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TAXREP 74/08

REVIEW OF EXISTING LEGISLATION ON VAT INVOICING

A submission made on 18 September 2008 to the European Commission by the Tax Faculty of the Institute of Chartered Accountants in England and Wales concerning the review of existing legislation on VAT invoicing.

CONTENTS

	Paragraph
Introduction	1-3
General – Timing	4
Key point summary	5-11
General comments	12-30
Comments on specific draft recommendations	31-72
	Annex
Who we are	A
Ten Tenets for a Better Tax System	B

ICAEW Tax Faculty, Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ www.icaew.com/taxfac	T +44 (0)20 7920 8646 F +44 (0)20 7920 8780 E tdff@icaew.com
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REVIEW OF EXISTING LEGISLATION ON VAT INVOICING

INTRODUCTION

1. We are pleased to respond to the European Commission's consultation paper issued in June 2008 on the future regulation of VAT invoicing, which can be found at http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/consultation_VATinvoicing_en.pdf
2. We are also aware of HMRC's own Consultation Paper, *Future Regulation of VAT Invoicing*, to which we have also responded.
3. Details about the Tax Faculty and the Institute of Chartered Accountants in England and Wales are set out in Annex A and our Ten Tenets for a Better Tax System which we use as a benchmark is in Annex B.

GENERAL – TIMING

4. We do have some concerns with the timing of this exercise. The Commission's Consultation Paper refers to the 'need to make any proposal before the end of 2008'. Businesses involved in cross-border trade within the EC already have a challenging IT timetable with the 1 January 2010 changes required for the VAT Package and possible further anti-fraud measures, both of which at the moment need further clarification. If there are also to be changes to cross-border invoicing requirements, these will need to be finalised very early in 2009 if they are not to cause significant additional costs for these businesses.

KEY POINT SUMMARY

5. Any changes should be kept to a minimum.
6. We recommend that the EC establishes a framework of invoicing requirements that lists compulsory and optional items for inclusion on sales invoices.
7. It should not become a legal requirement for any business to issue its sales invoices electronically.
8. It would not be appropriate to include all the rules that may be required for cross border trade to all domestic supplies.
9. Any variances to standard invoicing requirements should be kept to a minimum.
10. Electronic invoicing should not become a barrier to business, either as a consequence of it becoming a legal requirement to submit invoices electronically or because the conditions become too onerous.
11. A harmonised period of five years should be adopted for the retention of all financial records throughout the EU. It should be permitted for all such records to be retained electronically without prior authorisation.

GENERAL COMMENTS

12. Businesses are likely to have different priorities, depending on their size and operations. Large and small businesses trading in the domestic market are likely to have different capabilities, but both will want simplicity and the least prescription. On the other hand, large businesses trading cross-border, with operations and VAT registrations in more than one Member State are more likely to be interested in standardisation across the EC, even at the expense of simplicity in any particular Member State.
13. We believe that simplicity should be given a high priority, but please note our comments at 9. above.
14. We believe that the addition of any further requirements to VAT invoices would introduce an unwelcome and unnecessary burden to businesses and would, inevitably, incur some cost. Any changes should therefore be kept to a minimum.
15. We recommend that the EC establishes a framework of invoicing requirements that lists compulsory and optional items for inclusion on sales invoices using the following guidelines:
 - Compulsory items are those that would be compulsory for all sales invoices in all Member States;
 - Optional items are those that would not be compulsory in all Member States but would be compulsory in at least one Member State (items that were not compulsory in any Member State would not need to be included in the framework);
 - It should be a legal requirement for any Member State wishing to make an optional item compulsory within its own territory to obtain approval from the EC prior to implementation. Details of any such variations should be made available to all businesses in all Member States and kept to a minimum;
 - No Member State should be permitted to introduce a legal requirement for a particular item on a sales invoice that is not contained within the framework of compulsory or optional items;
 - If an optional item ceases to be compulsory in any EU Member State, it should be removed from the framework;
 - The EC should maintain and publish for access to all businesses a copy of the framework showing which of the optional items are compulsory in each Member State;
 - It may be necessary to produce two separate frameworks for domestic and international supplies.
16. A final framework would be likely to fall into four parts:
 - 1 Compulsory items for international trade in all Member States;
 - 2 Compulsory items for domestic trade in all Member States;
 - 3 Optional items for international trade, showing which of these items were compulsory in each Member State;
 - 4 Optional items for domestic trade, showing which of these items were compulsory in each Member State.

17. As we have said above, there are clear advantages to some businesses, particularly those that operate in several Member States, to standardise the invoicing requirements across the EU. However, we do not believe that all the rules that may be required for cross border trade would be appropriate for domestic supplies. For example, a requirement to include the customer's VAT registration number on all domestic sales invoices would create a significant additional burden for all businesses, particularly those that are never involved with international trade. Since VAT will be charged and accounted for by the supplier, it is difficult to see what advantage would accrue to the tax authority.
18. There are currently additional requirements placed upon particular types of invoice, such as those used in second hand schemes and the tour operators margin scheme. Any such variations to the standard invoicing requirements should be kept to a minimum. Ideally, they should be removed altogether.
19. Where a business has to introduce new wording or additional features to its invoices, we recommend that approval be given to use existing stocks of stationery to exhaustion, in a similar way to the approval that is often granted upon a change of VAT registration number. We suggest that such a concession should last for at least two years after the introduction of any new invoicing requirements.

Electronic Invoicing

20. At section 3 of the consultation paper, the question is raised: *Should e-invoicing be based on the following criteria?*
21. *a) Equality of treatment between paper and e-invoices*
22. We believe that there should be no significant disadvantages to using either paper or electronic invoices. Care should therefore be taken to ensure that any rules should not discriminate against either method of invoice production. In the interests of simplicity, any requirements should be kept to a minimum. For example, we would not want to see new requirements for paper invoices, such as the need to be signed or stamped. The general principle should be that what is sufficient for paper invoices is equally acceptable for electronic invoices and vice versa.
23. *b) Guaranteeing the authenticity of origin and the integrity of content of an e-invoice should remain as a general principle to be observed,*
24. We do not believe that such a guarantee can be provided for paper invoices. Under the principle of equality of treatment, we do not therefore support that such a guarantee should be required for electronic invoices.
25. *c) An agreement, either implicit or explicit, between the supplier and customer.*
26. The invoicing method, whether paper or electronic, should be based on an implicit or explicit agreement between the supplier and customer. If this were not the case, a supplier or customer could be required to follow a procedure which was impractical or inconvenient for them.

27. We do not believe that it should be a requirement for any business to issue its sales invoices electronically. For some businesses, particularly small ones, such a requirement would introduce a significant additional burden.
28. There are many large transactions where electronic invoices would be inappropriate, such as the one-off sale of a taxed property by a charity or the sale of a new car to a private individual. It would be disproportionate in the former case to expect the charity to comply with electronic invoicing rules for a single supply, which might not be repeated for many years. In the latter case, it would depend on whether the private individual was able to receive an electronic invoice.
29. We believe that the introduction of standard EU codes and/or legal references to all invoices would present a significant and unnecessary burden to most businesses. There would also be a high risk of error in any such regime, particularly for businesses that provide a wide range of goods and services.
30. We believe that electronic invoicing should not become a barrier to business. Consequently, any restrictions should be kept to a minimum, whilst maintaining a reasonable amount of control in an attempt to prevent fraud.

COMMENTS ON SPECIFIC DRAFT RECOMMENDATIONS

31. *1. Provisions in case countries with which no legal instrument relating to mutual assistance exists are involved should be abolished as these are not really needed by the large majority of the national authorities for control purposes.*
32. We agree with this recommendation as a simplification.
33. *2. The requirement to issue an invoice for supplies as referred to in article 33 of Directive 2006/112/EC should be abolished, as, on the one hand, there is no need for an invoice to control the correct and timely payment of VAT due and, on the other hand, VAT is not deductible.*
34. We agree that there is no need to issue an invoice to control the correct and timely payment of VAT. However, we understand that there are circumstances in some Member States where an invoice may be required in these circumstances as evidence for the deduction of VAT. We therefore suggest that the option to issue invoices should be available where required for this purposes.
35. *3. The option allowing Member States to require issuing an invoice to private individuals should be abolished for the same reasons.*
36. On balance, we agree with this recommendation as it would remove a potential burden on business and assist the harmonisation of the VAT invoicing requirements. However, we can see that there are reasons why VAT invoices may be desirable in some circumstances, such as assisting a business to keep control of its VAT affairs and to provide evidence in cases of legal disputes.

37. *4. A harmonised time limit for issuing invoices should be implemented, more specifically, we recommend imposing the requirement to issue invoices no later than the 15th day of the month following the month in which the taxable event took place.*
38. We disagree with the recommendation as the requirement to comply with the time limit would create an additional administrative burden on business. A VAT liability arises regardless of the issue of an invoice, so we therefore believe that there is no need for a statutory time limit for issuing an invoice. In many cases, the recipients of a supply will require an invoice prior to its authorisation for payment and as evidence for input tax deduction, so will chase the supplier for its invoice. A short time limit would also create difficulties where the value of a supply depends in part on third party costs to be invoiced to the supplier. The supplier would not be able to invoice the correct amount until he had received and processed those costs.
39. If a time limit is to be imposed, then we recommend a longer period, such as three months from the date of supply, as some businesses may not finally agree the value of its supplies within the suggested time period.
40. *5. The option currently provided for in article 223 of Directive 2006/112/EC allowing Member States to impose specific conditions in case of a summary invoice should be abolished, and the general rules with respect to “single invoices” should be applicable.*
41. We believe that there would need to be certain additional controls (ie above and beyond those required for paper invoices) for EDI invoicing at header level.
42. *7. The requirement to have a prior agreement in case of self-billing should be abolished as it is not a key element for control purposes.*
43. We agree with this recommendation as a simplification.
44. *8. The acceptance procedure in case of self-billing should only be implicit or silent as national authorities have other means to control the correct payment and deduction of VAT.*
45. We agree with this recommendation as a simplification.
46. *9. In order to inform the national authorities and the supplier that a self-bill invoice has been issued, the word “self-bill” should be clearly stated and two boxes could be added on the VAT return “ I received self-bills from my customers” or “ I issued self-bills to my suppliers” to be ticked by the taxpayer as appropriate.*
47. We agree that use of the description “self-bill” may be of some use to tax authorities whilst not creating a major burden on business.
48. We believe that the creation of two additional boxes on VAT returns is unnecessary, particularly as most tax authorities do not need to be informed if a business operates self-billing.
49. *10. A clear definition of “sequential numbering” should be provided in order to avoid different interpretations. All other requirements mentioned in article 226 of Directive 2006/112/EC should not be changed.*

50. We recommend that any sequential numbering requirement be made as flexible as possible to minimise the difficulties and costs to affected businesses.
51. We understand that there are businesses in some industries that find it difficult to allocate a sequential number to their invoices. For example, many utilities treat a combination of the invoice date and customer account number as their unique reference for VAT purposes. A more rigid requirement in relation to the inclusion of a sequential number on such invoices may involve affected businesses in substantial computer system development costs.
52. A more rigid requirement in relation to the sequential numbering of invoices is also likely to pose difficulties for large businesses with shared service centres producing invoices for their operations in several different Member States or several branches within one Member State or a combination of these factors. It is therefore important that any rules relating to sequential numbering are consistent across all Member States to avoid a potential conflict that could arise by allowing different rules in different Member States. The requirement for sequential numbering should therefore be both consistent and compatible across the EU.
53. *11. Abolish the option to require for paper invoices to be stored in the Member State as the principle providing access "without undue delay" is already included and resolves the national authorities' concern.*
54. We agree with this recommendation as a simplification.
55. *12. The option provided to Member States not to allow converting paper invoices into electronically archived invoices should be abolished.*
56. We agree with this recommendation, as it removes a potential burden on business and assists with the harmonisation of the VAT invoicing provisions.
57. *13. A harmonised storage period for invoices, i.e. 7 years as from 1 January following the year in which the taxable event took place, should be imposed (except for capital goods subject to a longer revision period).*
58. We agree with the principle of creating a harmonised storage period for invoices. However, we would like to see the period reduced to five years, as storage costs are becoming increasingly expensive. This is of particular concern to large businesses, which may have large quantities of invoices spread across many sites.
59. *14. In case it is not possible to eliminate all national options for invoicing:*
60. *a) the rules of the country where the supplier is established should prevail; with the exception of self-billing where the rules of the country of establishment of the customer (issuing the self-bills) should prevail;*
61. We agree that there should be an over-ride rule to determine which rules should prevail where there is a difference between the invoicing rules of the Member States involved.
62. We believe that the over-ride rules should be those of the Member State that issued the VAT registration number under which the supply is being made. In most cases this will be where the supplier is established, but will not necessarily be the case,

especially for companies that are registered for VAT in several different Member States.

63. This should also apply to supplies that are subject to a reverse charge. It would add unnecessary compliance costs if a supplier were required to vary his B2B invoices depending on the Member State of his customer.
64. For cases of self-billing, the over-riding rules should be those of the Member State that issued the VAT registration number of the customer.
65. The customer will normally require a VAT invoice as evidence of input tax deduction. If the rules of the Member State of the supplier prevail, the customer and its tax authority will need to know these rules, as input tax deduction could otherwise be at risk. This presents an alternative argument that the rules of the Member State in which the place of supply is located should prevail.
66. *b) if a supplier or for self-billing the customer is not established in one of the EU Member States he has to comply with the rules of the Member States that has granted him a VAT identification number under which he makes his supply of goods or services or issues the self-bills.*
67. We agree with this recommendation. If the rules at paragraph 62 above were adopted, there would be no need to have a separate set of rules for non-established businesses.
68. *15. In case it is not possible to eliminate all national options for archiving:*
69. *a) the rules of the country where the supplier or the customer is established should prevail for their respective archiving obligations;*
70. We believe that the prevailing rules should be those of the Member State that issued the VAT registration number under which the supply is being made. In most cases this will be where the supplier is established, but will not necessarily be the case, especially for companies that are registered for VAT in a number of Member States.
71. *b) if a supplier or a customer is not established in one of the Member States he has to comply with the rules of the Member States that has granted him a VAT identification number under which he makes his supply of goods or services.*
72. We agree with this recommendation in most cases. If the rules at paragraph 70 above were adopted, there would be no need to have a separate set of rules for non-established businesses. However, we believe that customers established outside the EC should not be bound by these archiving rules if the goods supplied have left the EU or if the place of services is outside the EU.

WHO WE ARE

1. The Institute of Chartered Accountants in England & Wales is a professional body representing some 128,000 members. The Institute operates under a Royal Charter with an obligation to act 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).
2. The Tax Faculty is the centre for excellence and an authoritative voice for the Institute on taxation matters. It is responsible for tax representations on behalf of the Institute as a whole and it also provides services to more than 11,000 Faculty members who pay an additional subscription.
3. Further information is available on the ICAEW website, www.icaew.co.uk.

THE 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**