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STAKEHOLDER SUGGESTIONS

- TAXATION AND CUSTOMS UNION -

DISCLAIMER

This document contains suggestions from stakeholders (for example citizens, NGOs, companies) or Member State authorities communicated to the Commission and submitted to the REFIT Platform in a particular policy area.

It is provided by the secretariat to the REFIT Platform members to support their deliberations on the relevant submissions by stakeholders and Member States authorities.

The Commission services have complemented relevant quotes from each suggestion with a short factual explanation of the state of play of any recent, relevant ongoing or planned work by the EU institutions.

The document does not contain any official positions of the European Commission unless expressly cited.

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1. SUMMARY

This briefing presents 10 suggestions received from four stakeholders: The Danish Business Forum, the German Chambers of Commerce and Industry (DIHK), the Austrian Federal Economic Chamber (WKÖ) and the Board of Swedish Industry and Commerce (NNR). They suggest:

- Combating VAT Fraud without applying reverse liability (DBF)
- Simplification in relation to chain transactions (DIHK)
- Simplification of warehouses rules (DIHK)
- Tax exemption on intra community deliveries (DIHK)
- Standardising the reverse charge throughout the EU (DIHK)
- Suggestions on how to avoiding the duplication of value-added tax (DIHK)
- Enabling EU-wide VAT registration through national registration offices (DIHK)
- Establishment of an EU VAT information portal (DBF)
- Simplifying the proposal for the VAT declaration (WKÖ)
- Extending the mini One-Stop-Shop (DBF)
- Extending the CCCTB to a sole trader (WKÖ)
- Simplification of requirements for documenting cross-border intercommunity supplies (NNR)
- Presenting a definition or guidance in explanatory notes on the distinction between single and composite supplies (NNR)
- Modernising of VAT rules for public bodies and transactions in the public interest (NNR)
- Creating possibility for small businesses to use a VAT reporting threshold on B2C sales across EU (NNR)

Overall, the concerns expressed by stakeholders are generally well known to the Commission and are being considered as part of the preparatory work for the EU Action Plan on VAT.

A revised CCCTB proposal is being prepared and is at the stage of impact assessment. Pending the finalisation of the impact assessment and the proposal, there is no reason to preclude any taxpayers from the option of opting into using the CCCTB to calculate their tax base.

Background

VAT compliance costs are a major administrative burden for EU business and create obstacles for cross border trade. The review of EU legislation conducted in 2006 as part of the Administrative Burden Reduction programme (ABR) showed that the Tax Law/VAT Priority Area alone represented 83% of the total administrative burdens related to the legislation in scope at EU level. These findings have been confirmed by business stakeholders. The TOP-10 consultation¹ confirmed VAT obligations as one of the main areas of EU regulatory burden.

Over the last years, the Commission took significant steps to cut red tape for businesses and ease compliance. As part of the ABR, the Commission proposed a number of

¹ http://europa.eu/rapid/press-release_IP-13-188_en.htm

simplification initiatives. These efforts have resulted in considerable reduction in VAT compliance costs. It is estimated that changing the rules of invoicing alone could result in savings up to €18 billion a year.² (for a more detailed overview of Commission simplification initiatives in the area of VAT see Annex 1 and 2).

However, not all of the Commission's simplification proposals have been adopted by the Council or, where options were given to Member States, the take-up of options has been limited. Taxation belongs to the few areas where unanimity is required in Council and, in some cases, it had been difficult to make any progress given divergent positions of Member States (e.g. harmonisation of SME thresholds, distance sales thresholds and restriction to the right of deduction, as well as the full 'one-stop-shop' for all supplies, the EU standard VAT declaration).

Ongoing work

In 2011, the Commission has launched a broad reflection³ in order to make the VAT system simpler, more robust and efficient and fully tailored for the single market. Towards the end of 2014, the Commission published a staff working document⁴ presenting the state of play in the preparations for the implementation of the definitive VAT regime for intra-EU trade.

