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GREEN PAPER ON THE FUTURE OF VAT - TOWARDS A SIMPLER, MORE ROBUST AND EFFICIENT VAT SYSTEM

BUSINESSEUROPE welcomes the initiative from the European Commission. The VAT system is of great importance for BUSINESSEUROPE due to the significant impact on day-to-day business. It is our hope that the green paper will bring simplifications to the VAT system that not only alleviates the burden on business, but also on fiscal authorities. Therefore we welcome the opportunity to work with both the Commission AND the Member States with the common aim of simplifying and harmonising the VAT system based on best practices, thereby reducing the complexity, the burdens and the VAT gap.

Clearly, there are numerous areas, where BUSINESSEUROPE would like see changes or improvements to the VAT system. In the short term, BUSINESSEUROPE would suggest focusing on the:

- Mini-one-stop-shop, that was part of the VAT package and should be fully operational by 2015,
- Harmonised implementation of the invoicing directive, for instance by publishing implementing guidelines on e-invoicing,
- Involvement of business into the legal process and practical implementation,
- Involvement of business to identify and facilitate intra-European discussions on practical problems for instance through the Business Expert Group,
- Obligations and risks being forced on businesses when entering into intra-Community trade, by asking for an in-depth analysis into the approach to tax the supply of goods like the supply of services at the place of the establishment of the customer and in parallel finding solutions that would cater for the need to reduce reporting obligations and the risk for legitimate business, and
- Areas for derogations, exemptions and deductibility, carefully reviewing the areas with the aim of harmonising and simplifying the rules, definitions and administrative practices based on best practices.

BUSINESSEUROPE recognises that a number of these issues require a political willingness and compromises and BUSINESSEUROPE hopes that this willingness can be mobilised – to the benefit of all.

Having said this, BUSINESSEUROPE is highly concerned about the section on alternative collection methods which seems to be solely focused on targeting fraud. BUSINESSEUROPE's concern is twofold. Firstly, we fear that this focus may distract attention from the main task of seeking to make the EU a more attractive place for legitimate business to do business. Secondly, the underlying data and assumptions of the section are too weak a basis to embark on significant changes in collection methods. We are not in

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agreement with the conclusions in the green paper nor the recommendations. Realistic measures need to be brought forward, measures that cater for legitimate business and at the same time reduce the VAT gap. The assumptions in the green paper based on full harmonisation are – at present – not seen as realistic and would first require solutions and agreement on most of the other questions in the green paper.
The implication of this is that the split payment method – besides the significant negative impact on cash-flow and other administrative and commercial issues – cannot function smoothly. The green paper is an initiative which business hopes will ideally bring us to full harmonisation over time. So our starting point and current focus should be on today´s challenges and how to resolve them in practice. Having said this, BUSINESSEUROPE does see some merits in the certified taxable person model and the data warehouse model, because they focus on administrative cooperation and harmonisation and can function under the current collection method. Therefore, further work could be done regarding these two models. Of course we have to be mindful of the costs associated with any of these options and, for instance, a proper impact assessment would need to be carried out.

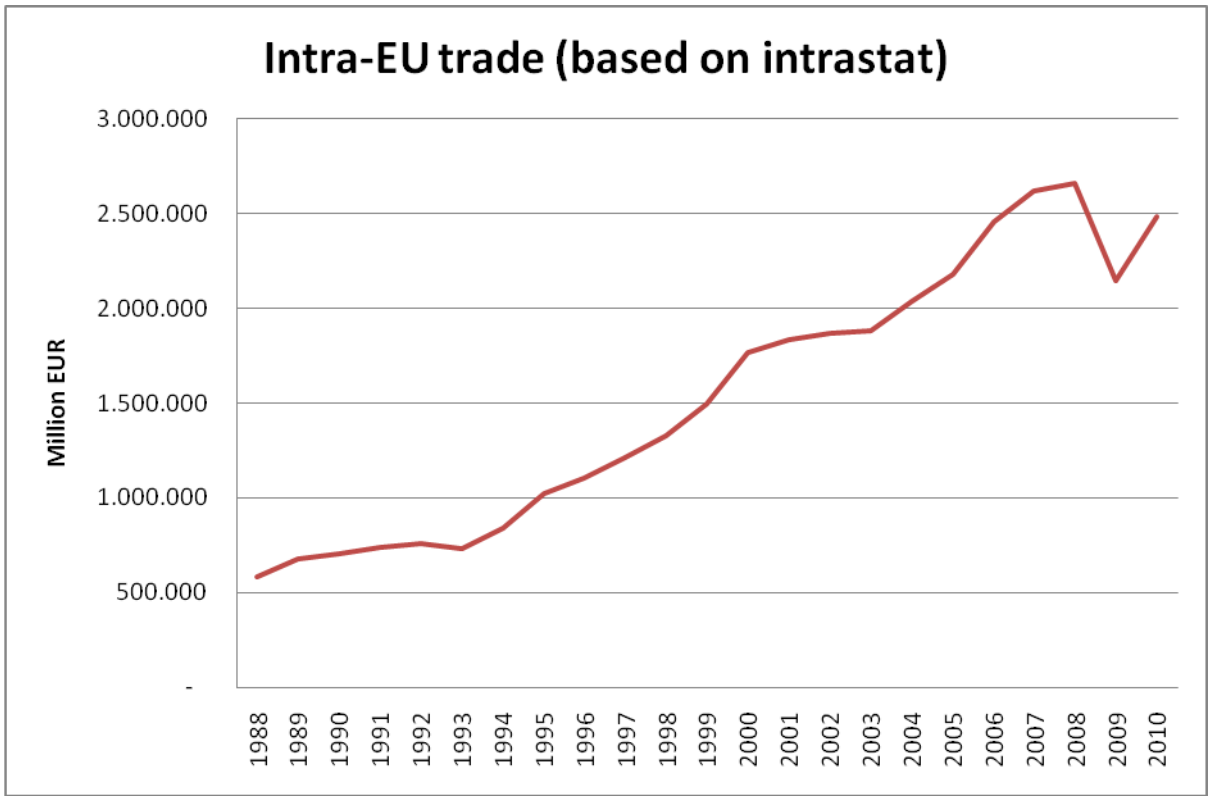
Below we have commented on the elements in the green paper. Our answer reflects the importance, the length and detail of the green paper with accompanying staff papers, etc. Therefore, we have summarised our key messages in the executive summary below and provided detailed answers in the accompanying technical answer. Due to the length of the technical answer, mirroring the importance of the topics and amount of work BUSINESSEUROPE has invested in answering the green paper, each section of the technical answer begins with a short summary.

Should any of the comments raised give rise to questions or comments, please feel free to contact us.

Kristian Koktvedgaard
Chair of the VAT Group at BUSINESSEUROPE

EXECUTIVE SUMMARY

Both businesses and the VAT system have evolved since the common VAT system was introduced in 1967. When the VAT system was first introduced in 1967 with only 6 Member States against the present 27 Member States, the volume of intra-Community trade was fairly limited. However, during the last 40 years the amount of intra-Community trade has risen significantly, both due to the increase in Member States and due to the increase in trade as such. This is illustrated below, where we can see that intra-Community trade alone has risen from roughly 500 billion euro in 1988 to 2,500 billion euro in 2010.



Within the environment of the 1970s/80s, it was effective for business to produce locally and sell locally. Even if the production site was in another European state, a business would first sell to a local subsidiary and the local subsidiary would sell to the local customer. Due to the focus on local-to-local supplies of goods and due to less complex cross-border infrastructures, logistics worked in simpler models (usually supplies to stocks of the customers, inventory owned by customer). Cross-border services were very rare. The markets for services were nearly impenetrable (e.g. an Austrian lawyer could not stand before a French court) and due to a lack of underlying infrastructures, long-distance services were hardly known. Such services were transformed into tangible assets (e.g. music into LPs) and supplied as goods.

In contrast, businesses are today operating in dynamic global markets and face global competition. They therefore need to keep up with their competitors on a global basis which puts great pressure on them in terms of costs, efficiency and technology leadership, particularly as technology and innovation has now become increasingly available as well for countries like China or India.

Country borders are permeable, production is specialised across Europe (and globally), services can be delivered over large distances, particularly with regard to non-tangible services (e.g. download of software, music, etc.), logistics has changed with central warehouses. Due to technological developments (particularly the Internet), customers gain transparency and easy access to global markets. Customers can virtually compare prices on a global level and can order goods and source services from all over the world. Former supplies of goods have dematerialised into supplies of long-distance services, due to the rapid change of the underlying infrastructure. For example music is no longer sold as LPs or CDs but for download from the Internet and increasingly books are sold as e-books.

With implementation of the Single Market in 1993, significant changes were made to the VAT system, especially with the abolition of customs procedures and physical controls of cross-border dispatches of goods at the borders of Member States. The simplifications in 1993 proved to be a significant step forward. However, the development in businesses and trade has put more pressure on the need for a more harmonised VAT system. The pressure has increased after the introduction of the VAT package, shifting the place of taxation of services in general to the place of consumption / customer establishment following a destination principle. Finally, the shift of risk from the member states to businesses when entering into intra-Community trade and the increased reporting obligations has raised the compliance burden for businesses to a level where it is often easier and less risky to trade with third countries rather than other Member States. This is clearly not sustainable. Therefore, BUSINESSEUROPE supports the initiative by the Commission and hopes that the outcome will contribute to a VAT-system, that is

- Simpler and more harmonised,
- Ensures the neutrality for businesses, especially with respect to input-VAT deduction, and
- Facilitates intra-Community trade to the extent that this trade is not significantly riskier, burdensome or complicated as compared with domestic trade.

PLACE OF TAXATION

One of the significant, underlying concepts is whether the place of taxation should follow the origin or the destination principle. The current arrangements for intra-EU trade present an obstacle due to a lack of clarity as regards the 'destination principle' with for example no single central regulation or statutory reference which states the maximum reasonable requirements and documents (based on best practice) to justify zero-rated cross-border transactions. The level of obstacles has in fact reached a level where the whole concept of the internal market is discouraged because of the complex and administratively onerous VAT rules. In fact, it is often easier to export than to trade with other EU Member States.

Due to this need for change, the fact that the origin principle has a lack of political support and the fact that the current taxation is already more or less based on a destination principle, BUSINESSEUROPE finds that a different focus that facilitates the present business models is both required and justified.

BUSINESSEUROPE is of the opinion that the introduction of a VAT union with one set of fully harmonised VAT rules in one single VAT area would be the ultimate preferred arrangement. Both businesses and tax administrations would benefit from the introduction of a VAT union as for both sides it would reduce complexity, enhance the functioning of the Single Market and reduce the VAT gap to a maximum extent.

If a VAT union cannot be realised, the alternative for BUSINESSEUROPE would be to look at the destination principle based on the place of establishment of the customer for B2B transactions. Such taxation for both the supply of services and goods will significantly reduce the complexity of the current VAT system. The reduction in complexity achieved with that model and the provision of a strong tax nexus as the place of establishment of the customer are good prerequisites for a reduction of the VAT gap in the Member States.

However, if not carefully addressed, taxation of the supply of goods based on where the customer is established will lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for internationally operating businesses. Introduction of this arrangement without any enhancements would especially reduce intra-EU operations of SMEs. Enhancement can be achieved by implementing a well functioning one-stop-shop scheme and harmonising rules to a maximum extent. In addition, clear rules should be developed on what constitutes the cross-border supply in supply chains with multiple parties. The cash flow impact can also be mitigated for intra-group transactions by implementing an affiliated VAT trade group concept.

The problems relating especially to multiple VAT registrations can also be mitigated with a reverse charge mechanism. However, as we highlighted in the beginning, the present burdens on legitimate business in terms of risk and compliance associated with the reverse charge mechanism must be reduced. As it has been put in other policy areas: “No change is not an option.

