the service is deemed to be supplied? Would it be possible to account for domestic sales and purchases, and also intra community supplies etc in other Member States through the one-stop-shop VAT registration?
- ▶ Lack of harmonization: regardless of the one-stop-shop concept, a business would still need to have an understanding of the different VAT rules in each Member State, because local rules would still apply.

- ▶ Complexity: how would the EU Member State where the business is registered for the purposes of the one-stop-shop simplification be able to identify whether preconditions for VAT grouping/call-off stock simplification/reverse charge/input VAT deduction are met in other EU Member States?
- ▶ Comprehensiveness: could EC sales list and Intrastat returns for all EU Member States also be submitted to the tax authorities of the one-stop-shop EU Member State?
- ▶ Information exchange: EU Member States would need to allow and further enhance provision and exchange of information, more harmonised and clarified rules in this respect would be necessary.
- ▶ Implementation: which additional/other costs and red tape (new burdens) would arise from the one-stop-shop?

Question 28: *Do you think that the current VAT rules create difficulties for intra-company or intra-group cross-border transactions?*

Intra-company supplies and intra-group supplies are not treated uniformly both at a domestic and intra-EU level. This can lead to distortions in how a business is taxed simply because of the legal structure it has chosen to adopt. In addition the following issues further compound this problem:

- ▶ Different VAT rules apply in Member States regarding the use of VAT groups. This can result in a corporate group having to charge VAT in one jurisdiction but not another in respect of intercompany supplies. This difference can have an impact on fiscal neutrality especially if the business is not entitled to full input VAT recovery.
- ▶ Different VAT rules apply in Member States regarding the use of the shared services provision. The scope of VAT exemption is interpreted differently between Member States and some restrict the use of this provision to certain sectors (financial services industry, healthcare sector). This lack in harmonization creates difficulties in cross-border transactions and, once again, can lead to cost anomalies if a business is not entitled to full input VAT recovery.
- ▶ Additional administrative burdens (e.g., issuing invoices required for intra-company or intra-group cross-border transactions) as the different rules in the Member States need to be considered.
- ▶ Different national rules hamper the opening up of markets as different rules result in higher costs, more administrative burdens, the risk that the setup is not accepted in another Member State etc.
- ▶ Companies that operate cross-border may not be able to use the same structure in all the Member States where they operate due to differing national provisions, e.g. some countries allow cross-border VAT groups, others do not.
- ▶ Despite EJC rulings, indirect tax practitioners feel that there is no common interpretation for whether a fixed establishment is involved in the supply of a service. In addition, the rules set out in the new Council Regulations on fixed establishments depart from the corporate tax treatment. For VAT purposes the relevant establishment is the establishment which intervenes in the supply rather than the establishment where costs/revenues are booked. This creates complexity where more than one establishment is involved/intervenes in the supply.

We consider that these issues/problems could be addressed by focusing on five key areas:

- ▶ VAT groups

The use of the VAT grouping provisions should be harmonised so that there is a consistent entitlement. Consideration should be given to cross-border VAT groups. This would require clarification of the legal requirements, guidance as to the registration process and verification of members' eligibility, standardized forms etc. Given that many Member States do not even offer the possibility for VAT grouping currently, a start would be to alter the VAT Directive so as to make grouping a mandatory provision.

► Independent groups of persons (IPGs)

The use of the cost sharing exemption provisions should be harmonised so that there is a consistent entitlement. We recommend that there be a clear definition of who would qualify to be treated as a member of an IPG. In addition, not all Member States currently allow international IPGs (e.g. in Austria, only a company with its seat in Austria can be a member of an IPG according to the opinion of the tax authorities). Consideration should be given to extending this provision across borders; doing so would require clarification of the legal requirements etc. Another issue that would need to be addressed is that, despite ECJ rulings, there is no common interpretation of distortion of competition in Member States.

► Fixed establishment

The VAT treatment should follow the accounting and corporate tax treatment which, in most instances, mirrors the establishment most closely connected from a legal and supply perspective.

