



Mr László Kovács
Member of the
European Commission
rue de la Loi 200,
B-1049 Bruxelles

Brussels, 15 December 2008

Re: VAT Package and Joint and Several Liability Rules

Dear Commissioner,

In the current difficult economic situation, the utmost should be done to reduce burdens on companies and to enhance the economic dynamism of the Internal Market. More emphasis should be given to reducing VAT-related compliance costs which remain a significant obstacle to cross-border trade in the EU and an important milestone to reach the Community's target to cut administrative burdens by 25% until 2012.

In this regard, I would like to draw your attention to two particular issues which cause major concern among the business community.

1. Implementation of the VAT package

The VAT package, which will enter into force in 2010, foresees important simplifications but also new reporting obligations. Businesses have to know these new obligations with certainty and the greatest urgency, in order to adapt their systems in good time. However, we have clear indications that national transposition is lagging behind, and that certain aspects of the VAT package need to be clarified with Member States to ensure uniform implementation across the whole EU. Without this, there will be no perceptible simplification for business in practice.

I strongly encourage the Commission to take a more active role in this process, amongst other things by facilitating discussions with Member States and by issuing comprehensive guidelines for interpretation of the VAT package to Member States and to companies. To reap the full benefits of this new legislation, a rapid and uniform implementation, ensuring the lowest possible administrative burden, is needed and we stand ready to support the Commission fully in this process.

2. VAT fraud

BUSINESSEUROPE fully supports a well coordinated anti-fraud strategy at EU level and welcomes the Commission Communication on VAT fraud with its emphasis on enhanced administrative cooperation and better risk management to prevent abuse and to strengthen the tools for detecting VAT fraud.



However, the accompanying proposal on joint and several liability (COM(2008) 805) represents a significant risk for legitimate business involved in intra-Community trade. The proposal is disproportionate as there is no explicit link between the application of joint and several liability and the occurrence of VAT fraud. Even if no VAT revenue is lost, it seems that the trader might be held liable for a mistake in the reporting obligations.

Also, the proposed recourse does not provide legal certainty, as it requires the trader to “duly justify to the satisfaction of the competent authorities” that it was not an intentional mistake. A person held liable should always be granted the possibility for legal appeal. While liability should exist in cases of cross-border fraud, strict liability should be replaced by liability based on fault. This is also in line with established ECJ jurisprudence.

Every change to the VAT system should be evaluated against its impact on legal certainty for business decisions, as this is crucial for a healthy business environment. We regret that no impact assessment was considered necessary for this new proposal.

In a context of increased risk awareness and difficult financing conditions, governments should urgently simplify the handling of VAT and allow the extension of payment deadlines within a broader policy to facilitate access to finance.

I would appreciate it if BUSINESSEUROPE could further exchange views with the Commission on these issues in the near future.

Yours sincerely, *and best wishes,*

Philippe de Buck