BUSINESSEUROPE calls upon the Commission and the Member States to make an in-depth analysis into the approach to tax the supply of goods like the supply of services at the place of the establishment of the customer. BUSINESSEUROPE will be pleased to assist the Commission and the Member States with relevant business models for such an in-depth analysis.

NEUTRALITY OF THE VAT SYSTEM

One of the key aspects with VAT is the principle of neutrality. This implies that since VAT is a tax on final consumption, business should not bear the burden of the VAT and consequently VAT should never be a source of competitive distortion. Even though measures have been taken to improve the system, VAT has become an important factor in deciding to trade in the EU and the VAT obligations and cash flow impact (re VAT) determines which Member States a company will choose to trade from. This cannot be right when it comes to VAT neutrality and also has significant knock-on effects on the internal market itself.

From a pure VAT perspective, all “commercial transactions” should be taxed and similar goods and services should be subject to the same VAT treatments. In cases, where other concerns play a significant role, BUSINESSEUROPE is of the opinion that businesses should – at the very least – be able to get full input VAT deduction, At present, there are a number of instances where the lack of input VAT deduction either due to the type of company (scope), type of service (exemptions) or nature of service (deductibility) causes problems for businesses. Below we have listed a few important examples:

- Holding companies are precluded from registering for VAT even though BUSINESSEUROPE would argue that they conduct economic activities and should be able to get input VAT deductions and form part of a VAT group. As an example of best practice, BUSINESSEUROPE would like to draw the attention to the practice in Switzerland.
- Subcontractors are at a competitive disadvantage compared to in-house production, when an exempt or out-of-scope business does not have any input-VAT deduction. Examples arise from health care, education, financial services, holding companies and public authorities. This can be solved by either granting the companies an input-VAT deduction or compensation, by zero-rating the company/service or by making the company/service taxable.
- Taxable businesses may find themselves at a competitive disadvantage when they act in competition with exempt or out-of-scope businesses. An example is public authorities performing economic activities in competition with a taxable company. This could be solved by broadening the scope of VAT making the business/authority or service subject to VAT.
- Taxable business may be subject to "hidden VAT" or non deductible VAT in the value chain, for example when VAT-able businesses buy VAT-exempt services like financial services with non-deductible VAT embedded in the price. The same goes for certain public authorities, for instance in waste management. This could be solved by either allowing the taxable business an input-VAT deduction for the VAT embedded in the service or extending the input-VAT deduction to the supplier. Of course, if the supplier is subject to VAT, then there is no direct problem.

The point on input-VAT deduction is also specifically addressed in the green paper:
"The right to deduct input VAT is fundamental to ensuring that the tax is neutral for business. The extent to which VAT is deductible is the key factor, but other factors include when and how VAT should be deducted."

BUSINESSEUROPE agrees with this statement and would like to emphasise that losing the right to deduct input VAT or delays in repayments can lead to large distortions and disturbance of competition. Both SMEs and large companies are greatly concerned about the actual repayment / reimbursement of VAT not only within their country of establishment but even more in cases where input VAT occurs outside the country of establishment. Business face huge cash disadvantages in cases where countries delay a repayment or refuse repayment due to errors of form. This situation has become more dramatic during the last years. As a short-term initiative, the refund system, including the new portals, should be significantly improved. When the VAT package was adopted, BUSINESSEUROPE hoped for significant changes in the area of refunds. However, the reality is that even though the application for refund is now fronted by a local portal, the problems for companies seem to be unchanged. One could essentially talk about a "refund gap" due to the number of hindrances business face in reclaiming the VAT.

In order to strengthen the legal certainty regarding the point of time in which the right to deduct input VAT can be exercised, which is another area of concern, BUSINESSEUROPE would suggest to allow input-VAT deduction at the point of time when the invoiced VAT becomes chargeable.

A separate issue is the divergent practice relating to the definition of exemptions, where differences arise due to different application, standstill clauses or demarcation problems as it can be difficult to determine which services are covered by the exemption directly or indirectly when subcontracted, but closely linked to the exemption. Therefore BUSINESSEUROPE would at the very least like the rules of exemptions to be fully harmonised, also – after appropriate transitional periods – on areas covered be the present standstill clauses.

THE LEGAL PROCESS

BUSINESSEUROPE welcomes the debate on the legal process. A key element is to increase the transparency of the decision-making and to enhance the cooperation between EC, the Member States and business. We believe that through trust, transparency and cooperation we can build a better and simpler VAT system to the benefit of all involved parties.

The choice of legal instrument is secondary if the overarching aim to increase the level of harmonisation is achieved. Having said this, regulations do create an immediate harmonisation. However, increased transparency and co-operation in the drafting and implementation processes should also reduce the complexity of directives, thus also adding to increased harmonisation. BUSINESSEUROPE supports the issuing of non-binding implementation guidelines by the Commission as a significant short-term measure to increase the level of harmonisation. BUSINESSEUROPE welcomes the initiative taken by the Commission regarding the invoicing directive, where BUSINESSEUROPE understands that the Commission will publish implementing guidelines later this year.

BUSINESSEUROPE also supports the initiatives taken by establishing the Business Expert Group to identify and facilitate intra-European discussions on practical problems.

BUSINESSEUROPE would also like to stress the need for a European interpretation body, where both businesses and Member States can get binding answers without having to go through the court systems. The model could be combined with the possibility to bring decisions before the European courts. However the process would be significantly swifter than at present, where businesses have to go through the national courts which are a costly and lengthy procedure and without any guarantee that the question can be referred to a European legal body.

DEROGATIONS AND THE EU'S ABILITY TO REACT QUICKLY

BUSINESSEUROPE finds that, in principle, derogations should be avoided or at the very least only be of a transitional nature. This is due to the fact that derogations are contradicting the overarching aim of harmonisation and simplification. In fact, derogations is a symptom that many MS are not pleased with the VAT system, but are not able to change it on a European level. By making derogations transitional Member States would need to evaluate whether the derogation is beneficial and should be incorporated in the VAT legislation to the benefit for all, or whether the derogation is not beneficial for the EU, and should thus be abolished.

BUSINESSEUROPE recognises the political nature of the derogations and would as a start strongly suggest evaluating the present derogations and deciding on whether they should be abolished immediately, be abolished after a transitional period or be incorporated in the VAT directives.

BUSINESSEUROPE is concerned about using derogations as a short-term measure to combat fraud. As mentioned derogations increases the complexity of the VAT system, especially since short-term derogations seem to stick to legitimate business, while fraudsters move on. In our opinion, fraudsters should not be targeted by derogations, but by close cooperation between tax authorities in the Member States as well as with business.

VAT RATES

The issues of rates are a twofold discussion. First, there is the issue of different rates applying on the same product or service in different Member States. Secondly, there is the issue of scope or tax base; how are goods and services eligible for reduced rates identified? BUSINESSEUROPE would like to stress, that especially the issue of scope or tax base is a problem that needs to be addressed at EU level. If there are different interpretations of the scope of a service subject to reduced rates, it becomes very burdensome for companies when doing business in other Member States.

Therefore, BUSINESSEUROPE would like to stress the need for clearly defining the goods and services that at present can be subject to reduced VAT, preferably organised in "packages" or groups of goods and services. This would allow businesses to streamline their processes, and for businesses engaging in activities in other Member States to understand the scope of a reduced rate. Further, this would ensure consistency between Member States applying a reduced rate.

REDUCING 'RED TAPE'

Reducing 'red tape' is an important issue. However, BUSINESSEUROPE would like to highlight that a number of the burdens are effects of the underlying lack of harmonisation and also lack of trust and cooperation between Member States. An example is the single EU VAT return. It is fairly easy to agree on a format based on best practices. However, in order to function, the underlying rules need to be harmonised to ensure consistent reporting. Otherwise businesses will still struggle to figure out, what the exact content of each field is in each Member State.

Further, differences in administrative practice will also influence the process.
Similar, changing reporting obligation from paper to electronic formats does not remove the underlying problem of both verifying the data and – in the case of transactions in other Member States – to ensure compliance with the specific requirements and interpretations in the other Member States.

Therefore, BUSINESSEUROPE supports the initiatives, especially concerning e-governance, but would like to stress that e-governance also requires harmonisation of the underlying rules, and that electronic reporting is not free of cost for business. The more detailed and frequent the reporting obligations get, the more resources will businesses have to invest in internal controls in order to validate the data transferred. One example of a short-term initiative that would be beneficial to both tax authorities and businesses is the

validation of the sales listings. As the filing is being done electronically, we would assume that the VAT numbers are verified electronically by the tax authorities and that messages are sent to the companies instantly, if they have reported sales to VAT numbers that are no longer valid. This natural detection internal control would aid both authorities and businesses, and can be enacted immediately.

BUSINESSEUROPE would also like to point out, that especially the cost of VAT compliance in cross border context is detrimental to the neutrality of the VAT system. According to a Swedish study in 2006 the compliance costs for VAT correspond to about 3 per cent of total VAT revenues of the Swedish state (in 1993 it was 2.5 per cent of total VAT revenues). The costs are even higher in most other member states.

Some of practical problems businesses face each day is the supposedly simple task of finding the relevant information about the implementation of the rules in a specific member state. Other problems relate to very formalistic approaches from tax administrations and disproportionate sanction regimes in case of for instance misreporting even though no VAT has been lost. This has a significant negative impact on all business SMEs as well as MNEs.

In short, from a business perspective, the current VAT system is making the internal market a less attractive place to invest. Businesses report that trade with non-EU partners is becoming increasingly more interesting than trade with EU partners as a result of the costs and legal risks associated with VAT compliance. Formalities, technicalities and bureaucracy have taken precedence over proportionality and ease of administration. In general terms, the problem we face today is that the European VAT system – which leaves administrative aspects fully in the hands of Member States – does not fit the reality of a deeply integrated internal market. BUSINESSEUROPE calls for a joined effort to streamline the day-to-day administration of the VAT system, guiding legitimate business rather than issuing penalties in cases of misreporting and thereby improving the functionality and reducing the burdens for both businesses and tax administrations.

A well functioning one-stop-shop would improve the VAT system significantly, if it is permitted to become a simplification. A well functioning OSS is vital and an essential element in a destination based system. In order to meet the requirements an OSS should cover input and output VAT as well as all VAT obligations in the Member State (both B2B and B2C). Therefore we recommend following the Commission proposal which is also supported by the HLG. A significant step is to ensure that the implementation of the mini-OSS agreed in the VAT-package is a success and we strongly encourage the Member States and the Commission to devote resources already now. We hope that the mini-OSS will be based on a standardised EU IT platform and we would be happy to contribute in order ensure a successful implementation.

A MORE ROBUST VAT SYSTEM

Throughout the document we have advocated for more harmonized rules, as we find the lack of harmonisation to be the biggest threat to the VAT system. Therefore, we also welcomes a debate on whether the present collection methods needs to be changed or whether it is still the best way to collect VAT. However, any discussion should be based on verifiable facts and realistic assumptions. It should also be considered, whether problems identified in the collection of VAT is founded in shortcomings of the collection method or shortcomings in the underlying rules and administrative practices.

BUSINESSEUROPE has dedicated a significant amount of time to understand the section on the VAT gap including the underlying studies, but we are not in agreement with the conclusions in the green paper nor the recommendations. First of all, studies needs to be undertaken by the Member States to understand the composition of the VAT gap based on a bottom-up approach. These studies should include the black economy. Secondly, realistic measures need to be brought forward, measures that at the same time cater for legitimate business and reduces the VAT gap.

