

DEVELOPMENTS IN INDIRECT TAX HARMONIZATION



Prof. Michael Tumpel

RECENT LEGISLATION

- Recast of the VAT Directive (2006/112/EC) as of 2007/01/01
- VAT Implementing Regulation (282/2011)
- Amendment as regards the place of supply of services (2008/8/EC) as of 2010/01/01
- One stop shop as regards VAT Refund to EU business (2008/9/EC)
- One stop shop as regards telecommunications, broadcasting and electronic services of EU business to consumer (2008/8/EC) as of 2015/01/01
- Amendment as regards a Quick Reaction Mechanism against VAT fraud (2013/42/EU) as of 2013 until end of 2018
- Amendment as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (2013/43/EU) as of 2013 until end of 2018

IN SEARCH OF A FRAUD-PROOFED FINAL VAT SYSTEM

- Issues with the existing system of taxation
 - The additional obligations and costs associated with VAT compliance for businesses engaging in cross-border trade
 - The existing levels of VAT fraud within the EU through fraudulent transactions such as MTIC ('Missing Trader Intra-Community') fraud (also known as carousel fraud)
- Destination Principle
 - Commission services concluded that there was no longer political support for keeping the origin system of taxation as an objective

IN SEARCH OF A FRAUD-PROOFED FINAL VAT SYSTEM

- Proposed policy options based on the destination principle
 - Option 1 – Improving the current rules without modifying them fundamentally
 - Option 2 - Adapting current rules whilst still following the flow of the goods with the supplier charging the VAT of the Member State of destination
 - Option 3 – Adapting current rules whilst still following the flow of goods with the reverse charge mechanism
 - Option 4 – Aligning with the rules governing the place of supply of services with the reverse charge mechanism
 - Option 5 – Aligning with the contractual flow with the supplier charging the VAT of the Member State of destination

THE BIG DIVIDE - PROS AND CONS OF SYSTEM CHANGE

■ Compliance cost savings

- ☐ Reverse charge generates most significant compliance cost savings
- ☐ Taxation including the OSS compliance cost savings only for larger businesses; cost increase for SMEs

■ Impact on VAT fraud

- ☐ No significant improvements under option 1 and 3
- ☐ New exposure to fraud under option 4 (?)
- ☐ Significant reduction of fraud under option 2 and 5 due to the mark-up applied by businesses on their purchases (?)

■ Distrust between Member States

- ☐ Exchange of information
- ☐ Auditing

A HYBRID VAT SYSTEM

■ Domestic business-to-business supplies

- ☐ Would be treated like intra-community supplies of goods or cross-border supplies of services
 - if the invoice value exceeds the threshold value and
 - a VAT identification number is presented
- ☐ All other domestic B2B-supplies should be handled according to the present VAT system
 - Right to deduct input VAT for all purchases up to the threshold
 - If the purchaser does not present a VAT ID, suppliers should remain liable for payment of VAT and input VAT can only be recovered directly from the tax authorities

■ Domestic business-to-consumer supplies

- ☐ would be treated according to the present VAT system

PROS AND CONS OF A HYBRID VAT SYSTEM

■ Advantage

- ☐ Effective domestic elimination of missing trader fraud
- ☐ Elimination of revenue loss by insolvencies of in-between traders
- ☐ Equal tax treatment of domestic supplies and intra-community supplies of goods as well as cross-border supplies of services
- ☐ Equal application of the reverse charge mechanism on domestic supplies
- ☐ Decreased risk of disputes between tax authorities and honest traders

■ Downside

- ☐ More opportunities for consumers to receive tax free goods and services, if they pretend to be a taxpayer above threshold (“micro fraud”)
- ☐ Increased revenue losses by insolvencies of retailers
- ☐ No special prevention of undeclared sales

SUMMARY

- Issues with the existing system of taxation
- Determination of destination principle
- Major differences regarding the final VAT system
- Chances for test of a hybrid VAT system?