An expert study⁵ on the feasibility and economic evaluation on the implementation of the destination principle to intra-EU B2B supplies of goods has been finalised in June 2015. The study shows that, depending on the policy option, implementing the destination principle to intra-EU business to business supplies of goods could lead to annual savings to businesses between €0.5 and €2.7 billion.

The Commission services will continue working with all stakeholders and, as announced in the Commission Work Programme 2016, present in 2016 an Action Plan on VAT setting out the future EU VAT system to tax intra-EU supplies.

The Commission is also planning to re-launch the Common Consolidated Corporate Tax Base, (CCCT) as part of the Action Plan for a Fair and Efficient Corporate Tax System in the European Union. The objective of this review and re-launch of the CCCTB proposal is to ensure that, in addition to creating a business friendly environment, the rules better reflect the current political priorities to fight aggressive tax planning.

² REFIT State of Play and Outlook "REFIT Scoreboard", p. 31

http://ec.europa.eu/smart-regulation/better_regulation/documents/swd_2015_110_en.pdf

³ COM(2011)(851):

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_851_en.pdf

⁴ SWD 14/338: http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/swd_2014_338.pdf

⁵ see Studies made for the Commission:

http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm

2. COMBATING VAT FRAUD WITHOUT APPLYING REVERSE LIABILITY OR IMPOSING ADMINISTRATIVE BURDENS

2.1. Submission by the Danish Business Forum (DBF)

Challenge

Today Member States apply reverse liability as a means to combat VAT fraud. However, the use of reverse liability implies that businesses must operate different sales and accounting systems for different business transactions, as well as inform their customers accordingly, which constitutes a significant administrative burden.

Suggestion

The application of reverse liability on purchasing as a means of combating fraud should be replaced by a simpler basic VAT regime in the EU. The EU should work toward a long-term and sustainable solution: a simpler, more efficient, neutral, and robust VAT system that is secured against fraud (see Council conclusions of May 15, 2012).

2.2. Policy Context

The “reverse charge mechanism” is where the customer becomes liable for the VAT on goods or services supplied to him. In this case, the customer is paying and deducting the VAT via the same VAT return (within the limit of its VAT deduction right), thus eliminating the cash risk as no actual payment of the VAT takes place. However, this system brings on the retail sector the charge of collecting the VAT due for the whole chain on the consumption.

A reverse charge mechanism has been implemented in Member States’ legislation in a number of specific cases as an “anti-fraud tool” in certain sectors that are vulnerable to fraud in accordance with the following provisions of the VAT Directive: (i) Derogations granted on the basis of Article 395 of the VAT Directive (or on the basis of a standstill provision with reference to Article 394); (ii) Options to apply a reverse charge mechanism to the goods and services enumerated by and under the conditions laid down by Article 199 and Article 199a of the VAT Directive.

The administrative obligations imposed on businesses in case of application of the reverse charge mechanism generally consist in a specific report in the VAT return and a statement on invoices. However, twelve Member States impose obligations going beyond this. For instance, the UK has introduced a so-called “Reverse Charge Sales List” to be completed by the supplier of services or goods subject to the scheme.

A reverse charge mechanism as an anti-fraud tool has been implemented quite early in certain Member States. The tendency to have recourse to such a mechanism seems however to have increased with sixteen Member States having extended or introduced measures from 1 January 2013.⁶

⁶ The overview of the implementation of the reverse charge mechanism per sector and per Member State can be found in the recent report produced for the Commission by Ernst and Young ([link](#)).

3. IMPROVING THE EFFICIENCY OF VAT

3.1. Submission by German Chambers of Commerce and Industry (DIHK)

1. *Making the VAT treatment of chain transactions manageable*

The VAT regulations for the execution of chain transactions need to be simplified. The registration of the intermediate business has to be avoided. This is easily possible if the last business of a chain in the destination country is liable for value-added tax and can fulfil all of its tax obligations there without any significant additional effort. The existing simplification rule for triangular transactions should be extended to include chain transactions in which the intermediate business is not registered in a third member state. This transfer of the tax debt should also be permitted in longer chains than those which involve only three parties. It would be helpful to have EU-wide unique solutions to simplify intra-EU trade. Simplifications should be reached soon.

2. *Simplification rules for warehouses*

The simplification opportunities provided by a consignment warehouse should be introduced in all member states. For this, the value-added tax System Directive should be amended in such a way that the procedure has to be implemented in all member states

3. *Tax exemption on intra community deliveries*

The regulation in force in Germany under § 6a para 1 sentence 2 of the Value Added Tax Act, according to which the delivery item can be processed on behalf of the customer before being transported or dispatched, should be specified uniformly and reliably throughout the EU.

4. *Standardising the reverse charge throughout the EU*

The reverse charge procedure must be generally applicable in B2B cases – contracts for services and work and materials. This eliminates many definition and interpretation questions. The pre-conditions for the reverse charge should be defined uniformly throughout the EU; this would also ensure that typical[?] case groups such as subcontractors, for example, would be subjected to uniform treatment. The affected standard is Article 196 in conjunction with Article 44 of the VAT System Directive.

5. *Avoiding the duplication of value-added tax*

Introduction of a two-stage process:

- Abolition of the obligation to pay the required VAT amount a second time for as long as the difference of opinion associated with the double taxation has not been resolved. In practice, the claim could be suspended if the VAT for the same goods or service has already been paid once in another member state. This suspension would last until the double taxation had been eliminated.
- Elimination of the actual double taxation by means of a mutual agreement process between the fiscal administrations of the member states concerned, and by an arbitration process if necessary if such a procedure fails

6. *Enabling EU-wide VAT registration through national registration offices*

The principle of the one-stop shop should be extended. In the short-term it must be possible for companies to register for the purposes of VAT in other EU states in the electronic portals of the state in which they are located. The national authority must - as with the refund procedure - forward the applications to the corresponding EU states. In addition, the portals of the national registration offices should at least also be accessible

by means of an English translation and therefore easier to understand.

3.2. Policy Context

Chain transactions

A chain transaction is a cross-border transaction involving four or more parties. There are currently no legal definitions set out in the VAT Directive that clearly stipulate how to determine which transaction in a cross-border chain of transactions is deemed to be domestic and which should be considered to be the intra-community supply. The rules applied by the Member States are currently derived from case law; for example, C-245/04 EMAG Handel Eder OHG, C-430/09 Euro Tyre Holding BV, C- 587/10 Vogtländische Straßen- and Tief- und Rohrleitungsbau GmbH Rodewisch (VSTR).

Simplification rules for warehouses

A consignment stock transaction occurs when a supplier transfers goods to a warehouse in a Member State where it has no permanent or fixed establishment. The customer will remove the goods from the warehouse but their identity is not known at the time of the initial transfer by the supplier.

Tax exemption on intra community deliveries

Business to consumer supplies are normally taxed in the Member State where the sale of goods is made or where the supplier is established. However, because of the risk of distortion of competition, special arrangements apply to the taxation of the supplies at destination, imposing heavy obligations on suppliers (distance sales of goods or certain services) or purchasers (purchases made by exempt taxable persons, notably small businesses, or non-taxable legal entities, and purchases of new means of transport, for example).

The burden falls mainly on the supplier, who, in his or her Member State, must justify exemption (in supplying goods) or non-taxation (for services) and faces certain additional reporting obligations and, increasingly, more stringent formalities designed to tackle fraud: the 'red tape' involved in cross-border transactions has been steadily increasing. In addition, tax administrations may challenge exemption or no taxation if fraud has occurred elsewhere in the commercial chain and legitimate businesses may find it difficult to protect themselves against that risk.

Avoiding the duplication of value-added tax

Tackling such issues i.e. the divergent assessments of the same facts by different tax authorities, could be coordinated at EU level. A pilot project has been set up by the EU VAT Forum to allow taxable persons to obtain advance rulings on the VAT treatment of complex cross-border transactions. This project has started in June 2013 and is now scheduled to continue till 30 September 2018. Several Member States are participating in this project, set up by the EU VAT Forum.