► Branches/subsidiaries

Intra-company transactions should receive equal treatment notwithstanding the company's internal organization involving branches or subsidiaries.

Question 29: *In which areas of VAT legislation do synergies with other tax or customs legislation need to be promoted?*

We believe that there are primarily four areas where synergies with other tax or customs legislation need to be promoted:

1. Transfer pricing
2. Customs duties
3. Excise duties
4. Corporate income tax

We have detailed below some thoughts in relation to current issues and possible solutions.

Synergies with transfer pricing

In principle, adjusting transfer prices on a yearly basis requires an adjustment of the underlying transactions which took place in the previous year if the adjustment can actually be linked to those transactions. The adjustment then has to take into account the VAT treatment, VAT rate, etc of the underlying transactions, which leads to a considerable administrative burden for VAT and to non reclaimable import duties.

Profit adjustments on the other hand can be considered as outside the scope of VAT (which can be the case if the adjustment is totally unrelated to the underlying transactions which took place in the previous year).

If the business concerned is partially exempt, we understand the need for the VAT value to be adjusted following a transfer pricing adjustment. Therefore, we need to have clear EU rules on the qualification and VAT treatment of transfer pricing adjustments. However, if the business is fully taxable, we believe that no VAT adjustment should be required as there is no net VAT impact associated with the changes.

Synergies with customs

Consideration should be given to the impact of the envisaged centralized customs clearance on VAT and its alignment to VAT, in particular:

- ▶ The change of place of importation rules (i.e., Member State of authorization)
- ▶ How is VAT data transferred to the Member State of importation?
- ▶ Is a separate declaration for import VAT needed?

The person entitled to act as importer of record can differ from country to country (e.g., legal owner, economic owner, or anyone mentioned in Box 8 of the import doc etc.) and the person entitled to deduct the import VAT (legal owner or anyone mentioned in Box 8 of the import doc) is not aligned in all countries. This discrepancy can result in the importer of record not being entitled to recover the VAT that it has paid. Therefore, harmonised EU rules are required on the capacity of the importer of record and the person entitled to deduct import VAT.

The facility to defer import VAT does not exist in all countries, and in some a cash deposit is required. These differences have an impact on the free flow of goods and international trade. We, therefore, recommend that a harmonised deferment regime be implemented.

Import declarations are now paperless. However, import documentation serves as a basis for the deduction of import VAT and need to be kept during the retention period to prove VAT deduction. The form of documentation to be retained varies between Member States. We recommend harmonization of the evidence that must be retained. In addition, consideration should be given to greater liaison between VAT authorities and customs authorities (or, as is the case in the UK within the same government department) in the case of audits and the use of central databases.

Synergies with excises

The suspension of excise duties and VAT exemptions are not always aligned. Examples can be given where excise goods can remain suspended from excise duties but the VAT becomes due on a transaction (e.g. in certain countries a fictitious entry in a excise/VAT warehouse suspends excise duties but not VAT as the goods are not physically stored in the excise/VAT warehouse). We recommend the adoption of harmonised EU rules aligning the suspension of excise duties and VAT.

Certain goods are considered to be excise goods but they still cannot be placed under a VAT warehouse regime. We recommend allowing all goods to be placed under a VAT warehouse regime, whether they are imported, intra-Community acquired or purchased locally.

Synergies with corporate tax

The concept of permanent establishment for corporate tax purposes should be independent from any VAT influences. Having a fixed establishment for VAT purposes or a VAT registration should not influence the existence of a permanent establishment for corporate tax purposes.

Furthermore, simplification could be achieved if the deduction of costs for corporate income tax purposes could be aligned to the deduction of VAT on these costs. We recommend the adoption of harmonised EU rules aligning the deduction of costs for corporate income tax purposes and VAT.

Question 30: Which of these models looks most promising in your view and why, or would you suggest alternatives?

