



10 June 2009

Commission proposal for a Council directive amending directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

This note sets out detailed remarks and suggestions to various articles of the proposal. While we strongly welcome the Commission proposal, in particular with regard to the equal treatment of electronic and paper invoicing, some amendments need to be reviewed as they risk imposing significant additional compliance burdens on businesses without providing any real benefit in terms of revenue protection.

Five key concerns

(1) Chargeable event of an intra-Community supply

Currently, Member States have different approaches regarding the moment when the chargeable event of an intra-Community supply/acquisition occurs. According to the proposed art. 68, VAT becomes chargeable at the moment of effective supply. However, this new proposed rule will cause difficulties.

Firstly, it is not always clear when goods are effectively supplied. Some Member States link the moment of supply to INCO terms, others use a different approach. This will cause differences in reporting and mismatches.

Furthermore, in certain situations, the transport of goods within the EU and the issuance, approval and processing of the relevant invoice will take so much time that the recipient of the invoice will not be able to report the acquisition on time. As a result, mismatches will occur and the goal to combat fraud will not be met.

- **BUSINESSEUROPE proposes to link the chargeable event of an intra community supply to the moment the invoice is or should be issued.**

(2) Right of deduction linked to valid invoice

According to the proposed art.178(c) and art.178(f), when required to pay VAT, a customer must hold a valid VAT invoice to be able to exercise the right of deduction.

This proposal implies that all non-EU suppliers providing e.g. services to business customers in the EU have to issue invoices that meet the European VAT legislation. BUSINESSEUROPE wants to stress that a EU business customer cannot force a non EU business customer to apply the EU invoicing rules. As a consequence, an EU business customer will receive wrong invoices and loose the right to credit input VAT.



The proposal is disproportionate. It does not meet the aim to fight VAT fraud as it imposes invoice requirements in cases where the liability to pay VAT and the right to deduct VAT arises in the same person. The proposal also disregards long established jurisdiction of the ECJ (e.g. “Bockemühl” and “Ecotrade SpA”).

- **In case of a cross-border transaction for which the liability to pay VAT and the right to credit input VAT for a transaction is with the same person, mistakes in invoices (from EU as well non-EU suppliers) should be ignored as ruled in Bockemühl.**

(3) Invoices for exempt supplies

The proposed art. 210 would require invoices to be issued for exempt supplies in all cases. In countries where invoices are not currently required for exempt supplies, this would necessitate costly changes to systems to produce invoices, plus the ongoing cost of valuing supplies for invoice purposes. In the financial sector the cost burden, both initial and ongoing, would be extremely high. No credible anti-fraud justification has been provided for this measure.

- **Member States should retain the freedom to choose whether to require invoices for exempt supplies with no right of deduction of input tax.**

(4) Currency exchange rate

According to the new art. 230, businesses issuing invoices in a currency other than that of the Member State in which tax is payable would have to use the ECB daily rate of exchange to translate the VAT amount. The requirement to use the ECB daily rate in case an invoice is issued in a currency other than that of the Member State in which tax is payable is a huge burden.

First of all adapting daily changes is already a burden. Secondly, for commercial purposes, other exchange rates (e.g. conventionally agreed exchange rates making it easier to hedge currency risks) might be used and accounting systems do not have the capacity to apply two different exchange rates. Adapting systems to cope with more than one exchange rate would be very expensive.

- **Businesses should be able to use on invoices the exchange rate which they use for accounts purposes or conventional exchange rates. The credit of any input VAT incurred on invoices should be equal to the amount reported by the supplier to avoid differences**

(5) Customer VAT ID-No. for domestic supplies

The proposed art. 226(4) requires the customer VAT ID-No. to be added to an invoice also for domestic transactions. This will create difficulties for business such as a rejection of input VAT for the customer if the supplier gives the wrong VAT-ID No.

