`5 March 2010

Our ref: ICAEW Rep 29/10

Your ref: markt-e-invoicing@ec.europa.eu

European Commission
SPA2 4/69
BE-1049
Brussels

Dear Sir or Madam

CONSULTATION ON THE FINAL REPORT OF THE EXPERT GROUP ON E-INVOICING

The ICAEW is pleased to respond to your request for comments on the *Consultation on the Final Report of the Expert Group on e-Invoicing*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

CONSULTATION ON THE FINAL REPORT OF THE EXPERT GROUP ON E-INVOICING

Memorandum of comment submitted in March 2010 by the ICAEW, in response to European Commission consultation paper Consultation on the Final Report of the Expert Group on e-Invoicing published in November 2009

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INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the paper *Consultation on the Final Report of the Expert Group on e-Invoicing* published by the European Commission.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 13,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.

4. We are listed on the Register of Interest Representatives. Our registration number is 7719382720-34.

MAJOR POINTS

Support for the initiative

5. The Expert Group should be congratulated on producing such a comprehensive report and on their careful analysis of the requirements of an EEIF, incorporating a common conceptual structure for e-invoicing and an extensive discussion of the underlying business requirements and standards.

6. However, our reservation is that, although the report openly refers to the challenges of implementing the EEIF, it includes relatively little discussion of how these challenges are likely to be overcome.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1: Do you agree with the report's assessment, conclusions and recommendations?

7. As outlined above, we do feel there could be more discussion on overcoming specific challenges.

8. In addition, we think Mr Tabasso is correct when he says in his minority report (Annex 2):

8.1. "*In my opinion, the move from a rule-based to a principle-based VAT Directive and the elimination of Article 233 go in the opposite direction of what is needed to create legal certainty, clear rules and compliance with standards. In a technical domain like e-invoicing, the latter are requirements for "more" interoperability among e-invoicing providers and end users.*

8.2. *"I maintain that "complexity" is not created by the e-signature – a simple, low cost, indispensable instrument for protecting e-documents end-to-end on open networks – but by European VAT Legislation, whose voids (e.g. legal archiving), ambiguities and options left to MS led to significant differences in local legislation and practices and to a lack of cross-border interoperability. Eliminating Article 233, a norm upon which, in the last 8 years, the majority of member states have built detailed national einvoicing legislations,* *undermines the certainty of the law and the uniformity of use which those legislations have painfully achieved. Making e-signature an "optional", replacing the norm with "freedom of choice" and voluntary compliance with a set of "high principles" and a "generic" Code of Conduct introduces a great deal of uncertainty in the market, arbitrariness on the part of Tax Authorities and diversity of solutions which, in turn, make interoperability more difficult".*

8.3. We interpret this as saying that repealing Article 233, rather than strengthening it, will add further complexity, presumably because member states will then have a 'free for all'. That may be right, but it begs the question as to what exactly would be the purpose of standardising the requirements for electronic invoices. We question whether member states' revenue authorities are happy with the proposed repeal of 233? If they are, then it might make sense to have an open standard, but if the parties don't want or need it for their own business or regulatory functions then mandating specific requirements appears unnecessary.

9. The point about the need for legal certainty, clear rules and compliance with standards being an essential pre-requisite and basis for technical inter-operability of products between end-users seems to us to be self-evident. If there is any chance that the proposed VAT directive will not provide a sufficiently specific rule-base that can be programmed into products, we think it is likely that developers, for the most part, will wait for more specific national regulations on which to base their products.

10. Paragraphs 6.2 and 6.3 indicate some of the main weaknesses in the Expert Group's conclusions. For example, we wonder about the validity of the statement in Para 6.3, that "*While some of the above requirements may be conflicting the challenge is to maintain a balance that best answers these requirements*". If the requirements conflict, the content standard solution will be ineffective. The Group may be underestimating the amount of work that will need to be done in eliminating the conflicts, particularly those between making the proposals for e-invoicing both universal, with semantic interoperability, and "*simple and adequate enough to secure easy integration*".

11. Section 7 of the Report does suggest a rather bureaucratic structure. Do we really need 27 national e-invoicing bodies in the EU, in addition to a Pan-European e-Invoicing Forum? Does this not run the severe risk of generating bureaucratic sclerosis rather than driving a useful process forward in a practical way?