Taxable persons planning cross-border transactions between two or more of the participating Member States can ask for such a ruling with regard to the VAT treatment of the transactions they envisage. 12 Member States have also agreed to endeavour to resolve by mutual agreement cases of VAT cross border double taxation.

The issues related to *standardization of the reverse charge* throughout the EU and

enabling *EU-wide registration through nation registration offices* are discussed as part of the submission from the Danish Business Forum.

4. AN EU VAT INFORMATION PORTAL – EASY ACCESS TO INFORMATION ON VAT IN OTHER EU COUNTRIES

4.1. Submission the Danish Business Forum (DBF)

Challenge

In the Internal Market it should in principle be just as easy to do business with a customer in Poland and Germany as with a customer in Denmark. However, because VAT rules are not harmonised the consequence is that companies that begin to trade within the internal market often encounter difficulties.

Not only are there major differences between the documentation requirements, requirements of signatures, invoice requirements and texts on the invoices, but the challenges are growing with the introduction of rules on reverse liability, various distinctions and definitions of delivery point and different rates of VAT. An older study from the Confederation of Danish Industry that focused on SMEs showed that approximately 9 out of 10 companies had little or no knowledge of VAT regulation in other EU countries.

Suggestion

In order to facilitate and support trade in the internal market an EU VAT information portal should be established. This will both reduce the companies' administrative burdens and make it easier to communicate subsequent changes or other information relevant to businesses. Firstly, an information portal should contain information on VAT rates and numbers, invoice requirements and on the requirements of the contents of an invoice. Secondly, the information portal should contain information on the requirements for registration as well as procedures in order to get VAT registered, report VAT, etc.

4.2. Policy Context

The idea of a EU VAT information portal was part of the 2011 Commission communication on the future of the VAT system⁷. The Communication was preceded by a public open consultation and stressed the need for accurate, reliable and timely information on the details of the VAT regimes currently in place in Member States as a key factor to compliance enhancement.

Following the May 2012 Ecofin Conclusions, the Commission looked into the possibilities of developing the concept of such a web portal, in particular via the setting-up of a Fiscalis working group with Member States and the commissioning of a study to evaluate the possible scenarios and the budgetary aspects. However, it appeared that little support was shown by Member States in that working group to get involved, either

⁷ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT - Towards a simpler, more robust and efficient VAT system tailored to the single market (COM(2011) 851 final of 6.12.2011, see point 5.1.2.)

technically or financially.

The issue was again discussed during the Ecofin of 20 June 2014 where it was stated that the Council noted that the Commission was developing an EU web portal for the Mini One Stop Shop (MOSS), which became operational by October 2014, and expressed the view that such a web portal could possibly be further extended in the future.

It was also asked from the Commission to further clarify, inter alia, the form and rules and responsibilities in connection with the proposed EU VAT web portal, which should however not impose disproportionate administrative burdens on national authorities nor duplicate work.

The Commission was in this context asked to report back to the Council before the end of 2014. To that end, a meeting was organised with the Member States during which the Commission presented three different options for the construction of a web portal: in a first scenario, the Commission (assisted by consultants) would do the bulk of the work; in the second, the Member States would upload directly national information into an specific (and agreed) format; and in the third, there would be more co-operation between the Member States and the Commission (templates and questionnaires to be filled in, meetings, permanent structure of correspondents, etc.) On the basis of the feedback received from Member States, it has become clear that the second option should no longer be kept as a possible option.

5. AN EU STANDARD VAT DECLARATION

5.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

The idea to have one VAT declaration for all businesses in the EU is welcomed. The proposal foresees 5 compulsory boxes and maximum 26 additional boxes for each member state. In fact this means 28 different VAT declarations. This is not a simplification compared to the status quo.

5.2. Policy Context

The VAT system requires businesses to complete periodic VAT returns detailing information necessary for the payment and control of VAT. This can be especially complex when submitting VAT returns in different Member States as a result of providing different information, the information not having harmonised definitions, the lack of good common guidance, different rules and procedures for the submission and corrections, and needing to use the national language. This all leads to an increase in burdens on business, reduced accuracy and timeliness of VAT declarations, and restricts cross-border trade.