We agree that reviewing the way that VAT is collected and implementing new systems could help combat fraud. However, such changes should not simply focus on improving collection of VAT, but also consider improving and simplifying the process for businesses. Furthermore, fraud/non-compliance is not only a question of how VAT is collected but could also be addressed by changing/enhancing the system, including VAT-audits.

The relevance of a change of such a fundamental and complex part of VAT such as the tax collection system has to be appreciated from all parties' standpoints, i.e. from the supplier's, the customer's and the State's perspective.

We believe that the Green Paper process is not the right place to reach conclusions on alternative tax collection models. Further exploration of the different models, including impact assessments, is needed and should be done jointly with business. None of the present options are sufficiently developed to be able to assess their practicality with any confidence. In addition, experience shows that sometimes tax authorities are unable to handle the new or changed requirements arising from system changes (for example, the recent cross border VAT recovery portal). It might be very challenging to properly implement any of the suggestions 1-3. The feedback that we received from our clients shows that a split payment model is clearly rejected as being too complicated, too cost-intensive and too limited in its scope of application. The same is true for a central VAT monitoring database.

The fourth option suggests a system that is already in place, e.g. in the Netherlands in the form of horizontal monitoring. As such, it has proven its functionality. Even so, such a system is far from perfect as it does not catch fraudsters (and therefore does not lead to a more robust VAT system), it may not apply to SMEs (thus creating inequality) and it risks depleting knowledge on the part of the tax authorities. Also, if the fourth system were to be preferred there should be a benefit connected to participation in the model, e.g. early payments of refunds.

Question 31: What are your views on the feasibility and relevance of an optional split payment?

The relevance of a split payment system should be appreciated from all parties' standpoints, i.e. from the supplier's, the customer's, the State's and the banks', perspective.

From the State's point of view, such a system cannot be fully efficient unless it is global and compulsory. What about non-EU companies which do not have a bank account in the EU? Moreover, it is doubtful that the system would work if not all Member States decided to implement it. What about distortions of competition? In addition, not all payments are made via bank transfer; cash payments and payments by cheque would have to be dealt with differently, which could make VAT reporting requirements more onerous. Also, VAT audits could be more complex as it would be necessary to reconcile invoices issued to the form of payment.

From the supplier's or the customer's points of view, such a reform would have other consequences than just tackling MTIC frauds. Indeed, it would de facto imply a change in the moment when the VAT becomes due (chargeable/recoverable). The supplier would no longer have an obligation to account for VAT before it had been received from the customer but would no longer be able to finance its own activity with the VAT it can currently receive in advance of the due date for payment to the tax administration. Nothing would change from the customer's point of view, since it would have to pay the VAT at the same moment as before. If such a system were to be implemented, how would the prejudice from the supplier's perspective be determined and would he be granted any form of compensation? In addition, if

there is an error with regard to the value of VAT paid to the tax administration who would be at fault - the supplier, the bank, or both?

From the banks' point of view, the question is quite simple: who will pay them for this new service, which at the end of the day is profitable only for the States? If any problem occurs, would they be responsible for it?

The relevance of such a system can be appreciated only by comparison with other systems. The other solutions referred to in question 30 may seem less ambitious but they do raise the problems mentioned above.

Question 32: *Would you support these suggestions to improve the relationship between traders and tax authorities? Do you have other suggestions?*

We agree with the four suggestions included in the Green Paper and would like to make the following comments.

Most of the issues we have highlighted above relate to onerous administrative burdens, therefore, we strongly support the pooling of best practices, streamlining administrative processes and reducing burdens on business.

We would question, however, whether an EU policy on voluntary compliance is necessary. The vast majority of businesses do endeavour to comply with their VAT obligations, and expend a considerable amount of time and incur significant costs in doing so. However, as we have indicated in this paper, the current VAT system is far from perfect. Inconsistencies in relation to how the indirect tax legislation is interpreted/implemented and administered hinder business and make full compliance difficult. We believe that the European Commission would be better placed to invest time and resources in dealing with these matters than pursuing such a policy.

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