Q2: What other suggestions/recommendations would you have?

12. We have no particular comments on this question.

Q3: Is there an important aspect for the successful uptake of e-Invoicing missing in the list of defined business requirements, especially to facilitate mass adoption by SMEs?

13. The major market issue that is hampering e-invoicing adoption is not the lack of education among SMEs, as stated in Para 3.5. It is the lack of any business-led incentive to spend the necessary up-front costs, particularly when their customers are neither using it nor demanding to use it, and when the main benefit suggested by governments is that it will make life easier for governments but the costs will have to be borne by businesses. This is particularly so in the case of small SMEs and micro-businesses. The product suppliers are also reluctant to invest in the development of products in the absence of demand from their customers. There is accordingly a need, not just for education, as recommended in the Report, but for attention to the identification of incentives for SMEs to move in the desired direction. The development of case studies would be helpful in this regard.

14. It is a strength of the Report that it places emphasis on the need for effective control systems to ensure, as far as possible, the continuing integrity of the information processing and the relevant accounting and financial data and reports. As the Report says (Para 3.5): "*Too much focus has been put on the transmission of data files, whereas the true risks arise in the acceptance, processing and payment processes within the receiver system and its internal controls*". This is applicable to businesses of all sizes, including small SMEs and micro-businesses. We also strongly support the Report's statement that: "*Internal business controls did not receive appropriate attention in the current legislative framework and its implementation. This is unfortunate because such controls are essential to all invoicing processes and, for most, whose systems are mature and robustly auditable, can actually provide the necessary assurance and without creating technical and operational complexity*". There is a slight tendency in the Report, however, to confuse technical control with procedural control. The Report suggests that: "*electronic invoicing allows businesses to use innovative business processes, which can incorporate high reliability control measures. This can reduce the risk of errors in VAT declarations and therefore provide certainty to businesses and tax authorities*." In the first place, it is not clear to what "innovative business processes" the Report intends to refer. Secondly, we do not think that the major risks of errors in VAT declarations are affected by the technical sophistication or otherwise of the systems processing the transactions. (Intuitiveness and ease of use (regardless of technical sophistication) and staff knowledge and training and review procedures are likely to be key ways to reduce errors.)

15. The Report recommends that: "*Best practice guidelines regarding internal controls relating to the acceptance, matching, processing and payment of e-Invoices should be made available in a central repository with all related e-Invoicing compliance documentation*". This seems a good idea; we have published a large amount of advice and guidance to our members on relevant internal controls over the years. The Report also recommends that: "*Public administrations, universities, research centres, private sector enterprises and associations, service and solution providers, banks etc. should provide affordable IT training and education to SMEs and especially their professional advisers such as accountants*" Of note, the ICAEW delivers training and education through its member service and public interest obligations. We would be pleased to provide examples of best practice guidelines and training and education if this is of interest.

Q4: Is the Code of Practice proposed by the Expert Group suited to complement future VAT legislation? If not, how could it be improved?

16. We have no particular comments on this question.

Q5: Do you agree with the 11 core principles set out in the Code of Practice in Annex 3 of the report? Is any important element missing?

17. Regarding Annex 3 Core Principle (c); see also top of page 33 – we do not believe it is true, in the UK at any rate, that the means of providing legal certainty in the e-invoicing process include auditability by such external auditors as are statutory auditors, or by processes implemented by trading parties that provide the equivalent level of assurance. External statutory auditors in the UK do not provide "legal certainty".

18. Regarding Core Principle (d) *To ensure a proper functioning of the Internal Market Member States should mutually accept the business control framework and other recognised implementation methods of trading parties involved in EU cross-border transactions (e.g. a German supplier's business control framework / recognised implementation methods should be accepted by its UK customer's tax authority)* – we think this is likely to be wishful thinking unless it is made much more explicit with reference to the business control frameworks and implementation methods that will be accepted across borders by tax authorities. Even then, it seems unlikely that a tax authority would necessarily accept an organisation's conformity to such frameworks and methods without question. Even if it did, it seems unlikely that a tax authority would feel obliged unquestioningly to accept the results produced by that organisation's systems. Accordingly, this Principle seems likely to be ineffective.