In order to address these problems, the Commission came forward on 23 October 2013 with a proposal to introduce a mandatory EU-wide standard VAT return declaration. This measure aims to allow businesses submitting a VAT return in one Member State to easily complete and submit a VAT return in another Member State, because the information is submitted in a common, preferably electronic format. The proposal also aims to reduce administrative burdens for business (estimated savings potential: EUR 15 billion per

year), as the standard VAT return simplifies the information that businesses will have to provide to tax authorities: The declaration will have only 5 compulsory boxes for taxpayers to fill in, Member States are given leeway to request a number of additional standardised elements, up to a maximum of 26 information boxes. This is a major improvement on the current situation, whereby some Member States require up to 100 information boxes to be completed. Businesses will file the standard VAT return on a monthly basis, while micro-enterprises will only be obliged to do it on a quarterly basis. The proposal also encourages electronic filing, as the standard VAT return will be allowed to be submitted electronically throughout the EU.

A clear negative correlation between the number of boxes in a VAT declaration (i.e. the complexity of the declaration) and Member States' VAT gap was indicated during the Impact Assessment of this proposal. The VAT gap has many causes, but they certainly include fraud and inefficiency. Thus, a standardised VAT return can be seen as a tool to facilitate voluntary compliance and reduce the VAT gap throughout the EU. Some Member States already consider national measures to simplify VAT obligations.

Given the lack of support in Council to the simplification objectives pursued by the proposal, the Commission decided to withdraw it in its Work Programmw 2016.

6. INTRODUCTION OF A WIDE ONE-STOP-SHOP FOR EU VAT DECLARATIONS

6.1. Submission by the Danish Business Forum (DBF)

Challenge

A company that trades within the internal market often has to be VAT registered in more than one Member State. This is the case if a company, for example, has a stock in country A and from this stock sells to country B. As a consequence, that company must satisfy local demands in relation to VAT registration, local language requirements, etc. It is expensive, since there is only a limited harmonisation of the rules and administration of VAT in the EU. The continued use and expansion of reverse liability on selected commodity groups further increases the risk of being met by a VAT registration requirement.

Suggestion

The European Commission should build and extend on the mini One-Stop-Shop (mOSS). A successful mOSS could be the basis for a broad One-Stop-Shop (bOSS), where companies can handle VAT registration, payment and other VAT obligations from their home country. This will reduce the companies' administrative burdens significantly, provided that the bOSS will also facilitate a simplification and harmonisation of VAT rules in key areas.

This is an ambitious goal, but the potential for Danish and European companies is very big - not least in view of the fact that VAT in principle should not be a cost or administrative burden on companies, since the VAT-registered companies in this area effectively act as unpaid tax collectors.

6.2. Policy Context

In 2004, the Commission proposed amendments to the VAT Directive regarding simplification of VAT obligations (COM(2004)728-1). In particular, EU businesses carrying out cross-border activities for which they become liable to pay VAT in Member States where they have no physical presence could benefit from a one stop shop. Examples for transactions that would have been covered: distance selling arrangements, supplies involving installation or assembly, work on immovable property, removals, sales at exhibitions, fairs or markets, etc.

However, this proposal was not agreed by Member States and the proposal was withdrawn by the Commission in 2014, after 10 years of negotiations.

The one stop shop principle has been adopted in a limited version in an amended legislative proposal regarding the place of supply of services adopted as Council Directive 2008/8/EC (a mini one stop shop for telecoms, broadcasting and electronic service). The introduction of the mini One Stop Shop (MOSS) allows suppliers of cross-border business to consumer (B2C) telecommunications, broadcasting and electronic (TBE) services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

The aim of such a single electronic registration and payment system is therefore to reduce the costs of reporting and administrative burdens of businesses in application of the VAT rules of the country where they are not established. The estimated savings on administrative burden are €463 million a year.

