

TAXREP 47/03

VAT OBLIGATIONS: SIMPLIFICATION AND MODERNISATION

Memorandum submitted in December 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the European Commission in response to a consultation document issued in April 2003

CONTENTS

	Paragraph
INTRODUCTION	1
WHO WE ARE	2-4
COMMENTS	5-15

Tax Representation

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INTRODUCTION

1. We welcome the opportunity to comment on the study of VAT obligations across the European Union as set out in the invitation to comment published by the Commission in April 2003 on the web at http://europa.eu.int/comm/taxation_customs/taxation/consultations/obligations_tva_en.htm.

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 125,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

COMMENTS

5. We believe that it is extremely important to consider the obligations imposed on taxpayers. As a professional body, we have consistently stressed the need to balance the right of individual taxpayers to have no more burden placed upon them than is essential for the proper maintenance of the tax with the need of Governments to protect the revenue on behalf of taxpayers in general. We therefore consider that the study by PricewaterhouseCoopers is not only timely but a useful contribution to the debate, and that the guidelines, framework and recommendations provide an excellent foundation for the Commission to build on.
6. When VAT was introduced in the Community, it was intended that it should be simple for taxable persons to administer. Simplicity underpins two main principles of tax, namely certainty and neutrality. Businesses are entitled to certainty as to their obligations in respect of specific transactions and the system as a whole. Without simplicity, it is not possible for citizens to be sure that they account for the right amount of tax to the authorities. We have consistently promoted these objectives as

Tax Representation

fundamental tenets for any tax system, for example in our discussion document published in 1999 as TAXGUIDE 4/99 (see http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160) and subsequent memoranda.

7. So far as concerns VAT and indeed other indirect taxes such as Excise Duty, these objectives appear to have been forgotten over the years, and we consider that this study provides a timely opportunity to introduce measures that would move the tax closer to its original intended design. We note that the Commission has instituted proceedings against the UK in regard to its simplification measures for motor expenses. In view of the insignificant amount of revenue at stake, the additional administrative requirements that will ensue should the European Community win seem to be out of proportion to the benefit.
8. Our concerns do not mean that we are not aware that there has to be a proper balance between certainty and how Member States can counter tax avoidance. So-called 'general anti-avoidance rules', whilst affording protection to the exchequers of Member States, reduce certainty as they depend on subjective interpretations by tax authorities, and reducing certainty is the opposite of simplicity. We would therefore prefer unambiguous laws, so that traders can ascertain how they should treat a transaction without having to second guess how their Member State's tax authority will react.
9. We would point out that almost all avoidance arises because of exceptions to general rules and it is the very existence of substantial exceptions that makes avoidance possible. By way of example, the derogation granted to the UK that increases the limits that apply under article 24 of the Sixth VAT Directive has resulted in two specific anti-avoidance provisions, one on disaggregation of business activities (VAT Act 1994, Schedule 1, paras 1A, 2) and the other on supplies of goods made to non-taxable persons for retail sale (VAT Act 1994, Schedule 6, para 2); the latter is discriminatory as it means that a housewife selling cosmetics for a large company that uses agents is effectively charging VAT on her sales whereas a small independent business in competition with turnover below the registration threshold does not.
10. Whilst the differing conditions across Member States mean that they will have to use different approaches to avoidance, in general terms there needs to be consistency across the Community in terms both of the framing the law by Member States so that it is logical to a reasonable man and making the law of Member States consistent. We are concerned that what might appear as a normal transaction to one tax authority might appear to another to be avoidance. Where this happens, when one tax authority applies its anti-avoidance measure there is a distinct possibility that double taxation could arise if the other tax authority involved in the chain of transactions makes no adjustment to reflect the application of the anti-avoidance measure. This was the situation in *Aro Lease BV* Case C-190/95, [1997] STC 1272 which the trader had to have resolved by the ECJ.
11. Another example of where a transaction carried out by a taxable person was subject to an anti-avoidance measure even though no tax avoidance was involved was the

Tax Representation

decision of the UK VAT and Duties Tribunal in the case of *Winterthur Life UK Ltd (No 2)* LON/98/127 (VTD 15785). Under Article 13C Member States are entitled to restrict the scope of the right of option and fix the details of its use. The UK Government introduced measures similar to those considered in the joined case *Gemeente Leusden C-487/01 & Holin Groep BV c.s.* Case C-7/02 with the intention of countering what was perceived to be tax avoidance. Under the measure, they were able to restrict its use even where the transaction did not involve avoidance.

12. Our concerns extend to other measures, for example those measures taken by the UK Government to counter missing trader/carousel fraud. It appears from a Ministerial briefing attended by our representative that investigations of Customs & Excise led to the closing down of fraudulent operations involving a very small number of businesses that accounted for a very large value of fraud. Official statements intended to advertise the success of the actions of Customs & Excise against such fraudulent operations suggest that the measures are disproportionate to the burdens imposed on innocent businesses to police the operations of a few major fraudulent businesses. Further, it appears that different measures have been adopted in different EU Member States which means that taxable persons established in several Member States have to adopt different measures depending on the Member State or States in which they carry on business, thereby adding to the overall burden on taxpayers.
13. We take the view that the first task of tax legislation is to ensure that it does not represent such a burden that it discourages citizens from setting up the businesses that become the engines for growth and prosperity in the Community. Without growing businesses, there will be no growth in the tax base, which would have negative economic consequences for everyone. We believe that businesses assume sufficient risk and already have to undertake the burdens of being tax assessors without adding to that burden the risk of policing the tax.
14. We are not convinced that governments always understand the dividing line between what burdens can justifiably be placed on taxpayers because they are in the best position to deal with them and those that are best left to the executive arm of governments. We would be happy to meet you to discuss our concerns should you consider this useful.

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