In the feasibility study, one of the basic assumptions is complete harmonisation. BUSINESSEUROPE believes that efforts should be put into solving the underlying problems before changing or addressing the collection methods fundamentally. Therefore we cannot support some of the models introduced – such as the split-payment model – that requires high investments and fundamentally changes the collection in part of the economy – shifting the basis to a payments-based system, and finds that discussions should be postponed until a point in time when the basic assumptions and preconditions are in place.

BUSINESSEUROPE does however see some merits in proposals that are seen as an evolution of the current systems. Therefore it could be suggested to look further into the data warehouse model and the certified taxable person model, provided that the models do not increase the administrative burden on business. However, we need to stress, that problems with the underlying VAT legislation needs to be addressed first and would, in our opinion, significantly improve the VAT system and reduce the VAT gap.

Underlying changes should also prove beneficial to bona fide traders, and BUSINESSEUROPE favours other initiatives to alleviate the burden for bona fide traders. One of BUSINESSEUROPE's key concerns is joint and several liability – especially for SMEs – when trading in the EU. Clear, simple guidelines on how to ensure that they will not be subject to joint and several liability would therefore be highly appreciated, especially since the detailed legislation varies from Member State to Member State.

EFFICIENT AND MODERN ADMINISTRATION OF THE VAT SYSTEM

All the proposals introduced so far in our response build on the day-to-day administration of the VAT legislation. One of the most critical elements is the administration of the VAT system. A key element is to achieve create a better cooperation between businesses and the national tax authorities. Member States and businesses have the same goal – the fight against fraud and legal certainty for bona fide businesses. An administration that is not burdensome for businesses and that allows the tax authorities to secure their revenue. Simple and effective VAT collection and VAT compliance needs to be built up with input from businesses. Cooperation is not only needed between businesses and tax authorities but also between tax authorities and other authorities such as customs and police to enable them to fight against VAT fraud, black market trade and other illegal tax avoidance.

To create an EU internal market the catchwords should be – simplification and harmonisation, legal certainty and streamlined administration, cooperation and better understanding.

BUSINESSEUROPE recognises that there are a number of barriers to overcome. There are cultural differences in the Member States: differences that become a barrier to trust both between tax authorities themselves and between tax authorities and businesses. BUSINESSEUROPE supports the initiatives taken to reduce the barriers, especially by initiatives such as Fiscalis and recently the Business Expert Group. BUSINESSEUROPE hopes that the initiatives will stimulate the dialogue between tax authorities, businesses and the EC enabling us to develop a long-term partnership built on trust.

We would like to highlight that an efficient and modern administration of the VAT system is the most important key to bringing the VAT system forward, as all other initiatives ultimately build on the day-to-day administration of the rules.

BUSINESSEUROPE TECHNICAL ANSWER ON THE GREEN PAPER ON THE FUTURE OF VAT - TOWARDS A SIMPLER, MORE ROBUST AND EFFICIENT VAT SYSTEM

VAT TREATMENT OF CROSS-BORDER TRANSACTIONS IN THE SINGLE MARKET

EXECUTIVE SUMMARY

Before implementation of the Single Market in 1993, the European VAT system for intra-EU trade was based on custom borders, physical controls of cross-border dispatches of goods by customs authorities and VAT border tax adjustment. The European VAT system for intra-EU trade is still based on VAT border tax adjustment. The only difference is the abolition of customs procedures and physical controls of cross-border dispatches of goods at the borders of the Member States. However, the improvements for intra-EU trade achieved by the abolition of customs border controls within the EU have been undone by shifting a significant part of the VAT risks, administrative costs and burdens from tax authorities to European businesses.

Thus, the current arrangements for intra-EU trade present an obstacle due to a lack of clarity as regards the 'destination principle' with for example no single central regulation or statutory reference which states the maximum reasonable requirements and documents (based on best practice) to justify zero-rated cross-border transactions. The level of obstacles has in fact reached a level where the whole concept of the internal market is discouraged because of the complex and administratively onerous VAT rules. In fact, it is often easier to export than to trade with other EU Member States.

Due to this need for change, the fact that the origin principle has a lack of political support and the fact that the current taxation is already more or less based on a destination principle, BUSINESSEUROPE finds that a different focus that facilitates the present business models is both required and justified.

BUSINESSEUROPE is of the opinion that the introduction of a VAT union with one set of fully harmonised VAT rules in one single VAT area would be the ultimate preferred arrangement. Both businesses and tax administrations would benefit from the introduction of a VAT union as for both sides it would reduce complexity, enhance the functioning of the Single Market and reduce the VAT gap to a maximum extent.

If a VAT union cannot be realised, the alternative for BUSINESSEUROPE would be to look at the destination principle based on the place of establishment of the customer for B2B transactions. Such taxation for both the supply of services and goods will significantly reduce the complexity of the current VAT system. The reduction in complexity achieved with that model and the provision of a strong tax nexus as the place of establishment of the customer are good prerequisites for a reduction of the VAT gap in the Member States.

However, if not carefully addressed, taxation of the supply of goods based on where the customer is established will lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for internationally operating businesses. Introduction of this arrangement without any enhancements would especially reduce intra-EU operations of SMEs. Enhancement can be achieved by implementing a well functioning one-stop-shop scheme and harmonising rules to a maximum extent. In addition, clear rules should be developed on what constitutes the cross-border supply in supply chains with multiple parties. The cash flow impact can also be mitigated for intra-group transactions by implementing an affiliated VAT trade group concept.

The problems relating especially to multiple VAT registrations can also be mitigated with a reverse charge mechanism. However, as we highlighted in the beginning, the present burdens on legitimate business in terms of risk and compliance associated with the reverse charge mechanism must be reduced. As it has been put in other policy areas: “No change is not an option”.

BUSINESSEUROPE calls upon the Commission and the Member States to make an in-depth analysis into the approach to tax the supply of goods like the supply of services at the place of the establishment of the customer. BUSINESSEUROPE will be pleased to assist the Commission and the Member States with relevant business models for such an in-depth analysis.

CURRENT OBSTACLES

Q1. Do you think that the current VAT arrangements for intra-EU trade are suitable enough for the single market or are they an obstacle to maximizing its benefits?

In July 2008, BUSINESSEUROPE addressed this question in our paper “Obstacles to the European Internal Market in the Field of VAT”. Unfortunately, the situation has not improved yet, and has even deteriorated for European businesses since then.
Before the implementation of the Single Market in 1993, the European VAT system for intra-EU trade was based on custom borders, physical controls of cross-border dispatches of goods by the customs authorities and VAT border tax adjustment (i.e. zero-rating in the country of origin and import VAT taxation at local rate in the country of destination).

Since 1993, and yet in 2011, the European VAT system for intra-EU trade is still based on VAT border tax adjustment (i.e. zero-rating in the country of origin and acquisition VAT taxation in the country of destination). The only difference is the abolition of customs procedures and physical controls of cross-border dispatches of goods at the borders of the Member States. However, the improvements for the intra-EU trade achieved by the abolition of custom border controls within the EU have been undone by shifting a significant part of the VAT risks, administrative costs and burdens, which stem from the fact that the VAT cross-border tax adjustment is no longer closely monitored by the customs authorities, to European businesses.

VAT risks

Even in straight-forward A to B transactions, where there should not be any issues, there are issues on the VAT risk. As recent ECJ jurisdiction shows, a seller engaged in intra-EU trade will bear the full VAT risk if the buyer fails to comply with his own VAT obligations, regardless of the fact that unlike the tax authorities the seller has no means whatsoever to influence the behaviour of the buyer (cp. ECJ case "X" (C-536/08) and "Facet-Facet Trading" (C-539/08) as of April 22, 2010).

The rules against carousel fraud have restricted legitimate companies from doing business but hardly prevented and punished actors in the black market or those acting in a carousel fraud. Companies tell us that the VAT rules leads to decisions to avoid EU trade and transactions instead diverted to imports from third countries. Further, operations in several stages, specific terms of transport and optimisation of transport are prevented due to obstacles in the VAT area. This means that the **most effective business decisions cannot be made, because of the need to comply with VAT rules.** The level of obstacles has reached a level where the whole concept of the internal market is discouraged because of the complex and administratively onerous VAT rules.

Thus, European traders have little choices if they do not want to bear the full VAT risk of their planned intra-EU supplies:

- They can set up a legal entity (subsidiary) in the Member State of destination and make the intra-EU supply as intra-group supply. In fact, there are estimates that approximately 70% of the intra-EU trade is intra-group trade. However, having to set up a legal entity in the Member State of destination first before engaging in intra-EU trade is a clear pointer to the failure of the Single Market in the field of VAT.
- Alternatively, they can confine themselves to dealing only with long-term customers which have proven to be reliable in fulfilling their own VAT obligations. Thus, the existing VAT system in the EU erects a trade barrier for new entrants to the Single Market.
- Or, the intra-EU trader chooses to subject the supply to VAT border tax adjustments, where there are still customs border controls, i.e. he exports the goods e.g. to Switzerland and asks his customer to pick up the goods there (and to re-import them into the EU).

Supply chain issues - goods

Apart from the VAT risks, the VAT compliance cost for intra-EU supplies of goods are prohibitive. One of the reasons is that the VAT system has not evolved at the same pace as business structures and trade patterns have changed. Thus the uses of both chain transactions (A to B to C, etc.) as well as the use of consignment/call off stock, sourcing and outsourcing, subcontractors etc. are not supported by the VAT system. An estimate by the German Federal Government for example has ranked four reporting requirements in the field of VAT among the top 10 of the most costly bureaucratic burdens in Germany. This is consistent with the findings in the High Level Group. The requirement to submit recapitulative statements (at the time of the estimate quarterly, nowadays even monthly) alone adds up to 854 million euro compliance cost per year. On top of that, business engaged in cross-border supplies out of Germany into other EU Member States have to spend additional 98 million euro yearly to fulfil INTRASTAT reporting requirements. Thus, it is not surprising that almost 20% (9 out of 49) of companies surveyed by BUSINESSEUROPE in 2008 have already refrained from intra-EU supplies due to increased VAT compliance cost or know businesses that have done so.

Another example is the VAT treatment when goods cross an EU border. For example as a result of the transitional rules, entities may be confronted with VAT registrations in other Member States (e.g. when you send a machine from the Netherlands to Luxembourg to be cleaned and then you decide to sell the machine to a customer in Germany, you are confronted with a VAT registration in Luxembourg. Or when you purchase products from a Member State that are shipped to another Member state to be used in a factory for a trial, you will have to register for VAT in the country where the trial is done).

The poor result of the European VAT system for the period 1993 to 2011 is that there has never been a Single Market established in the field of VAT with regard to the supply of goods.

Intra-EU supply of services

Though there have been some significant improvements for the intra-EU supplies of services by the VAT Package in 2010, the European VAT system is still far from establishing a Single Market regarding the VAT treatment of supplies of services, particularly as additional reporting requirements for services in the recapitulative statements have been imposed. Such additional burdens do not exist regarding the supply or receipt of services to and from parties established outside the EU.

One example is leasing of movable goods, e.g. laptops. If an IT company intends to lease out laptops throughout the EU for a period of e.g. four years, sources the laptops from one Member State but cannot guarantee that the laptops will return to the same Member State after the expiry of the leasing period, this IT company will have to register for VAT in all Member States of its customers. Such VAT registration is only due to reporting the intra-EU acquisition of the laptops in those Member States. Apart from the significant bureaucratic burden of those VAT registrations, such registrations are particularly annoying as they are not required for the ongoing supply of the leasing services, which are subject to the reverse charge mechanism.

The leasing example is indicative of the **persisting lag in implementation of the Single Market regarding the VAT on supply of services within the EU.**

Overall – a prominent example for the prisoner's dilemma

Overall, the VAT system as it exists in the EU can be seen as a prominent practical example of the prisoner's dilemma: since the Member States did not trust each other in 1992 (and ever since), they have lost billions of VAT and other tax revenues due to honest businesses refraining from entering the Single Market and due to VAT fraudsters exploiting the existing fragmented VAT system.

