VAT treatment of cross-border B2C supplies of services

Technical Indirect Tax

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Background

The OECD sought input on how cross-border supplies of services by businesses to consumers (B2C) should be treated for VAT purposes. This is an issue addressed by the EU in the recent legislation to deal with supplies of digital services to consumers in the EU.

The EU system (which is still being developed) requires services to be taxed under the destination principle; that is, tax is due in the country where the services are consumed. This can cause problems with the freedom to provide services in a bloc of 28 member states, so there is also provision for an optional simplified system of accounting called the mini one-stop shop, or MOSS. Ultimately, the system may be applied to all services.

The OECD consultation

The OECD consultation contemplates a broadly similar policy: that is taxation on a destination basis with an encouragement to OECD members to adopt a simplified accounting system. It also goes into some detail about what constitutes the place of consumption. In most cases this will be where the consumer lives but there may be a need for exceptions. These might include services relating to land and some typically consumed at the time of supply, such as restaurants. These issues will not be new to people used to the EU VAT system.

Our response

The system in general – We welcome the fact that the guidelines largely replicate provisions found in the model adopted by the EU on place of supply. We agreed with the consultation document's conclusion that it is difficult to see how countries can avoid having a VAT/GST registration system for non-established persons without compromising the destination principle. We also agreed on the need for a simplified compliance regime in relation to VAT on supplies to consumers provided by non-established businesses.

We noted that the suggested simplified accounting system described in Annex 3 of the guidelines largely followed the same principles by the EU in its MOSS accounting.

Tax neutrality – We had our concerns on this. Experience in the EU has shown that taxpayers do not always receive VAT refunds due in the timeframe specified by legislation.
We expressed the view that, to achieve true tax neutrality, a business making B2C supplies should be able to recover any VAT that they incur in the destination country that relates to their taxable activities more or less at the same time it accounts for output tax. There needs to be a refund system that runs parallel to the system for accounting for output tax.

Optional not mandatory – Although most businesses would want to adopt a simplified accounting system, we noted that there may be some businesses that might prefer to use the normal local registration procedures and make normal VAT returns. In the EU system, the MOSS is optional, not mandatory, and we suggested that the guidelines should make clear that non-established persons should be able to adopt the same procedures as those adopted by local businesses that provide similar services.

De minimis limits – The guidelines suggest that countries should consider having de minimis limits that allow small value transactions to escape local VAT. We believe that, if small businesses are not to be disadvantaged, it is essential to have de minimis limits. This departs from the EU VAT system but that is a consequence not of the principle at stake, but of the inability to persuade 28 member states to agree limits. Indeed, the CIOT and other bodies have made similar suggestions to the European Commission.

Avoiding double taxation – We noted that the guidelines were of necessity, not prescriptive, and this could result in some cases that two (or more) countries

claimed taxing rights: the country where the business is established and the country where the consumer lives or has a residence if there is more than one.

We suggested that measures to avoid double taxation in such circumstances ought to be considered. One possibility would be to have a rule that allows the country of the consumer's usual residence to have priority taxing rights but allow the country of the supplier to tax where this right is not exercised. Care would also need to be taken to avoid not just double taxation, but the risk of non-taxation through exploitation of the cross-border rules.

Specific issues – The guidelines note that land-related services might be one type that would fall outside the general rule of taxation where the consumer lives. This is an area of EU VAT that has raised many interpretational issues. To seek answers, we have worked extensively with HMRC in the UK and as part of the Fiscalis programme set up by the European Commission. Details of our views on what services should be regarded as services relating to land and taxed where the land is, can be found on the CIOT website.

We noted that land creates particular problems because of differences in countries' domestic land law regimes as well as simple differences in interpretation. We suggested that the OECD takes note of the Fiscalis work and consider producing its own guidelines.

Guidance – We agreed with the suggestion that there should be clear guidance in an appropriate language accessible by non-established taxpayers.

Conclusion

We welcome work to harmonise the structure of VAT. Because it is a tax on transactions, the best solution to the VAT treatment of transactions is a largely harmonised system relating to where they are taxed.

Our submission can be found on the CIOT website.