7. COMMON CONSOLIDATED CORPORATE TAX BASE (CCCTB)

7.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

The European Commission initiated the CCCTB to facilitate cross border trade for SMEs. But most SMEs do not operate in form of a corporation but in form of a sole trader. And therefore they do not profit from the CCCTB. The whole advantage of this system is the consolidation. The aims of a common corporate tax base without consolidation can be reached in other ways. The central point is the consolidation of this project.

7.2. Policy Context

The Proposal for a Common Consolidated Corporate Tax Base (CCCTB) is a single set of rules that companies operating within the EU could use to calculate their taxable profits.

The CCCTB is designed to include all types and sizes of corporations but SMEs operating as sole traders do not qualify for application of the CCCTB.

The Impact Assessment on the CCCTB Proposal (2011) contains economic data which shows that Multinational enterprises (MNEs) can derive more benefits from consolidation since they can form a group and benefit from cross-border loss relief and the absence of

transfer pricing compliance obligations within the group.

Yet, the regime could facilitate SMEs which wish to expand their business abroad, e.g. through a branch in a neighbouring State. The IA demonstrated that SMEs stand to gain more than MNEs, with their average tax-related costs of expanding within the EU dropping from €127,000 to €42,000.

To this date, the proposal is still pending in Council. Member States have decided to put it on one side and give priority to agreeing the tax base. The Commission has signalled its intention to review and re-launch the CCCTB proposal as part of a Commission Action Plan for a Fair and Efficient Corporate Tax (COM (2015)302).

8. REDUCED BURDEN OF PROOF INTRA-COMMUNITY TRADE

8.1. Submission by the Board of Swedish Industry and Commerce (NNR)

Legislation EU VAT Directive Council 2006/112

Burden on business As a general rule, intra-community supplies of goods are exempt from VAT if the purchaser is registered for VAT in another Member State. Instead, it is the purchase in such transaction that is subject to VAT. For the purpose of qualifying for this exemption, the supplier is required to document and prove that the goods in question have been transported within the EU and that the purchaser is registered for VAT in any other Member State. Lately, business has experienced stricter requirements from a number of Member States in terms of documenting and proving that the supply is a cross border intra-community supply. An unreasonable level of proof for purpose of VAT may make businesses elect less efficient transport logistics, for the purpose of qualifying for the VAT exemption. The increased burden of proof in certain Member States is a serious obstacle for intra-community trade that requires urgent measures. Today, the logistics flows are set up with the focus of environmental care, cost and time savings and should not be hindered by the VAT rules. Problematic requirements have been identified in the UK, Germany, Denmark, Italy, Czech Republic, Austria, and Slovak Republic. Other Member States, such as Poland, Spain and the Netherlands, have also been identified as “problematic”.

Simplification proposal Simplified burden of proof regarding intra- community trade. The EU must support legitimate business against unreasonable administrative burden in respect of VAT. Member States must use effective tools against VAT fraud that will support and not hinder business transactions within the EU.

Effects of the simplification proposal Time-saving Reduced costs Increased investments Reduced uncertainty

8.2. Policy Context

Given the absence of any specific provision in the VAT Directive, Member States are free to ask for documents to support the right to exempt intra-EU supplies, in accordance with Art. 131 of that directive, but bearing in mind the tax neutrality and proportionality principles.

Some Member States are less demanding than others regarding the means of proof of an intra-EU supply and the documentation that has to be provided in this respect, accepting various forms of alternative evidence.

However, in most cases there is no single document which would be sufficient but a number of different types and formats, which may or may not be listed in national legislation, or alternatively used in practice. For instance: commercial documents relating to contractual commitments, an invoice mentioning the fact that it relates to an exempt intra-EU supply; a document signed by the purchaser (or authorized person) acknowledging the receipt of the goods in the other Member State; a payment document proving that the purchaser has paid for the goods received, proof that the transaction has been correctly reported in the VAT returns and in the intra-EU sales listing of the supplier; proof of the VAT registration of the purchaser in another Member State at the time of the supply; the Intrastat listing; bank documents proving payment by the customer; etc.

There are also differences between the Member states as to when the documentation should be provided. Some Member States have additional requirements regarding the necessity to have documents signed. In most cases, Member States will accept the documents provided as proof in any available format.

