

**Comments to the OECD Discussion Draft on
OECD draft guidelines on VAT/GST Guidelines**

ICC welcomes the opportunity to provide comments on the OECD Discussion Draft on the two new draft elements of the International VAT/GST Guidelines (“the Guidelines”): (1) the B2C Guidelines on the place of taxation of B2C supplies of services and intangibles, and (2) the supporting provisions to support the application of the Guidelines in practice. ICC notes that the OECD’s work on the Guidelines provides an excellent foundation on which to build future work on VAT/GST.

Comments on Chapter 3

The development of the Guidelines by the OECD aims to provide a global VAT/GST framework based on two fundamental principles – the neutrality principle and the destination principle – while at the same time safeguarding the VAT revenues for governments and achieving a level playing field. This is fundamental for businesses too. However, in order to operate in a global environment, the following criteria are of equal importance to businesses:

- neutrality;
- efficiency of compliance and administration;
- certainty and simplicity;
- effectiveness; and
- fairness.

ICC would like to emphasize the importance of focusing on the ultimate objective of a VAT/GST framework: taxing final consumption, rather than ineffectively taxing businesses. In this context, businesses ought to serve as collectors of the tax and in that capacity play a key role. Consequently, ICC encourages the OECD to consistently balance the conceptual and practical aspects of VAT/GST encompassing the above-mentioned conditions. ICC notes that the destination principle as applied to tax B2C services and intangibles is a useful starting point – the same applies to B2B supplies which are also mentioned in the Guidelines. To strike a balance between safeguarding VAT revenues and ensuring certainty and simplicity for businesses, requires cooperation between governments and equally between governments and businesses, as well as a global rather than a jurisdictional mindset. An example, would be Cooperative Compliance Agreements established consistently in different jurisdictions.

ICC notes that the Guidelines currently draw on elements of the EU VAT system – e.g., the Guidelines adopt a similar approach to the EU’s newly implemented B2C telecoms, broadcasting and e-service place of supply rules. As with every tax system, the EU VAT system has both positive aspects (e.g., the application of the reverse charge mechanism in B2B cross-border services scenarios which is simple and effective) and also areas for improvement (e.g., as yet there is little consistency in the definition and treatment of immovable property and related services). It is therefore fundamental that the Guidelines continue to take up only those elements of established VAT systems which are considered to be genuine best practices.

Comments on Annex 3

Annex 3 is a completely new, unique and significant piece of work and deserves to play a key role in the Guidelines. It stresses the importance of a simple registration and compliance regime for non-resident



suppliers. This is crucial in order to balance the safeguarding of VAT/GST revenues for governments while at the same time enabling businesses to act as collectors of the taxes without distortion of their core business activities and loss of flexibility. This being a novel feature, it is very crucial that the VAT legislations as well technology infrastructure across borders uniformly support such initiative. In short, for successful implementation, it is crucial that there is a high level of concerted efforts by countries towards alignment of national legislations (including reporting compliance) amongst others. In general, ICC would like to encourage the OECD to remain focused on simplicity and flexibility in a wider context than B2C supplies and to use best practices shown in jurisdictions around the world – resulting in efficiency gains for everyone for future work done by the OECD on VAT/GST.

Comments on Chapter 4

ICC underlines that prevention is the best way to minimize disputes: the more consistently interpreted and implemented the Guidelines are, the fewer disputes on the place and collection of taxation will occur. The Guidelines were developed with the understanding that the parties involved will act in good faith, and that all transactions are legitimate and have economic substance. At the same time, it needs to be understood that VAT/GST is a transactional tax dealing with massive volumes of incoming and outgoing transactions. In this context, genuine mistakes can occur. That does not in any way mean they relate to tax evasion or avoidance. Often genuine mistakes do not even impact the governments' VAT/GST revenues, particularly where parties have full input VAT recovery. Nevertheless, in case of disputes/mistakes, ICC understands governments should take appropriate measures but with this kept in mind it is crucial that they apply these measures responsibly and proportionately in line with the neutrality principle of the Guidelines. Chapter 4 supports the resolution of disputes where they arise. Consequently, it is vital that governments cooperate, exchange information and agree on correct tax treatment. This equally applies to keeping the compliance and administration simple and efficient as mentioned above under ICC comments on Chapter 3. However, it is debatable if the government machineries across borders are equipped up to undertake the required level of co-operation in this regard.

Comments on BEPS related aspects

Although not specifically highlighted in the Guidelines, there is a clear link to the OECD's BEPS action plan. ICC would like to highlight a few BEPS-project issues with potential VAT/GST implications:

- *Permanent establishment status*¹: If there is greater application of force of attraction rules, this could lead to increased VAT compliance obligations which conflicts with the aim of keeping compliance for (non-resident) business simple, efficient and certain. Furthermore, it increases the risk of double taxation if the establishment definitions are applied differently in jurisdictions. Consequently, this would impact the principle of neutrality.
- *Transfer Pricing (TP)*: Increased risk of transfer pricing adjustments creates uncertainties and potential double taxation on how TP adjustments will be treated from a VAT/GST perspective. Similar as mentioned under the previous bullet, this would impact the principle of neutrality.

¹ A ground rule that cannot be emphasized enough is that a registration for VAT purposes does not in itself constitute a permanent establishment. If this rule is not followed it contradicts with all the conditions mentioned under Chapter 3.



The International Chamber of Commerce (ICC) Commission on Taxation

ICC is the world business organization, whose mission is to promote open trade and investment and help business meet the challenges and opportunities of an increasingly integrated world economy. Founded in 1919, and with interests spanning every sector of private enterprise, ICC's global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. ICC members work through national committees in their countries to address business concerns and convey ICC views to their respective governments.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. ICC conveys international business views and priorities through active engagement with the United Nations, the World Trade Organization, the Organisation for Economic Co-Operation and Development (OECD), the G20 and other intergovernmental forums.

The ICC Commission on Taxation promotes transparent and non-discriminatory treatment of foreign investment and earnings that eliminates tax obstacles to cross-border trade and investment. The Commission is composed of more than 150 tax experts from companies and business associations in approximately 40 countries from different regions of the world and all economic sectors. It analyses developments in international fiscal policy and legislation and puts forward business views on government and intergovernmental projects affecting taxation. Observers include representatives of the International Fiscal Association (IFA), International Bar Association (IBA), Business and Industry Advisory Committee to the OECD (BIAC), Business Europe and the United Nations Committee of Experts on International Cooperation in Tax Matters.