Suggested initiatives in our July 2008 paper

In our paper on obstacles dated July 2008 we suggested initiatives in the following areas as a short-term solution:

- Reduction of the options for derogations granted to Member States (Q 17);
- Creation of a central organ at EU level to provide guidelines on the application of directive 2006/112/EC to taxable persons (Q 15);
- Reduction of the bureaucratic cost for intra-Community supplies to the indispensable minimum (Q 21);

- Harmonisation and simplification of the rules as well as acceleration of the procedures for obtaining input VAT deductions or refunds (Q 9+10);
- Removal of interest and penalties on VAT related to errors of form if the Member State in question has not suffered any shortfall in VAT revenue (Q 33).

We acknowledge that these concerns are covered by the green paper and refer to the specific answers (indicated above) on the specific topics.

Conclusion

To conclude, the current arrangements for intra-EU trade present an obstacle for maximising its benefits. The shift of risk from the member states to businesses when entering into intra-Community trade and the increased reporting obligations has raised the compliance burden for businesses to a level, where it is often easier and less risky to trade with third countries rather than other Member States. This is clearly not sustainable and a solution must be found that alleviates the burdens for legitimate business and facilitates trade in the internal market.
The lack of clarity as regards the 'destination principle' with for example no single central regulation or Statutory Reference which states the maximum reasonable requirements and documents (based on best practice) to justify zero-rated cross-border transactions has added to the burdens. Also a range of reporting requirements (sales listings, INTRASTAT and VAT returns) give rise to significant compliance costs.

ORIGIN PRINCIPLE, DESTINATION PRINCIPLE OR OTHER VARIANTS

Q2. If the latter, what would you consider the most suitable VAT arrangements for intra-EU supplies? In particular, do you think that taxation in the Member State of origin is still a relevant and achievable objective?

SUMMARY

The current VAT system has moved away from the initial commitment to implement the origin principle. There does not seem to be political support to realise the origin principle. BUSINESSEUROPE views that the lack of political support for the origin principle, the need for change and a current taxation already more or less based on destination principle, justifies and requires a different focus that facilitates the present business models.

BUSINESSEUROPE is of the opinion that the introduction of a VAT union would be the ultimate preferred arrangement. In a VAT union, businesses only have to deal with one set of fully harmonised VAT rules in one single VAT area, be subject to fully harmonised VAT rates and operate under one EU VAT number. Both businesses and tax administrations would benefit from the introduction of a VAT union as for both sides it would reduce complexity, enhance the functioning of the Single Market and reduce the VAT gap to a maximum extent.

If a VAT union cannot be realised, the alternative for BUSINESSEUROPE would be to look at the destination principle based on the place of establishment of the customer.

Such taxation for both the supply of services and goods will significantly reduce the complexity of the current VAT system. It will foster the “trade in tasks” (distribution of production process to different geographical locations/member states in order to optimise the production) within the Single Market and will thus enhance the competitiveness of the European Union as a whole on the global markets. The reduction in complexity achieved with that model and the provision of a strong tax nexus as the place of establishment of the customer are good prerequisites for a reduction of the VAT gap in the Member States.

However, if not carefully addressed, taxation of the supply of goods based on where the customer is established will lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for international operating businesses. Introduction of this arrangement without any enhancements would especially reduce intra-EU operations of SMEs.
Enhancement in the area of multiple registrations can be achieved by implementing a well functioning one-stop-shop scheme and harmonise rules to a maximum extent.

Statistics show that cross-border trade within the EU predominantly takes places between members of the same group of companies. The cash flow impact can be mitigated by implementing an affiliated VAT trade group concept on an EU-wide basis, consisting of members of the same group of companies, but established in different Member States. Trade within the affiliated VAT trade group should be seen as trade within one company and thus without VAT.

The introduction of an affiliated VAT trade group concept would not solve reporting and cash flow issues for transactions between third parties. These issues may also be tackled via the introduction of a reverse charge mechanism. A reverse charge mechanism would limit the requirement of foreign reporting obligations and neutralise negative cash flow impact for businesses. However, BUSINESSEUROPE recognises the sensitivity of an introduction of a reverse charge mechanism as such mechanism needs to be accompanied by reasonable control measures to avoid untaxed final consumption. It is of utmost importance that such control measures will not lead to new VAT obstacles to the Single Market. BUSINESSEUROPE will be pleased to assist the Commission and the Member States in defining reasonable control measures.

BUSINESSEUROPE calls upon the Commission and the Member States to make an in-depth analysis into the approach to tax the supply of goods like the supply of services at the place of the establishment of the customer. BUSINESSEUROPE will be pleased to assist the Commission and the Member States with relevant business models for such an in-depth analysis.

VAT-UNION

The green paper rightly sets out that, from the start of VAT harmonisation in the EU, Member States took a commitment for the introduction of a VAT system tailored to the Single Market and operated across Member States in the same way as within a single country.
BUSINESSEUROPE believes that full realisation of this commitment would mean the introduction of a single VAT territory or in other words: a VAT union.

Translated into an operative system, the VAT union would result in one fully harmonised EU-wide VAT territory without VAT border tax adjustments, comparable with the customs union. Thus, there would not be any differences, e.g. whether goods are supplied from Sweden to Sweden or from Sweden to Poland or from Cyprus to Sweden, the VAT treatment would be exactly the same.

Reduction of complexity

A VAT union would reduce complexity to a maximum extent as in a VAT Union businesses only have to deal with one set of fully harmonised VAT rules, be subject to fully harmonised VAT rates and operate under one EU VAT number.
As a result both B2B and B2C transactions would be straightforward to manage for all involved parties involved. There would be for instance no more complexity around B2B intra-EU supply chains and B2C distance selling.

Enhancement of the Single Market

Similar to the existing customs union, a VAT union would enhance the functioning of the Single Market to a maximum extent from a tax perspective. Meeting VAT requirements would in principle no longer form a potential obstacle for doing business in the EU.

Reduction of the VAT gap

Introduction of a VAT union would not decrease the VAT gap insofar it is related to the black economy[1]. However, the introduction of a VAT Union would make a difference for part of the VAT gap that relates to VAT errors/inefficiencies and MTIC fraud in its current form. VAT errors/inefficiencies would decrease because complexity of the VAT system would reduce. MTIC fraud in its current form would no longer be an issue as in a VAT union there would be no distinction between domestic and intra-EU supplies.

Conclusion VAT Union

BUSINESSEUROPE is of the opinion that a VAT Union would be the most suitable and ideal VAT arrangement for dealing with intra-EU supplies.
Both businesses and tax administrations would benefit from the introduction of a VAT union as for both sides it would reduce complexity, enhance the functioning of the Single Market and reduce the VAT gap to a maximum extent.

[1] Please refer to our answer to question 30 for a discussion on the VAT gap and the black economy

TAXATION BASED ON DESTINATION PRINCIPLE – CUSTOMER ESTABLISHMENT

As the European Commission has rightly analysed, any VAT taxation based on the destination principle does not necessarily only translate into taxation where the goods arrive. Taxation at destination is also realised in a system that imposes the VAT where the customer is established, because the customer is the beneficiary of any taxable supply of goods to whom the "right to dispose of tangible property as owner" (cp. Article 11 Directive 2006/112/EC) is transferred. Thus it is a consequent approach to link the place of taxation to the place of establishment of the customer. Directive 2008/8/EC for the place of taxation regarding the supply of services has shown that such an approach works in practice.

Reduction of complexity

Recent EC case law (cp. cases C-245/04 EMAG Handel Eder [2006] ECR I-3227; C-430/09 Euro Tyre Holding BV [2010]) has clearly demonstrated the large difficulties for Member States and business to establish the right place of taxation regarding the supply of goods as soon as more than two parties are involved in supplies of goods with one dispatch. The risk for legitimate business to comply with the complex rules has even increased to the judgment of the ECJ in the joint cases C-536/08 "X" and C-539/08 "fiscale eenheid Facet-Facet Trading".

Supplies of goods in today's markets is often no longer a simple A-to-B transaction, but increasingly A-to-B-to-C (-to-D-to-E-, etc.) transactions. Whereas in A-to-B-to-C the already complex triangulation rules (Articles 42, 197 Directive 2006/112/EC) provide a set of simplification, it has to be noted that those rules are implemented in different ways in the EU. If more than three parties are involved in a supply of goods with one cross-border dispatch of the goods, the VAT treatment becomes rather unpredictable as the Member States have highly divergent approaches. BUSINESSEUROPE has addressed that issue in its paper dated 30 April 2009. That is even more true, in cases there are more than one dispatches in an A-to-B-to-C (-to-D-to-E-, etc.) (fractured dispatch).

Apart from the complexity of cross-border supplies of goods involving more than just two parties, another complexity arises from the nature of modern business models. Modern business models strive to provide a value added to the customer. For example, a car manufacturer has no interest in buying a certain quantity of coatings, but has an interest in getting the car bodies produced in his plant coated. Thus, a car producer will only pay per car body coated ("pay per unit"). The coatings supplier will thus install a coating line at the plant of the car producer, will employ the painters and will – last but not least – provide the required coatings. Similar examples can be found in the information service sector ("pay per user"). Supplies of goods and services are increasingly tied together to provide a delivery package adding value to the customer's business. The distinction into supplies of services and supplies of goods has thus become outdated with today's economic realities and as a result particularly burdensome.

Today's economic realities hence call for a single set of rules for establishing the place of taxation in cross-border transactions within the EU. As the basic rule establishing the place of taxation for supplies of services, article 44 directive 2006/112/EC as amended by directive 2008/8/EC, provides a rather straight-forward and well to comply with rule for any suppliers, that rule should be the general rule for all taxable supplies, being it supplies of goods or supplies of services.

The reduction of complexity with such a basic rule is at least threefold:

(1) To establish the place of establishment of the customer is much less burdensome for any supplier, than to establish the destination of the dispatch of goods, in particularly for pick-up deliveries (e.g. "EXW"). In some cases, competition law implications even restrict suppliers to ask their customers regarding the whereabouts of the goods supplied. The only way to solve such irresolvable conflicts of laws is to link taxation to the place of establishment of the customer.

(2) The complexity of A-to-B-to-C (-to-D-to-E-, etc.) will be resolved as under the rule of linking taxation to the place of establishment of the customer the above described sets of rules will simply become obsolete.

(3) The burdensome and sometimes irresolvable distinction into supplies of goods and supplies of services will become obsolete as well.

Taxation based on customer establishment does mean that international operating business will in principle be confronted with different VAT rates and application of different local VAT rules. Preventative and/or mitigating schemes should be considered to address this complexity.

Enhancement of the Single Market

As the WTO observe it, specialisation is no longer just based on the comparative advantage in producing a final product but on the comparative advantages related to each step of the global value chain leading to the production of the final good, the so-called "trade in tasks". "Trade in tasks" basically means that the end-to-end process leading to an end product is no longer concentrated in one single location, but is divided up and geographically spread.

Which such a "trade in tasks" in the Single Market, steps in the value chain will be made in the Member State, where there is a comparative advantage for such a step, i.e. economic resources within the European Union will be used in the most efficient way. That will increase the whole European Union's competitiveness on the global markets. Taxation based on customer establishment will foster the international division of work and thus the "trade in tasks" within the Single Market.

If the place of taxation will be linked to the place of establishment of the customer for intra-EU B2B supplies of services and goods, new business models will not fail because of the complex VAT laws for cross-border supplies in the Single Market.

However, if not carefully addressed, taxation based on where the customer is established will lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for international operating businesses. Introduction of this arrangement without any enhancements would especially reduce intra-EU operations of SMEs.
Enhancement in the area of multiple registrations can be achieved by implementing a well functioning one-stop-shop scheme and harmonising rules to a maximum extent.

