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8 April 2014

The OECD's BEPS Action 1 discussion draft: implications for VAT

On 24 March 2014 the OECD launched its discussion draft: ***BEPS Action 1: Address the Tax Challenges of the Digital Economy***[1].

The report links to the 15 actions identified by the OECD to tackle BEPS[2]. These actions are to be considered as the biggest expected change in the tax system since the 1920s and are meant to restore the fairness and integrity of the different tax systems and more generally the global financial system with the goal to have the fair amount of tax paid at the right place.

The discussion draft specifically refers to VAT…

The discussion draft addresses VAT collection challenges created by cross-border trading of goods/services magnified by the digital economy. The two most challenging supply types identified are:

- Imports of low value parcels from online sales on which VAT is not always levied, and;
- The growth of cross-border digital supplies made to end customers, where it is difficult for countries to collect VAT on supplies made by non-residents. The borderless nature of the digital economy produces specific administrative issues around the identification of business, determining the extent of activities, etc.

Several options are considered for addressing these challenges raised by the digital economy. The options include lowering the threshold for low value imports and requiring vendors to register and account for VAT in the jurisdiction of importation. The draft also refers to requiring non-resident suppliers of remote digital B2C supplies to register and account for VAT in the customer's jurisdiction as implemented in the European Union 2015 place of supply changes.

In addition, the report addresses remote digital supplies made to exempt, often multi-location, business with reference to prior OECD guidelines[3]. These guidelines seek to address these issues by allocating tax to the jurisdiction where the services are used for business purposes, irrespective of how the supply and acquisition of these services was constructed.

… but also the direct tax references could trigger VAT impact

Apart from the above specific VAT options, the draft mainly deals with the digital economy related direct tax challenges and solutions. Interesting points brought forward are modifications to the exemptions from permanent establishment status (e.g. for storage of goods being currently considered as a preparatory or auxiliary nature of activities), the introduction of the notion of virtual permanent establishment, etc.

The introduction of new or changed concepts for direct tax could possibly bring up new interpretations of these concepts for VAT purposes (e.g. broader concept of VAT PE) but will inevitably impact the business model of multinationals and as a result change VAT. These changes will need to be properly reflected in systems, on invoices and intercompany agreements. The OECD also aims for a greater consistency between direct and indirect taxes, potentially resulting in additional inquiries from authorities.

Relevant for:

- Multinationals engaged in remote supplies of goods are directly concerned
- Any multinational cause of introduction of new concepts

[1] **http://www.oecd.org/tax/discussion-draft-action-1-tax-challenges-digital-economy.htm**. Comments on the discussion draft should be submitted by April 14, 2014

[2] "Base Erosion and Profit Shifting". Action Plan launched in July 2013. (**http://www.oecd.org/newsroom/closing-tax-gaps-oecd-launches-action-plan-on-base-erosion-and-profit-shifting.htm**)

[3] Guidelines on place of taxation for B2B supplies of services and intangibles

Contact

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