



## VAT/GST GUIDELINES ON PLACE OF TAXATION FOR BUSINESS TO CONSUMER SUPPLIES OF SERVICES AND INTANGIBLES

ICAEW welcomes the opportunity to comment on the consultation paper [\*Guidelines on Place of Taxation for Business to Consumer Supplies of Services and Intangibles\*](#) published by the OECD on 18 December 2014.

This response of 19 February 2015 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## MAJOR POINTS

1. Any guidelines should provide consistency, simplicity and certainty, as these qualities are essential to the smooth operation of businesses trading in countries outside of their own national borders.
2. Many businesses, particularly small businesses, will choose to charge the same, tax inclusive, amount for a particular service. It will then calculate the amount of VAT included in this charge for each country in which it has a customer at the end of the VAT accounting period. A requirement to include the amount of local VAT on any invoice at the time of supply should be avoided, as it would be a considerable administrative burden in these circumstances.
3. Many businesses have websites for which they charge a fee for access to some or all of the content. Such fees will commonly take the form of a charge for the download of a particular item or a subscription to provide access for a specified period. The majority of such businesses will set up their websites with the expectation that only customers from their own country will want access to the information. If a customer from another country decides to pay for access, the supplier may not be aware that it has an overseas customer and that the corresponding receipt of payment has created a liability to register and account for VAT in the country of the unexpected customer. We believe that it would be appropriate to establish a de minimis turnover threshold to avoid the requirement to register for VAT in countries where the turnover was small. The threshold should not on the other hand be too high, to avoid distortions of competition between established and non-established suppliers.
4. In circumstances such as those in 3 above, it may be some time before the supplier becomes aware of the need to register for VAT in its customer's country. We believe that a period of up to one year should be allowed to apply for a backdated registration in such circumstances, without the automatic imposition of penalties and interest.

## ADMINISTRATIVE POINTS

5. If small businesses are to comply with any new rules that are established, it is essential that they are made as simple as possible and do not create a disproportionate administrative burden. The EU requirement to gather at least two pieces of evidence of customer location and status and for this information to be retained for ten years is regarded by many small businesses as too onerous, if not impossible. If the requirements are not simple to operate, it is inevitable that many small businesses will cease to trade internationally because of the barriers created. Alternatively, they will continue to trade illegally, either through ignorance or because they do not expect to be caught.
6. Some small businesses trade below the VAT registration threshold in their own country and may therefore be unfamiliar with VAT requirements in other countries where their customers are located. It would be a considerable administrative burden for such businesses to register and account for VAT in other countries, so a mechanism to avoid this requirement is needed by applying a minimum registration threshold for established and non-established suppliers.
7. As with any new regime, it will be important to protect VAT revenue against fraud, such as non-resident businesses deliberately failing to register for VAT in countries where they have a domestic customer. However, we believe that there should be protection for genuine businesses from excessive penalties that are simply unaware of the requirements in a particular country. In some cases, a business may be completely unaware that it has a customer in a country, particularly if it merely receives payment for website access or an electronic download of information.

8. We believe that it is fairly clear within the EU that a fixed establishment for VAT purposes does not necessarily create a permanent establishment for direct tax purposes. However, it may be less clear where the customer is outside the EU. Consequently, we recommend that the guidelines include a statement to the effect that a VAT registration for B2C supplies, and/or the existence of a fixed establishment for VAT purposes, in the country of the customer, should not of itself create a permanent establishment for direct tax purposes.
9. If businesses are to comply with non-domestic legislation, it is essential that adequate worldwide publicity is given to a country's requirements by its tax authority and that adequate notice is given of any changes. For example, we understand that Albania introduced new requirements with effect from 1 January 2015 at very short notice and with minimal publicity.
10. The suggestion of a simplified registration scheme for overseas businesses is welcome. However, a normal VAT registration should also be available to a non-established business if it incurs input tax in the customer's country that it wishes to recover. Ideally, a simplified registration system should allow a limited amount of input VAT recovery where feasible.
11. Within the EU, a Mini One Stop Shop has been created, to enable businesses to declare overseas VAT to its home country's tax authority. The creation of a similar system on a worldwide basis would be difficult to establish, but would probably be of long term benefit in the interests of simplification and encouragement of compliance. Evidence to emerge from the experience of users of the EU MOSS system will provide indicators of how such simplified systems can be enhanced further.
12. The guidelines should provide guidance as to how a business might comply. Some countries, such as Kenya, require a fiscal representative to account for the VAT on supplies made by non-established businesses, where most do not. This can cause difficulties for businesses that are unable to find a local business that is prepared to act as a fiscal representative. We recommend that the guidelines suggest that fiscal representatives should not be required.

## TECHNICAL POINTS

13. In any guidelines, it is always a concern that double taxation or unintended non-taxation could arise if the guidelines are not consistently adopted. For example, one country may regard a particular service as an 'on the spot' service, whereas another country may not. The guidelines should therefore be as specific as possible to minimise the risks of double and unintended non-taxation. The OECD's work on mutual assistance in Chapter 4 is clearly relevant at this point.
14. In some circumstances, there are considerable difficulties in determining whether or not a particular supply of services should be treated as a supply of electronic services, particularly when tax authorities throughout the world regard similar services differently. For example, a live webinar is not considered to be an electronic service in the UK and most of the EU, but South African VAT legislation specifically includes webinars as electronic services. If B2C services are to be taxed in the country of the customer, we therefore recommend that the same treatment be given to all supplies of services, to avoid the difficulties created when trying to establish under which set of rules a particular service should be treated.
15. Section 3.22 includes training courses and conferences as examples of temporary locations that do not create a place of residence. This section can be read to imply that if an overseas participant attended a conference, VAT should be charged in the normal country of residence of the participant, as opposed to the country in which the conference takes place. In practice, this would cause significant difficulties for conference organisers where most, if not all, other participants were resident in the same country as the supplier and conference location. We therefore suggest that the place of supply for individual consumers attending training courses and conferences be where they take place, in line with the guidance for 'on the spot' supplies.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )