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By email to: piet.battiau@oecd.org

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Dear Monsieur Battiau,

BEPS Discussion Drafts: Two new elements of the OECD International VAT/GST Guidelines

This response reflects the general views of the PwC network of firms, and we offer our observations on several key aspects of the Discussion Drafts for inclusion in the OECD International VAT/GST Guidelines. We are also intending to submit a more detailed response expanding on these observations, and offering some additional comments, from the viewpoint of member firms of our network based in Africa. This reflects the specific OECD objective to involve developing countries more specifically in the BEPS process.

The current draft Guidelines deal with (i) the place of taxation of business-to-consumer supplies of services and intangibles (B2C Guidelines) and (ii) provisions to support the application of the Guidelines in practice (Supporting provisions). We respond in relation to each matter in turn.

The OECD states that “The collection of VAT in business-to-consumer (B2C) transactions is a pressing issue that needs to be addressed urgently to protect tax revenue and to level the playing field between foreign suppliers relative to domestic suppliers”.

This positions it as a key part of the BEPS Action Plan that is of critical importance to a number of countries due to the significant budgetary impacts.

I Place of taxation of business-to-consumer supplies of services and intangibles (B2C Guidelines)

The OECD proposes that most services supplied B2C should be taxed on the basis of the destination principle, i.e. based on the customer’s usual residence, as being the best proxy for identifying the place of consumption (General rule).

However, the OECD points out that the General rule may not give a good indication of the place of consumption in the case of ‘on the spot’ services and provides a second rule – i.e. generally where the services are actually performed.

In addition, the OECD accepts that even with the two above rules, taxation should not take place where the consumer is located in relation to certain services and that a specific rule should be applied to tax such services.

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In order to determine whether there should be a 'specific rule' or rather an exception to the General rule, the OECD provides in the Guidelines a framework ('two step approach') against which Governments should test the need for a 'specific rule'.

The draft states that the OECD's objective here is to encourage Governments to limit the numbers of 'specific rules' (e.g. passenger transport, real-estate related services, work on moveable goods), to make the VAT/GST systems more transparent and legally certain for both business and tax authorities. This is to be welcomed – having too many exceptions to the General rule complicates the application of VAT/GST and would complicate the position of businesses in dealing with their compliance obligations. The provision by the OECD of a decision framework within which to determine whether a 'specific rule' is required is an excellent idea. Careful monitoring as to how this framework is applied in practice by governments will, nonetheless, be required to ensure that governments do not use the framework to justify 'specific rules' when the General rule is a better proxy for determining the place of actual consumption.

In the Annex to chapter 3, (it would perhaps be better if this were in the main body of the Guidelines as an integral part of the 'destination system' proposals) the OECD proposes that governments adopt a 'Simplified Registration and Compliance Regime for non-Resident Suppliers'.

This is very much inspired by the EU's MOSS system which took effect on 1 January 2015 (and the earlier EU VoeS system in place since 2003 for non-EU companies), whereby non-resident suppliers will collect the tax in each country where the customers are located, but would remit the tax via a simplified compliance system.

The alignment of the OECD's proposals with the EU system is a very significant move and will enable global business to optimize their compliance systems wherever they are located. In an ideal world a global MOSS, where a taxpayer would file and pay locally in his own territory to satisfy his VAT/GST reporting obligations globally would ensure more effective compliance and enable tax authorities to more easily reconcile VAT and other tax reporting.

II Provisions to support the application of the Guidelines in practice (Supporting provisions)

The OECD suggests, to meet the objective of minimizing the scope for double taxation or unintended non-taxation, that more use be made of existing instruments and points out, for example, that the OECD Model Tax Convention, in its article 26, specifically provides for the exchange of information in relation to any taxes (including VAT/GST) and not just those covered by the Convention. This proposal is important. Experience shows, however, that even within the EU the 2010 Regulation on Administrative Cooperation is still not used effectively in all cases – see the Commission's report COM(2014) 71 final of 12 February 2014.

In attempting to provide a balance between taxpayers and governments, the OECD insists that governments provide more attention to the provision of data and information to taxpayers such that the latter find it easier to comply with their reporting obligations. This point is critical. Governments cannot expect businesses to comply if they (governments) do not provide simple compliance systems and a detailed level of information in the language of the taxpayers to ensure that compliance is effective and as simple as possible.



On behalf of the global network of PwC Member Firms, with the contribution of our colleagues, we respectfully submit our response to the Public Discussion Draft. For any clarification of this response, please contact the undersigned or any of the contacts below.

Yours faithfully

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