Statistics show that cross-border trade within the EU predominantly takes places between members of the same group of companies. The cash flow impact can be mitigated by implementing an affiliated VAT trade group concept on an EU wide basis, consisting of members of the same group of companies, but established in different Member States. Trade within the affiliated VAT trade group should be seen as trade within one company and thus without VAT.

The introduction of an affiliated VAT trade group concept would not solve reporting and cash flow issues for transactions between third parties. These issues may be tackled via the introduction of a reverse charge mechanism. A reverse charge mechanism would limit the requirement of foreign reporting obligations and neutralise negative cash flow impact for businesses. However, BUSINESSEUROPE recognizes the sensitivity of an introduction of a reverse charge mechanism as such mechanism needs to be accompanied by reasonable control measures to avoid untaxed final consumption. It is of utmost importance that such control measures will not lead to new VAT obstacles to the Single Market. BUSINESSEUROPE will be pleased to assist the Commission and the Member States in defining reasonable control measures.

Reduction of the VAT gap

The proposed approach to have the place of taxation at the place of establishment of the customer for supplies of services and goods can be significantly less complex than the current set of rules for the taxation of intra-Community supplies. As higher complexity is a breeding ground for unintentional mistakes and fraud, vice versa the potential less complex new approach of customer establishment is an enabler to reduce the VAT gap. Both for suppliers and tax administrations it will be easier to focus on tax payers resident in their Member State and to know the status of such tax payers. Workarounds like article 41 directive 2006/112/EC will become obsolete. A fixed tax nexus like the establishment of a VAT person is from a tax authorities' perspective a much better nexus for taxation than the floating nexus of the end of a dispatch.

There will not be any loss on information on the product flows in the EU, as the Member States can still rely on other reporting, which under the current set-up is burdensome and unnecessary double reporting on the same issue for business.
To realize the potential of effectively reducing the existing VAT gap as a result of errors and inefficiencies, harmonisation of rules, introduction of an affiliated VAT trade group and/or a intra-EU reverse charge mechanism will be required.
It should be noted that taxation based on customer establishment will not decrease the black economy.

Conclusion customer establishment

The implementation of a destination principle based on the place of residence of the customer for B2B for both supply of services and supplies of goods will significantly reduce the complexity of the current VAT system. It will foster the "trade in tasks" within the Single Market and will thus enhance the competitiveness of the European Union as a whole on the global markets. The reduction in complexity achieved with that model and the provision of a strong tax nexus as the place of establishment of the customer are good prerequisites for a reduction of the VAT gap in the Member States.

However, if not carefully addressed, taxation based on where the customer is established will lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for international operating businesses. Introduction of this arrangement without any enhancements would especially reduce intra-EU operations of SMEs.

Enhancement in the area of multiple registrations can be achieved by implementing a well functioning one-stop-shop scheme and harmonising rules to a maximum extent, by allowing for affiliated VAT trade groups for members of the same group of companies, or for a

reverse charge mechanism, provided that such mechanism is accompanied by control measures restricted to a reasonable dimension which will not lead to new VAT obstacles to the Single Market.

BUSINESSEUROPE will be pleased to assist the Commission and the Member States in defining such reasonable control measures.

BUSINESSEUROPE calls upon the Commission and the Member States to make an in-depth analysis into the approach to tax the supply of goods like the supply of services at the place of the establishment of the customer. BUSINESSEUROPE will be pleased to assist the Commission and the Member States with relevant business models for such an in-depth analysis.

TAXATION BASED ON DESTINATION PRINCIPLE - WHERE THE GOODS ARRIVE

Cross border taxation of both goods and services is more of less now based on destination principle. Difference is however that taxation of cross border supply of services is based on the establishment of the customer whereas taxation of cross border supply of goods is in practice based on where the goods arrive. As described earlier, business models have developed in a way which is not supported by the current distinction between the taxation of services and goods.

Reduction of complexity

Cross border taxation of goods is in practice now based on the destination principle. However, under the current system the customer has to report the intra-Community acquisition in Member State where the goods arrive whereas under the proposed arrangement the supplier will instead have to report the supply in the Member State of arrival. The customer will no longer make an intra-Community acquisition, but instead a regular purchase. Contrary to the current situation, this will have adverse consequences for businesses as they will exactly need to know to which Member States the goods depart and register and report accordingly for VAT purposes. As a result international operating business will be confronted with different VAT rates and application of different local VAT rules. A further critical issue that remains under this arrangement is where to report in the supply chain the intra-EU supply in case multiple parties are involved.

Complexity will be reduced to the extent that under this arrangement there is no requirement to report transfer of own goods to other Member States.

Taxation based on where the goods arrive does not address the issue of goods and services being taxed differently.

Enhancement of the Single Market

Equally to taxation based on customer establishment, taxation based on where the goods arrive will in principle lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for international operating businesses. Introduction of this arrangement without any enhancements would especially reduce intra-EU operations of SMEs.

Again enhancement in the area of multiple registrations can be achieved by implementing a well functioning one-stop-shop scheme and harmonising rules to a maximum extent. In addition, clear rules should be developed on what constitutes the cross-border supply in supply chains with multiple parties

The cash flow impact can also be mitigated by implementing an affiliated VAT trade group concept.

The introduction of an affiliated VAT trade group concept would not solve reporting and cash-flow issues for transactions between third parties. Also here these issues may be tackled via the introduction of a reverse charge mechanism with at same time taking in consideration the sensitivity of this topic.

Reduction of the VAT gap

Taxation based on where the goods arrive, will not decrease black economy.
Without harmonisation of rules, introduction of affiliated VAT trade group and/or a reverse charge mechanism, part of the VAT gap that relates to errors and inefficiencies are expected to increase as international operating businesses will have to apply foreign local rules.

Conclusion where the goods arrive

Taxation based on where the goods arrive will in principle lead to multiple VAT registrations, increased compliance costs and have a huge cash flow impact for international operating businesses. This would not reduce complexity, enhance the single market or reduce the VAT gap in general unless measures, like harmonisation of rules, a well functioning one-stop-shop, an affiliated VAT trade group concept and a reverse charge mechanism are considered.
Taxation based on where the goods arrive will mean that goods and services are being taxed differently. Such distinction does not facilitate evolved business models. BUSINESSEUROPE is therefore in favour of a destination principle that is based on taxation where the customer is established.

TAXATION BASED ON ORIGIN PRINCIPLE - ORIGIN OF THE GOODS AND SERVICES

Fiscal frontiers were abolished in 1993 with the end-state in mind that taxation of cross-border supplies shall take place on origin principle. Since then cross border taxation has more and more moved away from the end-state thought of taxation on origin principle. Cross-border taxation of both goods and services is in practice now based on destination principle. Taxation based on origin principle is not widely supported by the Member States.

Reduction of complexity

Taxation based on origin principle will specifically reduce complexity in the area of cross-border B2C transactions of goods. Distance-selling will no longer have to be subject to special arrangements and will no longer have to lead to multiple foreign VAT registrations.

Origin based taxation will further reduce complexity for B2B transactions in straightforward cross-border supply chains. The supplier will charge VAT by default and will no longer bear the risk of not rightfully applying a VAT zero rate or exemption. However, mirror wise

complexity will be increased from a purchase perspective as the customer will be confronted with different VAT rates on their purchases which the customer will need to recover.

Complexity also remains for supply chains with more than two parties involved as those supplies chains will still cause foreign registrations and application of different rules and rates for parties involved.

Complexity will be reduced to the extent that under this arrangement there is no requirement to report transfer of own goods to other Member States.

Complexity of the taxation of services will increase as the current embedded destination principle will be abandoned and the origin principle would have to be newly defined and embedded.

Enhancement of the Single Market

Taxation based on origin principle will only enhance the functioning of the Single Market, if VAT rates are harmonized to a high degree. If not harmonised, at least B2C activities are likely to be concentrated in the Member States with the lowest VAT rates.

Furthermore, cross-border supply chains with multiple parties will still trigger foreign VAT registrations and application of different rules and rates. Enhancement in this area can be achieved by implementing by a well functioning one-stop-shop scheme, developing clear rules on what constitutes the cross-border supply in supply chains with multiple parties and harmonisation of rules in general. Introduction of a one-stop-shop will also enhance the recovery of foreign VAT charged.

Taxation based on origin principle will have a huge cash flow impact for businesses operating cross-border within the EU. This cash flow impact can be mitigated by implementing the earlier described affiliated VAT trade group concept.

The current VAT system has moved away from the initial commitment to implement the origin principle. There does not seem to be political support to realise the origin principle. BUSINESSEUROPE is of the opinion that the introduction of a VAT union would be the ultimate enhancement of the functioning of the Single Market. If a VAT union cannot be realised, the alternative for BE would be to look at the destination principle rather than the origin principle. BE views that the lack of political support for the origin principle, the need for change and a current taxation based on destination principle, justifies and requires a different focus that facilitates the earlier described and evolved business models.

Reduction of the VAT gap

VAT errors/inefficiencies would not decrease significantly as complexity of the VAT system remains in the sense of foreign registrations and application for foreign rules and rates.

Conclusion origin of the goods and services

The current VAT system has moved away from the initial commitment to implement the origin principle. There does not seem to be political support to realise the origin principle. BUSINESSEUROPE is of the opinion that the introduction of a VAT union would be the ultimate enhancement of the functioning of the Single Market. If a VAT union cannot be realised, the alternative for BUSINESSEUROPE would be to look at the destination principle

rather than the origin principle. BUSINESSEUROPE views that the lack of political support for the origin principle, the need for change and a current taxation based on destination principle, justifies and requires a different focus that facilitates the earlier described and evolved business models.

TAXATION BASED ON ORIGIN PRINCIPLE - SINGLE PLACE OF TAXATION

Single place of taxation is just another variant of taxation based on origin principle that will likely not be supported by the Member States.

Reduction of complexity

Equally to taxation based on the origin of goods and services, single place of taxation will reduce complexity in the area of cross-border B2C transactions of goods.

There will no longer be complexity for B2B transactions regardless the kind of supply chain. The supplier will charge VAT at default of the Member State that is considered as tax domicile for that supplier. However, mirror wise complexity will increase from a purchase perspective as the customer will be confronted with different VAT rates on their purchases from foreign suppliers which the customer will need to recover. Complexity in this area will only be reduced, if rules and rates are harmonised to a high degree.

Complexity will be reduced to the extent that under this arrangement there is no requirement to report transfer of own goods to other Member States.

Enhancement of the Single Market

Single place of taxation will only enhance the functioning of the Single Market, if VAT rates are harmonised to a high degree. If not harmonised, economic activities are likely to be concentrated in the Member States with the lowest VAT rates.

Single place of taxation will have a huge cash flow impact for businesses operating cross-border within the EU as they will be charged by default with foreign VAT. Enhancement in this area can be achieved to a limited extent by implementing a well functioning one-stop-shop scheme through which VAT refund process can be streamlined. Cash flow impact can be further mitigated by implementing the earlier described affiliated VAT trade group concept.

As already indicated, BUSINESSEUROPE views that the lack of political support for the origin principle, the need for change and a current taxation based on destination principle, justifies and requires a different focus that facilitates the earlier described business model development.

Reduction of the VAT gap

The gap related to VAT errors/inefficiencies would be minimised.

Conclusion single place of taxation

BUSINESSEUROPE is of the opinion that the lack of political support for the origin principle, the need for change and a current taxation based on destination principle, justifies and requires a different focus that facilitates the earlier described business model development.

