

United Kingdom

## BEPS Action 1: International VAT/GST Guidelines – Place of Taxation for B2C Supplies and Provisions on Supporting the Guidelines in Practice

On 18 December 2014, the OECD, as part of its work on the Action Plan to address Base Erosion and Profit Shifting ('BEPS'), released two Discussion Drafts on Action 1 in relation to addressing the tax challenges of the digital economy.

The OECD is developing international VAT/ GST Guidelines to address issues of double taxation and unintended non-taxation resulting from inconsistencies in the application of VAT/ GST to international trade. The first three chapters of these Guidelines were approved in January 2014 and endorsed as a global standard at the second meeting of the OECD Global Forum on VAT in April 2014. Public comments are now invited on two new draft elements of the Guidelines, relating to: the place of taxation of business-to-consumer supplies of services and intangibles (B2C Guidelines) and provisions to support the application of the Guidelines in practice (Supporting Provisions).

The Discussion Draft on the B2C Guidelines responds to the key conclusion on VAT/ GST in the Report on Tax Challenges of the Digital Economy, prepared in the context of BEPS Action 1, which concluded that the collection of VAT/ GST in a B2C context is a pressing issue that needs to be addressed urgently to protect tax revenue and ensure parity of treatment between foreign and domestic suppliers.

The Discussion Drafts are released for the purpose of inviting comments from interested parties, and do not necessarily reflect the final views of the OECD and its member countries.

### Deloitte Comments and Issues

Many of the concepts in the Discussion Drafts are familiar to taxpayers who operate within the EU. The EU rules on place of supply of services are a useful precedent for dealing with the issue of ensuring that VAT is accounted for in the country of consumption, particularly with respect to B2C supplies, including the rules for telecoms, broadcasting and e-services, which are changing on 1 January 2015 so that the supply will take place in the Member State of the customer.

It remains to be seen how many countries will implement the proposals. Beyond the EU, some countries are moving in this direction, such as Iceland and South Africa. However, the issue remains of how to implement an effective form of VAT collection that does not prejudice wider commercial and investment concerns. Ensuring this balance is achieved will be critical in implementing the guidelines.

One particular issue of potential concern is in relation to B2C supplies that are not 'on-the-spot'; basing the place of taxation on the customer's usual residence presents challenges in determining consumption, particularly where use and enjoyment may lead to a different answer.

There are also practical issues regarding the IT systems and technology required by both businesses and tax administrations to ensure the effective implementation of the proposals. The experience in the EU, for example, has been that this has been a challenge, and it is likely that this will be even more difficult outside a single market.

It is important that taxpayers potentially affected by the OECD's Discussion Drafts, and the guiding principles, consider the degree to which these may impact upon their business in the future, and, where appropriate, respond to the consultation to ensure their views and concerns are represented.

## **B2C Guidelines**

### **General principles**

Under the VAT/ GST Guidelines, the destination principle is the core principle for determining the place of taxation for both business-to-business (B2B) and B2C supplies in an international context. The destination principle means that internationally-traded services should be taxed in the jurisdiction in which final consumption occurs.

In the past, achieving this was relatively straightforward, as services were generally consumed where they were performed. Accordingly, jurisdictions often determined taxation on the basis of where a supplier was located, as this was generally where the services were performed and consumed. However, the global economy, with an increase in the volume of digital supplies, has created challenges for this approach; the supplier's location or the place of performance is no longer necessarily a useful proxy for determining the place of taxation. For supplies of services where consumption does not necessarily bear a relationship to where the service is performed or where the supplier is located, a rule based on the customer's residence is often used as a proxy for determining the place of consumption. This rule ensures neutrality between domestic and foreign suppliers and is relatively easy for suppliers to comply with and tax administrations to administer.

Accordingly, the Discussion Draft recommends two general rules for determining the place of taxation for B2C supplies of services:

- For supplies that are physically performed at an identifiable location and ordinarily consumed where they are performed ('on-the-spot supplies'), a place of taxation based on the place of performance is recommended;
- For supplies that are not on-the-spot supplies, a place of taxation rule based on the customer's usual residence is recommended.

This results in allocating the taxing rights to the jurisdiction where (it can reasonably be assumed) the customer is located when consuming the supply.

### **On-the-spot supplies**

For on-the-spot supplies, the place of physical performance of the supply is an appropriate proxy to determine the place of supply. Examples of such supplies include services physically performed on a person (such as hairdressing, beauty therapy, physiotherapy); accommodation; restaurant and catering services; and entry to cultural and sporting events. The final consumption of these services generally requires the physical presence of both the person performing the supply and the person consuming it.

### **Other supplies**

For other supplies, the place of usual residence of the customer is an appropriate proxy for the jurisdiction of consumption, as generally these services will be consumed where the customer has his/ her residence. Examples of such supplies include: consultancy, accountancy and legal services, financial services and online supplies of software and digital content.

To enable suppliers to determine the place of residence, tax administrations should provide clear and realistic guidance, and suppliers should be able to rely on information routinely collected as part of their business activity.

The most effective and efficient approach to ensure collection of VAT/ GST on cross-border B2C supplies is to require the non-resident supplier to register and account for VAT/ GST in the jurisdiction of taxation. The Discussion Draft recommends that tax administrations consider establishing a simplified registration and compliance regime for non-resident suppliers, and includes an annex setting out the main features of a simplified registration and compliance regime for non-resident suppliers. The Discussion Draft also advocates enhanced international co-operation between tax administrations in the area of indirect taxes, with a focus on the exchange of information and assistance in recovery.

### **Specific rules**

In some situations, the general rules may not give an appropriate result, in respect of both B2C and B2B supplies. In these situations, specific rules may be necessary. The application of specific rules should be limited, and they should be supported by clear criteria.

The Discussion Draft does not set out when specific rules may apply, but provide the following guidelines (which should be considered together as a package) for evaluation of whether a specific rule is appropriate:

- Neutrality;
- Efficiency of compliance and administration;
- Certainty and simplicity;
- Effectiveness;
- Fairness.

The supply of services directly connected with immovable property is one situation where a specific rule may be appropriate, such that the right to tax is allocated to the jurisdiction in which the immovable property is located.

### **Supporting the Guidelines in Practice**

The objective of the VAT/ GST Guidelines is to provide guidance to jurisdictions in developing practical legislation to facilitate a smooth interaction between national VAT/ GST systems in their application to international trade, with a view to minimising both double taxation and unintended non-taxation, and increasing certainty. The Discussion Draft states that this objective should be achieved through adherence to the internationally agreed principles on VAT/ GST neutrality and implementation of the principles for determining the place of taxation.

The Discussion Draft acknowledges that whilst in an ideal world achieving these objectives would be simple, in practice, differences between jurisdictions can create difficulties and disputes. The Discussion Draft therefore suggests mechanisms for avoiding double taxation and unintended non-taxation, for minimising disputes and for dealing with evasion and avoidance.

Topics covered include:

- Mutual cooperation, exchange of information, and other arrangements allowing tax administrations to communicate and work together, including multilateral and bilateral cooperation.
- Taxpayer services, including readily accessible and easily understood guidance on the VAT/ GST rules and the creation of points of contact with tax administrations.
- Application of the guidelines in cases of evasion and avoidance.

## Timetable

Interested parties are invited to submit written comments by 20 February 2015. A public consultation on the Discussion Draft will be held on 25 February 2015 at the OECD Conference Centre in Paris.

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