BUSINESSEUROPE

POSITION PAPER

GO FOR GROWTH

AN AGENDA FOR THE EU IN 2010-2014

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IMPLEMENTATION OF THE 2010 VAT PACKAGE AND LESSONS FOR FUTURE LEGISLATIVE CHANGES

SUMMARY

The VAT package entered into force on January 1, 2010. In this context, BUSINESSEUROPE is highly concerned about the practical, technical, administrative, and financial issues that businesses face, due to the fact that a number of Member States have not informed businesses properly about its interpretation and/or have not implemented the rules on time. In some Member States, businesses face legal uncertainty and fear penalties for failure to comply with the new rules, even if there was/is no information publicly available about how to do so.

BUSINESSEUROPE would also like to ask the Commission to take legislative action in those particular issues where compliance is not possible under the current rules – such as the moment of the taxable event linked to the supply of a service – and review the relevant part of the Directive.

THE VAT PACKAGE

The VAT package entered into force on January 1, 2010. From this date onwards, new rules for cross-border B2B services (2008/8/EC), for refund applications in accordance with the Eighth Directive (2008/9/EC), and for sales listings of goods and services (EC143/2008), have to be applied.

The VAT Package was adopted in February 2008, and very early on in that year, the business community quickly pointed out that businesses needed to be informed about the practical consequences of the new rules (interpretation of rules, impact on reporting etc.) as soon as possible, given that the implementation and rollout by business of these major changes could take up to a year.

Businesses always face a number of challenges when new VAT rules have to be implemented. In the case of the VAT package, businesses had to go through the following steps:

- decide about the impact of the new legislation;
- check the business operations, map all type of services supplied and or purchased;
- check and update information regarding customers and/or suppliers;
- change ERP systems including implement new VAT codes, change the references and wording of invoices, change (internal) reporting, implement sales listing for services etc.;
- train personnel dealing with AP and AR invoices;
- train personnel dealing with reporting, listing etc.

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These activities require both time and resources. As IT departments have also other obligations to fulfil, strict and timely planning is essential. In some companies, IT departments plan their resources ahead for up to two years.

Member States had almost two years to implement the new rules, yet by the end of December 2009 (even into January 2010), many Member States were not ready. Complying with the new rules regarding the place of supply of services with no information/explanatory notes available has led to legal uncertainty for business, an increase in the administrative burden, and a financial risk should Member States later on form the opinion that business handled their business transactions incorrectly.

An example of legal uncertainty is that only a supply of a taxable service has to be reported. This implies that the seller needs to know which transactions are taxable in the Member State of destination. Businesses have received unclear information regarding how to act, particularly as Member States have adopted different approaches. Another example of legal uncertainty is the scope of the main rules. For instance, different Member States have a different approach regarding warehousing, and some apply the main rule while others apply exceptions to the main rule.

Besides, regarding the exchange of information, the IT portals and connections did not work yet in January 2010 (date when the VAT package entered into force). Each Member State should have developed their own IT portal and connected it to the other 26 Member States' portals, in order for the new VAT refund system to work. According to reports received by BUSINESSEUROPE, this system still does not work in all Member States, and no information is available as to when it will be fully up and running.

Bearing in mind that the application for a refund needs to be submitted for VAT paid during 2009, businesses face the situation that large numbers of claims are not being processed by Member States. Businesses need to manage an additional financial risk in an already strained financial and economic situation.

BUSINESSEUROPE RECOMMENDATIONS

The implementation of the VAT package by Member States should have been ready months before it entered into force. However the actual implementation and current situation of the VAT package clearly shows that there is a lack of common understanding by Member States about the business reality and the challenges they face. Therefore, BUSINESSEUROPE calls on the Commission for action regarding the following issues:

- Publication of practical guidelines, including an overview of all kind of supplies, including the supplies on which Member States do not agree.
- A complete functioning refund system must be put in place by working portals or supporting paper-based system.
- Convince Member States not to charge penalties when businesses do not fully comply with the new rules, and apply a light-touch approach for a period of between 6 to 12 months.

- Coordinate future legislative changes between Member States, in areas such as a building a common portal. This would not only bring efficiencies to Member States, but would facilitate compliance by business.

BUSINESSEUROPE furthermore recommends that the Commission takes appropriate and immediate action in order to change the rules concerning the implementation of new legislation in the future. In this regard, we would like to highlight that the Commission has the **mandate** to harmonise VAT systems across Europe. This needs to be done in order to support future implementation of the VAT changes and minimise the administrative burden for business. Member States' obligations on timely implementation of new rules, including early provision of information/explanatory notes necessary for essential business system changes, must be strengthened. Businesses are required to act as unpaid tax collectors for VAT, and they need correct information in good time to be able to fulfil their obligations.

We also recommend the that Commission proposes that Member States are ready with their national legislation on an **"introduction date"** at least 6 months before new legislation enters into force. This is also the minimum period of time that business need to be informed of the new VAT reporting requirements (i.e. new VAT return forms, etc.) ahead of the law entering into force in order to be able to comply with it. On this basis, the VAT package would have had an introduction date of 2009-07-01 and an effective date of 2010-01-01. However, the refund rules (2008/9/EC) could have had an effective date of 2011-01-01 instead of 2010-01-01 since the rules for supply of services leads to a more common use of reverse charge and hence the refund applications will be fewer.

With the above mentioned different dates, Member States should be forced to create the legislation at least 6 months before the legislation will have effect. It will also put pressure on the Member States to be ready with explanatory notes which gives the business a better environment to comply with the legislation that will be effective at least 6 months later. Businesses will be given the opportunity to react and start the work with systems changes and other necessary changes in good time.

Finally, BUSINESSEUROPE would like to congratulate the Commission for recognising that the current rules regarding moment of the taxable event linked to the supply of a service are impossible to comply with. Therefore, we would like to ask the Commission to take immediate legislative action, and review the relevant part of the Directive.