BUSINESSEUROPE

NEUTRALITY OF THE VAT SYSTEM

EXECUTIVE SUMMARY

One of the key aspects with VAT is the principle of neutrality. This implies that since VAT is a tax on final consumption, business should not bear the burden of the VAT and consequently VAT should never be a source of competitive distortion. Even though measures has been taken to improve the system, VAT has become an important factor in deciding to trade in the EU and the VAT obligations and cash flow impact (re VAT) determines which Member States a company will choose to trade from. This cannot be right when it comes to VAT neutrality and also has significant knock-on effects on the internal market itself.

From a pure VAT-perspective all "commercial transactions" should be taxed and similar goods and services should be subject to the same VAT treatments. In cases, where other concerns play a significant role, BUSINESSEUROPE is of the opinion that businesses should – at the very least – be able to get full input VAT deduction, At present, there are a number of instances where the lack of input VAT deduction either due to the type of company (scope), type of service (exemptions) or nature of service (deductibility) causes problems for businesses.

The key issues are:

- Holding companies are retained from registering for VAT even though BUSINESSEUROPE would argue that they conduct economic activities and should be able to get input VAT deductions and take part of a VAT group. As an example of best practice BUSINESSEUROPE would like to draw the attention to the practice in Switzerland.
- Subcontractors are at a competitive disadvantage compared to in-house production, when an exempt or out of scope business does not have any input VAT deduction. Examples arise from health care, education, financial services, holding companies and public authorities. This can be solved by either granting the companies an input VAT deduction or compensation, by zero-rating the company/service or by making the company/service taxable.
- Taxable businesses may find themselves at a competitive disadvantage when they act in competition with exempt or out of scope businesses. An example is public authorities performing economic activities in competition with a taxable company. This could be solved by broadening the scope of VAT making the business/authority or service subject to VAT.
- Taxable business may be subject to "hidden VAT" or non deductible VAT in the value chain, for example when VAT-able businesses buy VAT-exempt services like financial services with non-deductible VAT embedded in the price. The same goes for certain public authorities, for instance in waste management. This could be solved by either allowing the taxable business an input VAT deduction for the VAT embedded in the service or extending the input VAT deduction to the supplier. Of course, if the supplier is subject to VAT, then there is no direct problem.

The point on input VAT deduction is also specifically addressed in the green paper:
"The right to deduct input VAT is fundamental to ensuring that the tax is neutral for business. The extent to which VAT is deductible is the key factor, but other factors include when and how VAT should be deducted."

BUSINESSEUROPE agrees with this statement and would like to emphasise that losing the right to deduct input VAT or delays in repayments can lead to large distortions and disturbance of competition. Both SME's and large companies are greatly concerned about the actual repayment / reimbursement of VAT not only within their country of establishment but even more in cases where input VAT occurs outside the country of establishment. Business face huge cash disadvantages in cases where countries delay a repayment or refuse repayment due to formalistic errors. This situation has become more dramatic during the last years. As a short-term initiative, the refund system, including the new portals, should be significantly improved. When the VAT-package was adopted, BUSINESSEUROPE hoped for significant changes in the area of refunds. However, the reality is that even though the application for refund is now fronted by a local portal, the problems for companies seem to be unchanged. One could essentially talk about a "refund gap" due to the number of hindrances business face in reclaiming the VAT.

In order to strengthen the legal certainty regarding the point of time in which the right to deduct input-VAT can be exercised, which is another area of concern, BUSINESSEUROPE would suggest allowing input-VAT deduction at the point of time when the VAT invoiced becomes chargeable.

A separate issue is the divergent practice relating to the definition of exemptions, where differences arise due to different application, standstill clauses or demarcation problems as it can be difficult to determine which services are covered by the exemption directly or indirectly when subcontracted, but closely linked to the exemption. Therefore BUSINESSEUROPE would at the very least like the rules of exemptions to be fully harmonised, also – after appropriate transitional periods – on areas covered be the present standstill clauses.

THE SCOPE OF VAT

Q3. Do you think that the current VAT rules for public authorities and holding companies are acceptable, particularly in terms of tax neutrality, and if not, why not?

PUBLIC AUTHORITIES

BUSINESSEUROPE believes that the current VAT rules for public bodies and the application of the rules are not neutral and therefore need to be thoroughly reviewed. Distortion of competition is becoming a serious problem. Public authorities are becoming more and more often active as regular economic operators, for example regarding construction work, financial and insurance services, different forms of consultancy, services of recruitment and selection, outplacement and career guidance, in sourcing of pure economic activities etc. Private businesses on the other hand are becoming more active in sectors that used to be the privileged domain of public authorities for example regarding energy, public transport, waste management, healthcare, education etc. Furthermore, public bodies are involved in complex arrangements with private companies (e.g. public-private partnerships).

The VAT treatment of public authorities also offers an incentive not to outsource to private sector companies the supply of goods or services that are merely ancillary to the public activities, although the same goods or services could be supplied more efficiently and at a lower cost (excluded VAT) by a private sector company. This results in a non-efficient allocation of public resources. In some member states, VAT compensation funds are destined to mitigate this negative incentive. However, as the compensation mechanisms are not harmonised, it is difficult for business to penetrate markets in other member states. This also reduces instances were creative public authorities try to get into a refund position.

Article 13 of the VAT directive (2006/112/EC) is unclear and leads to complicated issues. One example is how to decide whether public bodies are "governed by public law". Another issue is how to determine when public bodies are engaged in activities or transactions "as public authorities". This is directly linked to the fundamental and highly sensitive philosophical, ideological and political question of the role of public authorities in today's society, more precisely: where does such a role stop? Another difficult issue is to determine what is a "significant" distortion of competition? BUSINESSEUROPE believes that these rules should be clarified and that a formal procedure should be introduced to enable other (private sector) taxable persons to take up these issues with the tax authorities.

BUSINESSEUROPE believes that it is essential to have VAT rules that ensure a level playing field to avoid distortions of competition. Public Bodies should only be considered as a non-taxable person for their exclusive ability and legitimacy to provide pure public goods, such as the power to legislate or to administer justice, activities for which they are never in competition with businesses. Supplies of goods or services which could be performed by both private and public bodies need to be within the scope of VAT to achieve neutrality or be compensated for non-deductable input VAT in the same manner as public bodies' true VAT compensations funds.

Please note, that even though public authorities might be subject to VAT, the services may be zero-rated in order to reflect the public service element on the one side and to create a level playing field on the other side.

HOLDING COMPANIES

Even though a large number of EJC-decisions are dealing with holding companies there is still uncertainty. A lot of questions are still not answered and therefore lead to discussions between business and fiscal authorities. From BUSINESSEUROPEs perspective, holding companies engage by nature in economic activities and should be able to get an input-VAT deduction.

A key point is the different interpretation in respect of the extent a company has to perform services to be a VAT-able person. Today, you could take 5 VAT-specialists and get 5 different answers. BUSINESSEUROPE believes that if the purpose of a holding is more than for a pure financial interest, the holding should be treated as a VAT-able person with the general right to deduct input VAT. The roles of holding companies have evolved over the last years and the option to be treated as a VAT-able person should be seen as a natural extension of the regime. This is also in line with a potential extension of VAT into financial services as well as the increased focus on owners being a part of the governance structure. Again from a commercial perspective, EU businesses are being made uncompetitive in terms of mergers and acquisitions which are often reflected in holding companies whilst the uncertainty continues and specific restrictions apply to holding companies.

Today we see artificial business models where holdings are charging for services where it was not necessary in the past (before ECJ "Cibo"). It should be enough that the holding company is involved in the management of the "subsidiary" (as until ECJ "Polysar").

The VAT treatment of holding companies is important in case of VAT grouping, especially if it is considered, as is the view of the Commission, that non-taxable holdings cannot be members of a VAT grouping. However it could also be argued that non-taxable persons can join a VAT grouping and that the VAT regime of the VAT grouping would in this case be the same as that of an ordinary taxable person carrying out both taxable activities and out-of-scope activities.

BUSINESSEUROPE would prefer that holding companies could be treated in line with the subsidiaries and be granted the option to register for VAT and thus be treated as a VAT-able person. In any event, BUSINESSEUROPE is of the opinion that the holding of significant shareholdings (= that give the holding company the possibility to influence the management decisions and the strategy of the subsidiaries, e.g. 10% in line with the threshold in the parent-subsidiary directive) in other companies is to be considered as an economic activity.

Best practice: Switzerland

In Switzerland the acquisition, holding and the disposal of participations is considered a business activity which allows the holding company to deduct input VAT.

Participations are defined as the shareholdings which are held as a fixed asset and give the holding company a decisive influence in the subsidiary. Shareholdings of at least 10% of capital are always considered as participations. The business activity of the subsidiaries may be taken into account to determine the right to input-VAT deduction for the holding company.

Q4. What other problems have you encountered in relation to the scope of VAT?

SUBSIDIES

Today we have a variety of subsidies that business can receive in several different forms and situations. Subsidies can come from the EU, member states, regional or local authorities, semi-public bodies, charities, etc. Subsidies can be (very) general or (very) specific, direct or indirect, in cash or in kind. Although the economic effect of all subsidies is in principle the same, the VAT treatment of subsidies differs and is not always clear.

In practice is often very difficult to determine if a given subsidy is directly linked to the price of a taxable supply and whether it should be regarded as a consideration for a supply or not. This leads to a lot of uncertainty and problems for business. The same applies for compensation for damages etc.

Further, if such a subsidy affects the right to deduct input VAT it is an even larger problem (a rise in the standard VAT rate in some member states also means that the cumulative amount of non deductible VAT also increases).

Member states have different approaches to this issue. Businesses have difficulties gaining an overview of the economic and VAT effects when receiving subsidies, which is unsatisfactory. The VAT rules must give a clear answer to these questions.

TRANSFER OF ASSETS VS. SHARE SALE

Even though restructuring of companies is a constant process, it is still nowadays an extraordinary business transaction when shares in a company and / or a totality of assets are sold.

Under article 19 of directive 2006/112 Member States may treat a transfer of a totality of assets or a part thereof as a transfer of a going concern as being out of scope of VAT. Input VAT in connection with the transfer of assets is treated as VAT from "overhead" cost and therefore may be deductible.

Advocate General Jakobs already mentioned in his opinion regarding ECJ C-497/01 "Zita Modes" that "where however the transfer involves a whole business, the event is an exceptional one and special treatment may be justified because the amount of VAT to be advanced on the transfer is likely to be particularly large in relation to the resources of the business in question".

The sale of shares is a similar transaction but a number of Member States do treat the sale of shares as VAT exempt under article 135 f of directive 2006/112 even when 100% of the shares are sold. Both transactions – transfer of assets and transfer of shares – are very similar from an economical point of view even though they may be different from a legal point of view.

Even though both transactions are "without VAT", input-VAT treatment is completely different. Input VAT can easily reach high amounts in larger transactions where consultants, lawyers etc are involved because the entire process is more complex than just selling of assets or shares. Neutrality is at stake when transfer of assets and shares are treated differently and / or when Member States do not take a uniform approach.

There is movement on the transfer of shares after ECJ C-29/08 "SKF AB" in which the ECJ said, that a sale of shares may be seen as an out-of-scope VAT transfer of assets rather than a VAT-exempt transaction. Unfortunately details was left open and to be decided by the responsible courts of the Member States. The effect is that we now see first decisions which are different from country to country which will lead to distortion.

BUSINESSEUROPE would welcome a uniform approach for the transfer of assets or shares with general possibility to deduct input VAT in both cases.

NON-PROFIT ORGANISATIONS?

BUSINESSEUROPE has noted that non-profit organisations are covered by the study on "Public Bodies", and we therefore refer to discussions regarding public bodies.

Q5. What should be done to overcome these problems?

BUSINESSEUROPE believes that it is essential to have VAT rules that ensure a level playing field to avoid distortions of competition. Basic rule: all economic operators, whether they are public sector or private sector, should be considered as taxable persons if they carry out activities that could be considered as economic activities because they can also be carried out on a commercial basis.