In recent years, many Court cases at the EU level in the field of VAT have concerned the issue of fraud. Carousel fraud and substantial disruption to certain markets by fraudulent operators have been reported. Consequently, the fight against tax fraud is currently a major issue at both national and EU level. However, it is important to note that the vast majority of businesses comply with the rules.

9. SINGLE AND COMPOSITE SUPPLIES

9.1. Submission by the Board of Swedish Industry and Commerce for Better Regulation (NNR)

Title: EU harmonized definition or clear guidance regarding the distinction between single and composite supplies

Legislation: EU VAT Directive 2006/112

Burden on business: One of the most complex issues regarding VAT is how to assess sales consisting of several elements. For the purpose of VAT, one must determine whether such sales should be deemed to be taxed as one single supply or several supplies. There is no clear guidance in the VAT Directive in this respect. Instead, business is dependent on guidance from their respective tax authority and the courts. This is a general question with wide effect on the taxation for VAT purposes since it affects area as place of supply, VAT rates, exemptions, use of specific rules as reverse charge for the building sector etc. A Swedish survey in 2012 regarding the local guidelines showed a lack of coherence in the guidance and practice, insufficient reasoning in the assessments, diverse treatment for different industries, different treatment for similar transactions and references to obsolete case law. This study shows the need for a harmonized definition or clear guidance from the EU regarding the distinction between single and composite supplies.

Simplification proposal: The Commission should present a definition or guidance in explanatory notes on the distinction between single and composite supplies.

Effects of the simplification proposal: Time-saving Reduced costs Increased investments Reduced uncertainty

9.2. Policy Context

The VAT treatment of a transaction (e.g. its place of taxation, the VAT rate applicable, the VAT liability, the possible application of an exemption) is notably dependent upon the type (supply of goods, intra-Community acquisition of goods, importation of goods or supply of services) and the nature of this transaction.

Every transaction must normally be regarded as distinct and independent. However, where a transaction consists of the supply of several elements, it should be assessed whether the transaction should be treated as a single supply or as several distinct and independent supplies. The Court of Justice of the European Union has already shed some light in this area. A supply must be regarded as a single supply where two or more elements or acts supplied by the taxable person are so closely linked that they, objectively, form a single, indivisible economic supply, which it would be artificial to split. The essential features of the supply in question must be ascertained in order to determine whether the customer, being a typical consumer, receives several distinct supplies or a single supply.

This is also the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied.

In the presence of a single bundled supply, the predominant element of the supply has to be identified so that the tax treatment can be determined according to the very nature of the predominant element of this single bundled supply.

The qualification of a given scenario as a single or multiple supplies must be done on a case-by-case basis taking into account the above mentioned criteria as set out by the Court of Justice of the European Union. Although not exclusively devoted to this subject, guidance issued by the Commission touches on the issue of bundled supplies. The guidance in the form of explanatory notes can be found at:

- Explanatory notes on EU VAT place of supply rules on services connected with immovable property that enter into force in 2017:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/explanatory_notes_new_en.pdf

- Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf

These explanatory notes were prepared by the Directorate General for Taxation and

Customs Union of the European Commission (DG TAXUD) after extensive consultation with Member States and business representatives.

However, these explanatory notes are not legally binding. They do not express a formal opinion of the European Commission nor do they necessarily fully represent the views of all Member States.

10. MODERNIZED VAT RULES FOR PUBLIC BODIES AND TRANSACTIONS

10.1. Submission by the Board of Swedish Industry and Commerce (NNR)

Legislation: EU VAT Directive Council 2006/112

Burden on business: The current VAT rules in the public sector are not neutral and distortion of competition is becoming a serious problem. An increasing number of companies have highlighted the negative impact on business created by the combination of exemptions, higher VAT-rates within EU and no input-VAT deduction. The current VAT rules leads to cascade effects, self-supplies and a disincentive to invest or to outsource even where services could be provided more efficiently by another entity if the VAT aspect was irrelevant.