19. Regarding Core Principle (f) *Businesses must ensure that the competent tax authority and all other relevant parties can humanly read, readily interpret and audit the underlying transaction data and any relevant supporting documentation and data* – the Commission may be aware of the work being undertaken in the UK with respect to iXBRL, where HMRC is collecting Corporate tax returns electronically using iXBRL, which provides a human-readable form of the return, alongside the underlying computer-readable document in XBRL.

20. Regarding Core Principle (k) – we do not believe that the European Union can legislate by means of Commission proposals, so we think the Principle should make reference to "duly adopted European legislation", rather than "the Commission's proposal" in relation to the transmission and storage of invoices.

21. We think that two additional and mutually supportive Principles would be useful in order to reconcile the objectives of semantic interoperability and ease of integration. These would be:

21.1. (1) Principle of phased development of requirements for legal certainty (which would allow for the evolution of technical and practical requirements as a result of the identification and resolution of technical and practical difficulties, as well as the establishment of legal precedents);

21.2. (2) Principle of economy of requirements. As Para 5.5.3 of the Report states: "*The number of strictly mandated technical requirements must be kept to a minimum as a matter of principle*". The same principle should be applied to all the requirements of the EEIF, not just the technical requirements.

Q6: Beyond VAT legislation are there any other significant regulatory barriers which prevent the uptake of e-Invoicing?

22. We have no particular comments on this question.

Q7: Is the 'eco-system' described in the report a valid target environment? Does it reflect all requirements for an open and interoperable level playing field?

23. We think the Report specifies too many requirements for this "eco-system", running the risk of the project collapsing under its own weight. In particular, the objective of creating a universally accessible exchange or transport environment belonging in the collaborative domain (e.g. enabling the electronic delivery of e-Invoices and related data to facilitate Straight Through Processing (STP) by the key actors in the supply chain (Buyers, Suppliers, Tax Authorities, Agents, Banks, Service Providers etc.) goes far beyond just e-invoicing. In the first instance, the project should concentrate on e-invoicing and see where it leads.

Q8: Is the proposed target data model (UN/CEFACT CII v.2) meeting user requirement?

24. We have no particular comments on this question.

Q9: Do you agree with the proposed implementation bodies and the tasks assigned to them in the report?

25. We have no particular comments on this question.

Q10: Do you see other implementation tasks which can not be entirely left to the market alone?

26. We have no particular comments on this question.

Q11: Do you see other bodies or organisations which could play an important role in implementing the framework?

27. We have worked with the Business Applications Software Developers Association (BASDA) in the UK who may have useful input. In addition, we work with the XBRL.org consortium in the UK to help the roll-out and take-up of the electronic reporting language and its various applications.

Q12: Do you believe that SMEs needs are sufficiently covered in the report? Are there any other means to promote the adoption of e-invoicing by SMEs?

28. See comments under question 3 above.

Q13: Are the guidelines for SMEs in Annex 3 *[Do you mean Annex 4?]* comprehensive enough? Would you suggest any additional content?

29. The Report is very helpful (particularly in Annex 4) in discussing financial incentives for businesses, even small SMEs and micro-businesses, to adopt e-invoicing. The basis of the figures used in Annex 4, however, is not stated; neither do these figures take account of any additional costs that may be incurred, either initially or subsequently, in implementing and maintaining an e-invoicing capability. In the absence of more rigour in the presentation and justification of these figures, we think they will not be regarded as convincing and will be largely ignored. Up-front costs are a particular issue for small SMEs and micro-businesses.

30. Annex 4 also possibly, by confusing technical and substantive correctness, overstates the administrative benefits of e-invoicing, particularly for a small organisation. For example, Annex 4 states: "*With electronic channels, receipt of invoices can be fully automated. Manual entry and coding is no longer necessary. The invoice data can be imported automatically into the accounts payable system – real-time import is possible, independent of volume. 100 % of the imported data is correct*." This may be correct in the technical sense, in that data have not been open to accidental loss of integrity during re-keying or other forms of transcription to other systems, but poor development, implementation and maintenance of systems, to which smaller organisations may well be prone, may still cause significant processing errors. In addition, data may be substantively incorrect in the first place. Moreover, if technical and procedural control systems are inadequate, data are certainly open to loss of integrity through fraud or sabotage.

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