Exceptions to this principle should be limited and clearly defined. If distortions of competition still exist, there should be a formal procedure to resolve these issues, regardless of whether these issues relates to distortions between in-house vs. outsourcing or on the final service delivered (in competition with taxable service providers).

In case exceptions are to some extend retained, it should be ensured that fully or partially taxable companies are not left with non-refundable VAT, including when working in public-private partnerships.

EXEMPTIONS FROM VAT

Q6. Which of the current VAT exemptions should no longer be kept? Please explain why you consider them problematic. Are there any exemptions which should be kept and, if so, why?

BUSINESSEUROPE is of the opinion that the entire system of exemptions should be reconsidered, with the aim of:

- getting a broad base for VAT with minimum of exemptions that are clearly defined,
- determining a streamlined and harmonised set of exemptions that are clearly defined,
- solving the problem of input VAT-deduction relating to in-house production vs. outsourcing,
- solving the problem of "hidden" VAT in supply chains, where exempted businesses supplies to VAT-able businesses;

This would make compliance easier and reduce distortion of neutrality.
Exemptions often create demarcation problems as it can be difficult to determine which services are covered by the exemption. For instance it can be difficult to determine what is a financial service, a real estate or insurance service.

Furthermore there is legal uncertainty as to how subcontracted services are to be treated when they are closely linked to an exempt service. Exemptions also make distortion of input decisions, as exempt companies have an incentive to insource economic activities to avoid VAT, due to the fact they do not receive an input-VAT deduction. Therefore, BUSINESSEUROPE believes the question of input VAT-deductions needs to be addressed.

At the very least the rules of exemptions should be fully harmonized in the EU. Today cross boarder business activity needs to comply with different regulations with regards to exemptions of VAT. Getting the right information concerning the different national VAT rules constitutes a high administrative burden for business.

FINANCIAL SERVICES

Regarding financial services, BUSINESSEUROPE would like to refer to the position paper dated 27 August 2008 concerning the proposals COM(2007) 747 and 748. As we highlighted in the position paper, the different interpretations and options within Member States regarding the taxation of financial and insurance services are a major source of legal uncertainty and fragment the Internal Market, both for financial institutions and industrial businesses. A common EU-wide approach and uniform implementation is essential in this area to create a level playing field and to guarantee legal certainty and neutrality for business operating in the European VAT system.

While the main stakeholders regarding financial services are financial institutions and insurance companies, industrial businesses are also highly sensitive to legal changes in this sector. Many businesses procure financial and insurance services from related companies, such as the holding company of a multinational group, or from a third party. These services are often provided across borders. Since the rules concerning the taxation of financial and insurance services differ significantly across EU Member States, consultancy costs are usually incurred by businesses before services are carried out or procured in order to ensure compliance.

Due to the differences in interpretations across EU, BUSINESSEUROPE warmly welcomed the intention from the European Commission in 2007 of spelling out and clearly defining the individual services in the form of a universally applicable regulation, thus bringing the definitions up-to date.

However, as we also highlighted in the position paper the fact that financial and insurance services are generally tax exempt is not compatible with the concept of VAT neutrality. The solution whereby there is an option to tax would solve the problem from a business perspective as long as the individual taxable person and not the Member State chooses whether to make use of the option to tax or not. This would ensure businesses make economically sound commercial decisions that are not influenced by or based on the VAT environment. The option to tax should furthermore be designed and applied in a uniform way across the European Union in order to reduce compliance and administrative costs both domestically and in the case of cross-border provision of services.

Efforts should also be made to ensure that VAT-able businesses are able to compete with in-house production on equal terms. Outsourcing is a widely used commercial practice intended to improve business efficiency and competitiveness by transferring ancillary or support functions not forming part of the main business activity to an external provider, for whom they are the main business activity. Examples of such functions are transaction processing, information technology and professional and technical services. Significant cost reductions can often be achieved in this way through economies of scale. Thus a solution should be found on input-VAT deductibility.

STANDSTILL-CLAUSE

Also the exemptions under the standstill clause of article 176 should be reviewed and abolished where possible and harmonised where not possible. Further, derogations not abolished should be phased out, thus only being transitional in nature.

HEALTHCARE AND EDUCATION

BUSINESSEUROPE also needs to point out the significant problems in the healthcare and education sectors, where subcontractors are facing severe VAT-problems. BUSINESSEUROPE suggests to broaden the tax base, and to make use of the zero-rating option in certain areas in order to solve the problems around sub-contractors on the one hand and the issue of final consumer price on the other hand. This should also solve issues, where a service is covered by the exemptions, if it is being produced / performed by an exempted company (due to the service being auxiliary) or imported by the exempted company directly, but is subject to VAT if it is produced by a subcontractor.

Example

Dentures imported from third countries by dentists are today exempted. Dentures produced within Europe are subject to non-deductible input VAT on materials, as the dentures are covered by the VAT exemption. The consequence is that dentures produced in Europe have a competitive disadvantage compared with dentures imported from third countries. If dentures were zero-rated, then there would be no distortion of competition from the VAT system

Q7. Do you think that the current system of taxation of passenger transport creates problems either in terms of tax neutrality or for other reasons? Should VAT be applied to passenger transport irrespective of the means of transport used?

Transportation services are today treated differently (exempt, zero-rated, reduced rates, normal rates and partial input exemptions) depending on the purpose and/or nature of the transportation service being provided. Further, differences due to the type of company (public transportation company vs. private transportation company) also contribute to differences in the treatment. Finally, place of taxation plays an important role. Thus, BUSINESSEUROPE agrees with the Commission, that the area of passenger transportation should be seen as a whole, covering questions regarding place of taxation, rates and exemptions.

BUSINESSEUROPE would like to point out that the uniqueness of the transportation area calls for special concerns. International transportation services, especially air and sea, is in direct completion with service providers from outside the EU. This may be the case even if the service is between two member states. This is due to the fact that the route may – fairly easy – go through a non-EU country and thus it is no longer a transportation service only within EU, but has been converted to two international transportation services. The means of transportation may also be used to international transportation. Thus for operators with larger fleets, the carrier may both operate on international routes, on European routes and even on domestic routes. Further, non-EU service providers may be able to purchase goods or make investments without input-VAT, which would place EU-based transportation providers at a competitive disadvantage.
At the other end of the spectrum, we find national transportation services covered by a public service obligation (that is to say in the public interest). These services are in some member states exempted, causing problems for service providers to the sector. The exemptions also causes problems when provided in direct competition with VAT-able transportation services.

PASSENGER TRANSPORTATION

Passenger transportation can be split into two overarching categories – the transportation covered by a public service obligation (usually domestic with rail/bus and to some extent ferries and taxi) and other passenger transportation.

PASSENGER TRANSPORTATION COVERED BY A PUBLIC SERVICE OBLIGATION

Passenger transportation covered by a public service obligation is today VAT-exempt in some Member-states. For these transportation providers repairs performed in-house has a clear VAT-advantage compared to sub-contractors. Further, if they also provide

transportation services not covered by the public service obligation, then this service is subject to VAT. This causes extra administrative burdens and complicates the VAT return.

Having said this, the exemption is due to the fact that the service is – to a high degree – provided directly to consumers. Therefore a solution to the problem should be neutral to the final consumer. BUSINESSEUROPE would suggest making this service fully VAT-able, but at the same time either fixing a zero rate (and rebalance through the subsidies already being provided) or apply the normal rate (and again rebalance through the subsidies already being provided). If this service becomes fully VAT-able then problems relating to outsourcing should be solved. This suggestion also covers public operators.

PASSENGER TRANSPORTATION NOT COVERED BY A PUBLIC SERVICE OBLIGATION

This service is in principle fully VAT-able, and the place of taxation is where the transportation takes place. However international sea and air-transportation services are exempted (see below). This implies that, for instance, bus transportation taking place in more than one Member state is VAT-able in each member state based on the distance travelled. With the introduction of the reverse charge, this can actually force VAT registrations for operators providing this service to a fully VAT-able customer. This is for example the case if a Danish operator transports the employees of a Danish VAT-able company from Billund to, for instance, Hamburg. In this case either the Danish operator or the customer needs to register for VAT in Germany. A solution would be to establish a one-stop-shop for these services enabling the operator and the customer to avoid foreign VAT registrations.

INTERNATIONAL (INCLUDING INTRA-EU) AIR AND SEA PASSENGER TRANSPORTATION

Passenger transportation by air and sea is a special chapter due to the international competitiveness issue highlighted above. Therefore, applying a normal tax rate would have a significant impact on the industry. Zero-rating the area combined with reverse charge on purchases would not change the cash-flow impact on the industry, but would bring the area in conformity with the VAT system. This could be extended to domestic carriers as well as other means of international transportation, for instance rail. This would also solve the issues around the present distinction between carriers that mainly operate internationally and those that primarily operate domestically.

CONCLUSION

To conclude BUSINESSEUROPE finds that all areas should be subject to VAT. However, due to the different policy implications as well as competitive issues, some of the areas should be subject to zero-rating possibly combined with reverse charge on purchases.

Q8. What should be done to overcome these problems?

BUSINESSEUROPE suggests to broaden the tax base, and to make use of the zero-rating option in certain areas in order to solve the problems around sub-contractors on the one hand and the issue of final consumer price on the other hand. This suggestion also ensures that businesses are able to recover input VAT, which is one of the key problems.

Regardless of the specific method chosen, efforts must be taken to design a regulatory framework, which makes it easier for companies, especially those engaged in healthcare, education and care.

DEDUCTIONS

BUSINESSEUROPE agrees with the statement in the green paper that:
"The right to deduct input VAT is fundamental to ensuring that the tax is neutral for business. The extent to which VAT is deductible is the key factor, but other factors include when and how VAT should be deducted."

BUSINESSEUROPE would like to be emphasizing that loosing the right to deduct input VAT or delays in repayments can lead to large distortions and disturbance of competition. One should bear in mind that in the last years the average VAT rate has increased significantly in a lot of member states. While just only a few years ago a standard rate of 20% or above was exceptional, a rate of about 20% or above is common nowadays.

Q9. What do you consider to be the main problems with the right of deduction?

SCOPE OF DEDUCTION

BUSINESSEUROPE believes that VAT should be deductible to a large extend and limitations of the right to deduct should be avoided as far as possible.

In the current systems it takes huge efforts for business to identify the "right" amount of deductible VAT. Allocation of input VAT to taxed activities and non-business / tax-exempted activities is not free of interpretation. If there is no obvious link between a specific purchase and a specific supply cost and input VAT have to be treated as overhead costs. Allocation of input VAT from overhead cost is usually done on a pro-rata basis which is depending on a status quo in a given period which to some extent may be influenced by extraordinary circumstances.

Even if an allocation is possible adjustments need to be made in cases where changes of usage occur during the economic lifetime. While in principle adjustments are useful to avoid artificial business models which can lead to distortion and unjustified tax advantages on the other hand administrative efforts to calculate, record and report adjustments can very easily end up in huge costs which are often disproportional.

Flat-rate deduction is also no solution. From a theoretical point of view flat-rate restrictions are a measure to ease administrative burdens and to simplify the VAT system. BUSINESSEUROPE experience shows that in practice the effect is completely different. There are hardly two Member States which apply the same rules. Therefore business again faces a problem with different rules which usually pushes costs for applying the rules. Furthermore BUSINESSEUROPE believes that flat-rate deductions are always unfair. Business which are usually able to deduct input VAT at a 100% rate face restrictions, while business which are usually only able to deduct small portions of input VAT will gain due to the flat-rate deduction.