Simplification proposal: The VAT rules for public bodies and for transactions in the public interest need to be modernized. Redraft article 13 in order to establish a level playing field between the public and private sector. Introduce measures which lead to deductibility of input VAT with regard to activities in the public interest.

Effects of the simplification proposal: Time-saving Reduced costs Increased investments Reduced uncertainty

10.2. Policy Context

Article 13 of the VAT Directive contains special rules for public bodies where they engage in transactions as a public authority.

Where this occurs, the public body will not be considered to be a taxable person for VAT purposes. Therefore, services performed as a public authority by a public body are out of scope for VAT purposes.

Already in the past the legislator was concerned about the risks of distortion of competition and for this reason VAT directive contains some safeguards addressed at preventing distortion of competition. In particular, where the treatment of public bodies as non-taxable persons would lead to "significant distortions of competition", they must be regarded as taxable persons. This is always the case for a specific list of supplies placed in the Annex I of the VAT Directive (e.g. telecommunications services, supply of water...). However, as highlighted by the replies to the public consultation, these safeguards do not appear effective, also owing to the fact that the Directive does not lay out any criteria for determining whether a distortion of competition is significant.

In addition, Article 132 of the VAT Directive contains a list of exemptions for certain activities in the public interest (e.g. public postal services, education, health...) which are

in some cases restricted to supplies by public bodies and in some cases not. The optional nature of these derogations contributes to creating a jumbled patchwork of regulation.

The issue of the VAT treatment of the public sector was raised in the Communication on the future of VAT according to which the Commission committed itself to promoting a gradual approach towards taxation and to table a proposal which ‘will concentrate on activities with a greater degree of private sector involvement and a heightened risk of distorted competition’.

The Commission launched two economic studies to analyse the impact of the current VAT rules applicable to the public sector and to identify options for alternative rules; subsequently, in January 2013, the Commission had discussions with Member States within the Group on the future of VAT and with stakeholders outside the tax administrations in the VAT expert Group.

An impact assessment is currently being carried out with a view to presenting, early in 2017, a proposal for reform of Articles 13 and/or 132 of the VAT directive. The public consultation has already been carried out.

11. REPORTING THRESHOLD FOR THE 2015 EU VAT MOSS REGIME

11.1. Submission by the Board of Swedish Industry and Commerce (NNR)

Legislation: EU VAT Directive 2006/112

Burden on business: Since 1st January 2015 VAT on telecommunications, broadcasting and electronic services B2C is levied in the country where the customer is located, and not where the supplier is based. To make it easier for businesses a MOSS (mini-one-stop-shop) regime was introduced. The MOSS regime makes it possible to supply these services in a number of member states and yet only register for VAT in one. Even with the MOSS regime introduced, levy VAT in the customer’s country is burdensome for small businesses. The cost of managing VAT on supplies of such services B2C in other member states might even be higher than the profit of making such supply. This has forced small businesses into using online market places that handles the VAT for them; or to bluntly stop supplying these services cross border in the EU.

Simplification proposal: A possibility for small businesses to use a VAT reporting threshold on B2C sales across EU.

Effects of the simplification proposal: Time-saving, reduced costs, increased investments, reduced uncertainty

11.2. Policy Context

The modification of the Place of Supply rules, adopted in 2008 and applicable from 2015, triggered increased complexity for businesses as they need to account for VAT in the EU Member States of consumption. However, the consequential VAT administrative burden of having to potentially file 28 VAT returns was reduced by the introduction of the mini One Stop Shop (MOSS), allowing suppliers of cross-border B2C telecommunications,

broadcasting and electronic (TBE) services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

The aim of such a single electronic registration and payment system is to reduce the costs of reporting and administrative burdens of businesses in application of the VAT rules of the country where they are not established. It is estimated that the availability of this system will have saved businesses supplying cross-border B2C telecommunications, broadcasting and electronic an average of EUR 40 000 annually, with total annual savings on administrative burden for business of approximately EUR 490 million.

However, given the firm rejection of the VAT thresholds by Member States, the place of supply rules do not include the threshold from when the place of supply rules apply, meaning that businesses need to register for VAT from a first relevant cross-border transaction.