- **No changes to art. 226(4).**



Further comments

Article 64

- What is meant with “continuous supplies”: e.g. how to treat the supply of one big piece of machinery/equipment being shipped in several parts over a period longer than one month? Does this bring more than one supply for the VAT?
- What is meant with “services supplied continuously”: e.g. the services supplied by a tax advisor. Is the contract decisive? A contract stating that there is a continuous supply? Or is the actual supply of services decisive? E.g. two or more invoices? Often billing only takes place when it is economical wise (the amount is sufficient enough) to invoice.
- What in case a customer has not accepted the supply (goods or services)? Has the supply been performed?
- What about a service contract with a fixed fee, where services are provided if there is a default (for instance a software glitch, a machine is out of service, etc.). When is this chargeable?
- In many large contracts, payment terms are set out in the contract. Thus when certain milestones are met, the seller may issue an invoice. This invoice may cover only a part of the expenses or might be in excess (advance payment). Both with services, goods and property this is an essential part of the negotiations and may be a deal breaker, as cash flow considerations are essential in these types of contracts. Will the proposal change this? It is important that contracts negotiated on arm’s length are not changed due to VAT-rules, especially in an environment where financing is an important issue.
- The proposal should clearly state the differences (if any) to the present VAT rules. If the changes would require more "chargeable events" or more "individual supplies" this would also increase the administrative and economic burden for companies.

Article 66

- Harmonization is as such very good. However this new obligation will have a big impact on SME’s. Proportionality is very important. In case an invoice is issued too late, the right to credit input VAT should not be denied/ restricted solely by the fact that the time limit of 15 days has not been met.

Article 67a

- Article 67a implies that art 63 (main rule: chargeable events shall occur and VAT shall become chargeable when the goods or the services are supplied) is applicable for intra community supply of goods (for the acquisition art 68 is applicable). This will not work for in the intra community supplies, as the next example will show:
 - a supplier (e.g. a UK supplier) ships goods to another member state (e.g. Greece) at the end of the month, e.g. 30 March; and
 - the supplier issues an invoice for this shipment in the following week, so e.g. somewhere around 8/10 of April and sends the invoice to its business customer in Greece ; and



- if we assume that the business customer in Greece receives the shipment and the invoice somewhere around 14/20 April, invoice verification will take place (this will take a few days); and
- according article 67a and 68 the supply must be reported in the VAT return (at supplier side as an intra community supply, at customer side as an intra community transaction) and listing over the month March
- however, at the moment the invoice is going to be processed by the business customer (somewhere at the end of April), the VAT return over March already has been filed.
- So from a timing perspective this article will not work.
- Besides, the question arises when a supply takes place
 - If goods are shipped from the UK to Greece; and
 - transport starts at March 30; and
 - date of arrival is April 5.
 - When does the supply take place? When does the right to dispose of tangible property as owner transfers? March 30? April 5? Somewhere in between. INCO terms are dealing with risks not with “ownership”. Member States have a different position regarding INCO terms.
- BUSINESSEUROPE suggest to link the chargeable event to the moment of invoicing (or the 15 day of the following month).

Article 69:

- See remarks 67a. BUSINESSEUROPE suggest to link the chargeable event to the moment of invoicing (or the 15 day of the following month).

Deletion of Article181

- Does this imply that a (small) mistake in an invoice implies no right to deduct? BUSINESSEUROPE stresses that VAT is a consumption tax and that proportionality is an important pillar for a well functioning system of VAT that can facilitate growth in the internal market.

Article 218

- Restriction on formalities. Fiscal formalities are all kind of formalities?

Article 219

- Although art 219 is not amended, BUSINESSEUROPE is of the opinion that to avoid uncertainties an Implementation Regulation should deal with the question who is or who are authorized to amend a VAT invoice. E.g., in case of self billing, is a supplier allowed to amend the self bill?

Article 219a – 2

- This paragraph is unacceptable. This implies that a supplier must apply 27 VAT legislations. Also in case of reverse charge the main rule should be there where the supplier is VAT registered/ established. In case of self billing the legislation of the member state of where the self biller is VAT registered/ established should be applicable. Furthermore, as Article 219a pursuant to its wording is not applicable in case of suppliers not established within the EU, the whole Sections 3/6 of Chapter 3 of Title XI are not applicable in such cases with



detrimental consequences for the customer being liable for VAT according to Article 178 f.

