



**Opinion statement of the Confédération Fiscale Européenne**

**on the OECD International VAT/GST Guidelines**

**April 2008**

**Paper submitted by the Confédération Fiscale Européenne**

**to the OECD in 2008**

*This is an Opinion Statement on the Commission Consultation Paper on the OECD International VAT/GST Guidelines, prepared by the Fiscal Committee of the Confédération Fiscale Européenne (CFE). The CFE is the leading European association of 29 national tax advisory organisations representing over 160,000 tax advisers.*

*The CFE welcomes the consultation of the OECD consultation initiative on the international VAT/GST guidelines and related issues and appreciates the detailed analysis made by the OECD summarizing the current systems and focus on an appropriate framework especially for the international trade of services and intangible properties.*

## **1. Introduction**

The OECD expressed in its working paper from February 2008 the intention to set a framework for consumption tax of the trade of international services and intangibles. CFE agrees with the analysis outlined in the preface of the paper. CFE believes that such a framework may become a suitable standard for the taxation of the trade of services and intangibles among Members and beyond, as OECD guidelines have already proved to be in the area of double taxation.

At the current stage of the discussion CFE recognizes that the OECD is seeking a more general approach as currently regulated in the VAT Directive (Directive 112/2006; OJ L 347, 11.12. 2006), as amended in Council Directive 2008/8 (OJ L 44, 20.2.2008). The European law as laid down in the Directives mentioned above pursues the following concept.

- a. Commencing with 2010 the destination principle will be applied in business to business transactions in most circumstances. The general principle does not require a limited concept which excludes all transactions which can not be carried out from a remote location. However, this general term of the OECD concept is to be understood as an exclusion from the general principle and embraces in the essence the same places of supply of services in the VAT Directive, which are not eligible for the destination principle.
- b. For business to consumer transactions, the principle suggested by the OECD, in the VAT Directive only applies for consumers who are resident outside of the European Union. However, there are some exceptions left, which correspond to the concept for the business to business

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transactions. Furthermore, the Directive has determined the destination principle for services of those electronic service providers which are established outside of the European Union to the extent that their customers are non-traders and resident in the European Union. However, this concept could easily be accomplished for revenues which originally were beyond taxation by a single Member State.

- c. For business to consumer transactions to customers resident in the European Union the place of supply will be altered to the destination principle commencing with 2015 for a limited range of services like telecommunications, broadcasting and electronic services. In all other cases especially for services of the advisory industry the place of supply remains where the service provider is established.

## **2. General comment**

CFE supports the work of the OECD as outlined in the working paper. In particular, rules dealing with dispute resolution would be welcomed since an effort undertaken by the Commission very recently to set up necessary rules on the European Union level are neither supported by the Member States nor by the representatives of European industry. A consultation procedure launched in 2007 has not received substantial attention, notwithstanding of the importance of the subject. In addition, CFE agrees that the ultimate solution taxing the trade of services and intangibles in the area of consumption tax needs to focus on the destination principle.

## **3. Specific comment**

One of the goals of the current initiative of OECD is to reduce any type of double taxation or double non-taxation in the area of VAT/GST. In order to achieve this aim CFE will draw the attention to a very specific issue, deriving from the customs valuation concepts and the treatment of royalties. Since in the VAT Directive as well as in the most of the VAT/GST statutes the taxable amount for importation VAT relies on the transaction price principle for custom purposes plus the obligatory additions of certain expenses (see Art 8 of the customs valuation agreement of the World Customs Organisation), which includes royalties and licence fees related to the goods being valued, that the buyer directly or indirectly must pay, a double taxation may occur if simultaneously royalties are taxed under the destination principle (see Art 32 (2)(c) of the Customs Code and Art 85 of the VAT Directive). In particular, distribution contracts for pharmaceutical products may contain additional royalty charges for being allowed to distribute

the product to further parties. If the contractor is carrying out his business in the healthcare sector he might be tax exempt and therefore may run into a double taxation situation.

Therefore CFE recommends that for royalties which are included in the basis for the importation VAT an exemption from any further taxation under the destination principle should be given. It may be that some States treat such royalties as ancillary services directly linked to the supply of the imported goods and accept the charge as part of consideration for the supply of goods, while other States will treat such obligations as independent services and require an additional charge.

#### **4. Summary**

CFE welcomes the initiative of OECD and support the concept of the destination principle for the cross-border trade of services and intangibles. However, CFE believes that there is a need to mitigate obvious sources of double taxation of royalties in the context of the importation of goods.