Article 220a

- The implementation of invoicing requirements for financial institutions will increase the administrative burden significantly. We learned that investment banks involved in multiple dealings on daily bases would have to issue multiple invoices.
- Why is the threshold fixed at 200 euro for simplified invoices? BUSINESSEUROPE proposes a 1000 euro, similar to the refund threshold.
- What are the rules for “exemption”. MS of supply or MS of receipt?

Article 221

- A taxable person should be allowed to issue a regular (non simplified) invoice. This to avoid that a taxable person must issue 2 different kind of invoices.

Article 222

- Harmonization is as such very good. However this new obligation will have a big impact for SMEs. Proportionality is very important. In case an invoice is issued too late, the right to credit input VAT should not be denied/ restricted solely by the fact that the time limit of 15 days has not been met.

Article 224

- This is an improvement. In practice supplier and customer discuss the process of self billing in detail as the “invoice” also triggers the payment. In theory supplier and customer could disagree about (certain elements) of a self bill invoice. To avoid uncertainties, BUSINESSEUROPE suggest that an Implementation Regulation should deal with denial of self billing invoices.

Article 226 – 7

- This article is related to article 63 and 67a. When does an intra community supply/acquisition takes place. What is the exact date? BUSINESSEUROPE suggests to link the chargeable event to the moment of invoicing (or the 15 day of the following month). Again, proportionality is very important. In case an invoice is issued with a wrong date, the right to credit input VAT should not be denied/ restricted solely by the fact that the VAT number of the customer is wrong.

Article 226 – 10a

- Reference to self billing is ok, however it should be allowed to make a reference in English or to use an abbreviation similar to 11/11a, e.g. “SBI”.

Article 226 – 11/11a

- Reference to EX RC is an improvement, we assume in all countries the same capitals must be used. So no mandatory local translations.

Article 226b

- See also our remarks under article 220a



- What is the “identification” of the taxable person? This can be interpreted in different ways. An Implementation Regulation is necessary. BUSINESSEUROPE proposes to use name and address.
- What is meant with “identification of goods...”. An Implementation Regulation is necessary. BUSINESSEUROPE proposes to use the description in art 226.
- What is meant with “information”? An Implementation Regulation is necessary. BUSINESSEUROPE proposes to use the description in art 226.

Article 231

- This is an improvement, however art 248 a is new.

Article 232

- The equal treatment is an important step forwards. This will facilitate the introduction of E invoicing.

Article 238

- A higher threshold is as such good, however the option will imply less harmonization. We refer to our remarks under 220a to increase the threshold to 1000 euro.
- What is “particularly difficult” as mentioned in article 238-1-b ”? Member States will interpret these words in different ways, implying less harmonization.
- Article 238-3 does bring a kind of discrimination? However in practice the majority of these kind of supplies will be above 200/400.

Article 246

- Art 246 only relates to storage, and not to issuing. Any solution should be technology neutral.

Article 247

- A 6 years period for VAT is a big improvement. However, there are also other taxes (income tax) other laws (accounting) that enforce an storage/archive of 7 to 10 years. So the improvement is limited.

Article 248a

- What is meant with “control” and “particular”? An Implementation Regulation should make clear that it should be about a specific individual invoice. This to avoid that not by default all invoices are selected to be translated. BUSINESSEUROPE would like to stress that that there should be no specific requirements about the translation, and or the legalization of translations. A taxable person should be allowed to make a translation by himself.

Article 249

- What is meant with “control”? An Implementation Regulation should make clear that it should be about a specific individual invoice. This to avoid that not by default all invoices are selected for a regular control.
- Does this imply on line real time access 24 hours per day by 27 Member States?



- BUSINESSEUROPE fully understands that information and audits are essential for governments, however we would like to stress that audits should be based upon risk management approach. Exchange of information should be routed via the country of establishment.