DEDUCTION LIMITATIONS UNDER THE STANDSTILL-CLAUSE

Under article 176 sub-paragraph 2 of directive 2006/112/EC, Member States can maintain their national exclusions from input VAT deduction. Thus, businesses engaged in cross-border transactions usually face a completely different situation in other Member States regarding the exclusion of input VAT deduction than in their home Member State. Quite often there can be a debate within businesses where cross border transactions take place

with differing opinions due to the inconsistency of approach by Member States. Since it is difficult to gain a guaranteed up-to-date overview of the numerous exclusions, businesses engaged in cross-border transactions in the EU have to engage VAT advisers, thus increasing the VAT advisory and compliance cost for cross-border transactions in the EU.

A separate aspect is the evidence required for recovery/deduction. This again comes down to local rules which make it difficult to having one approach for a business trading in a number of Member States. Formal aspects of VAT compliance should not prevail over the principle of neutrality of the VAT system. Harmonising this by introducing one rule that applies in all member States and allows no room for interpretation would be a highly appreciated and a quick win.

REPAYMENTS / REIMBURSEMENT

Of great concern for business – both SMEs and large companies – is the actual repayment / reimbursement within their country of establishment but even more in cases where input VAT occurs outside the country of establishment.
Business face huge cash disadvantage in cases in which countries only know a carry forward system or do delay a repayment. The situation has become more dramatic during the last years due to several aspects.

VAT fraud is an aspect Member States and business are both concerned about. Nevertheless this is often used as an excuse to held back repayments by requiring further documents and / or information. Even though it is common understanding that the fiscal authorities need to be careful and therefore perform audits. Nevertheless business often doubts whether the documents / information required are useful to detect fraudsters or if asking for a lot of documents is just a way to delay repayments.

Another issue in connection with the audits is that authorities often go for formal mistakes. Even though there is no doubt that no fraud is involved, and that the supplier has paid the VAT, penalties are applied due to errors of form.

BUSINESSEUROPE believes that both issues – undue delaying and a too formal approach – lead to huge disadvantages. A lot of countries have introduced a general reverse charge for foreigners. This leads even more to repayments claims due to a lack to offset input VAT from output VAT. In cases of low profit margins combined with large input VAT claims a cash disadvantage can lead to the effect that business cannot be run profitably. This is a good example where VAT neutrality does not exist and commercial decisions are made based upon the cash flow position in respect of VAT refunds. This just cannot be right.

OTHER AREAS OF CONCERN

There are a lot more individual issues regarding deduction, e.g.

- Deduction of VAT incurred before the formal VAT registration or during the preparatory phase before the first outgoing supply of goods or services is done.
- In some member states there are large problems with the possibility to recover VAT for a fully taxable company that receives subsidies.
- Different deadlines for claiming input VAT and / or correcting invoices
- The rule governing the exercise of the right of deduction usually requires the claimant inter alia to hold an invoice made out to him. Strictly this excludes invoices for employees' business expenses, such as hotel accommodation, meals car hire etc.,

which bear the name of the employee rather than the claimant, although practice varies among the Member States. Provision should be made in the Directive for Member States to accept input-VAT claims supported by invoices made out to employees where the expense relates to the claimant's business.

- Formalistic approaches from tax authorities, when a business has tried to understand the rules but may have misunderstood details that would not have impacted the transaction or the cash flow, but may impact the documents. We refer to the detailed answer to question 32.

Q10. What changes would you like to see to improve the neutrality and fairness of the rules on deduction of input VAT?

BUSINESSEUROPE believes that VAT should be deductible to a large extend and that limitations of the right to deduct should be avoided as far as possible. The remaining limitations should be completely harmonised.

Further, the refund system, including the new portals, should be significantly improved. When the VAT package was adopted, BUSINESSEUROPE hoped for significant changes in the area of refunds. However, the reality is that even though the application for refund is now fronted by a local portal, the problems for companies seem to be unchanged. One could essentially talk about a "refund gap" due to the number of hindrances business face in reclaiming the VAT. The fact that an entire industry is built around aiding companies with obtaining their refunds is a signal in itself.

The refund gap is a significant contributor to the problems on deductibility and should be solved. One improvement would be for the tax authorities to trust each other in order to streamline the process. Another important step would be for all tax authorities to meet the deadlines set in the refund directive.

BUSINESSEUROPE would also like to emphasise that the deadline for applying for a refund is too short, especially when comparing with the fact that member states usually operates with significantly longer claim periods.

The point of time in which the right to deduct input VAT can be exercised should be re-defined and article 178 of directive 2006/112/EC should be revised to allow input-VAT deduction at the point of time, which equals the point in time in which the VAT invoiced became chargeable for the supplier according to article 62 et seq. directive 2006/112/EC. The invoice should be limited to be a mean of proof that the supplier acknowledged the VAT which is requested to be deducted as input VAT by the customer as his (the supplier's) output VAT liability.

Following such an approach would lead to improved legal certainty, would avoid the impairment of the VAT neutrality principle by exploiting the strict formalities related to the invoices and would avoid a significant part of the legal remedies in the field of VAT. The invoice would no longer be treated like a security paper but as a means of transport of information about the VAT treatment of the underlying transaction.

INTERNATIONAL SERVICES

Q11. What are the main problems with the current VAT rules for international services, in terms of competition and tax neutrality or other factors?

The decision of where to produce goods or supply services and where to buy goods or services should only be based on economic imperatives and should not be biased by tax motives.
For goods, the exemption of exports and the taxation of imports manage to solve the most important issues.

This is not the case for international services (and intangibles). The complexity and the lack of harmonisation of the VAT system still constitute obstacles to the international trade in services and intangibles. Not all countries (even within the EU) have the same approach regarding the difference between a supply of goods and a supply of services, complex services, composite services, supply and installation contracts, the use of use and enjoyment rules, etc.

Clear rules that are consistently applied by all member states and third countries are of paramount importance. For example to determine:

- whether a supply is to be qualified as a good or a service;
- if a transaction is to regarded as a single or a composite supply;
- place of the supply;
- applicable VAT rate;
- taxable amount;
- application of possible exemptions;
- invoice requirements;
- etc.

Now countries have their own national rules (or no rules at all) to resolve these issues, resulting in legal uncertainty and double taxation.

One example from within the European Union is warehousing / storage of goods that may be treated either as a service related to the fixed assets or as a service. Thus, there are also problems within the EU relating to article 44 and 47.

The exponential growth in international services has made these problems even more acute.

Q12. What should be done to overcome these problems? Do you think that more coordination is needed at international level?

The best way to overcome these issues is by a systematic and consistent use of the destination principle where services are taxed in the country of destination. The VAT should be declared and paid by the customer (in case of B2B). Excessive administrative burdens should be avoided because this would mean replacing one obstacle by another obstacle. In this way, it makes no difference whether services or intangibles are obtained domestically or abroad because the domestic VAT rate will always apply.

The EU should enter into agreements with other countries/regions in the world to ensure a common approach to international services and to facilitate administrative cooperation with countries outside the EU.

There is an urgent need for clear and simple VAT rules to resolve the issues relating to the qualification of a transaction for VAT purposes (good, service, single supply, composite supply, etc.) and this both within the EU and with third countries. Another way of reaching simplifications is to apply the same VAT treatment to supplies of goods and services, as this eliminates the problems.

BUSINESSEUROPE supports the work done on this topic in the OECD working party n° 9 on consumption taxes.

BUSINESSEUROPE

DEGREE OF HARMONISATION REQUIRED FOR THE SINGLE MARKET

THE LEGAL PROCESS

BUSINESSEUROPE welcomes the debate on the legal process. A key element is to increase the transparency of the decision-making and to enhance the cooperation between EC, the Member States and business. We believe that through trust, transparency and cooperation we can build a better and simpler VAT system to the benefit of all involved parties.

The choice of legal instrument is secondary if the overarching aim to increase the level of harmonisation is achieved. Having said this, regulations do create immediate harmonisation. However, increased transparency and cooperation in the drafting and implementation processes should also reduce the complexity of directives, thus also adding to increased harmonisation.

BUSINESSEUROPE would also like to stress the need for a European interpretation body, where both businesses and Member States can get binding answers without having to go through the court systems. The model could be combined with the possibility to bring decisions before the European courts. However the process would be significantly swifter than the present, where businesses has to go through the national courts which are a costly and lengthy procedure and without any guarantee that the question can be referred to a European legal body.

Q13. Which, if any, provisions of EU VAT law should be laid down in a Council regulation instead of a directive?

Business needs clear VAT rules that can only be interpreted in one way. Directives often give discretionary powers to the Member States and contain unclear provisions that lead to multiple interpretations by Member States. The resulting complex VAT system hinders enterprises, including SMEs, to initiate cross-border activities and leads to an unnecessary administrative burden and consequently to extra cost for international business (e.g. advisory fees).

The question is whether the choice for a regulation as a legislative instrument will bring the goal closer. BE is of the opinion that it is not the legal form that is crucial, but the political will to achieve uniform and clear rules. However, as a regulation is directly applicable in every Member State, it often has added value over a directive. This is especially true, if the regulation is so clear that it can only be interpreted in one way. In this case it would be a step forward if key definitions would be laid down in a regulation, e.g. the place of supply, one-stop-shop, IT aspects.

If the political decision making does not lead to clear rules, then a regulation has no added value. Despite the equal wording in Member States, there will still be different interpretations. In any case, BUSINESSEUROPE finds that the transparency of the decision-making process – and therefore the possibilities for business to intervene and to understand the arguments and compromises behind the articles – is of great importance, as this can aid businesses and Member States in the implementation process.

Q14. Do you consider that implementing rules should be laid down in a Commission decision?

BUSINESSEUROPE supports the introduction of legally binding implementing rules adopted by the European Commission. There needs to be more direction (not directives) from the EC which should be followed by the Member States giving little room for interpretation. This would remove the additional reporting requirements that creep in as well as additional documentary obligations.
Another significant problem at present is the lack of an appropriate forum where business can bring forward issues of a European magnitude. Today, if a Member State has taken a position with a business which seems to not be aligned with the EU and other Member States, the only course of action available to the business is to take court action which is not good for the business, the Member State or the EU.

On the implementing rules, the EC should be assisted by a committee, e.g. the VAT Committee that should also take account of the position of business. For that purpose the business representatives in the Business Expert Group could be involved. The VAT Committee should decide by qualified majority voting.

As BUSINESSEUROPE would also like to call for a forum that could act as an arbitrator prior to court actions, it might be considered to establish a joint VAT Forum (similar to the Joint Transfer Pricing Forum), with representatives from both business and public authorities. This forum should have the same authority as the VAT Committee and should deal with problems raised by both Member States and businesses. The key element is to have a forum, where business can receive answers on problems of implementation and interpretation of intra-Community interest like the example below on repair services.

Regardless of the approach, there needs to be greater transparency as to the decision-making by Member States in committees such as the VAT Committee. Communication at the right time – even if (or especially if) there a different interpretations – is vital to making good legislation.

Example

Treatment of repair services (examples of different interpretations that have been recognised after the implementation of the VAT package when it comes to the place of supply of services.)

During the autumn 2009 before the change on 1 January 2010 should be implemented company A sent out questions to its affiliate companies in all 27 Member States and asked if a repair service (included warranty repair) should be treated in accordance with the general rule in article 44 (reverse charge should be applicable if cross border invoicing between two VAT registered parties).

The answers from the different companies in all the Member States were that the main rule should be applicable (most answers were confirmed with either consultants or tax authorities). Due to these answers company A started to inform and adapted necessary systems and invoicing routines to this. As from 1 January 2010 company A started to invoice in accordance with this.

During the summer 2010 company A began to receive information that Tax Authorities in some Members States had another view of which rule that should be applicable for these kinds of services. The Tax Authority in France said that if goods are involved in a repair service you have to apply a so called 50%-50% rule. Which means that if the value of goods doesn't exceed 50% it's considered to be a supply of a service but if the value of the goods exceed 50% it's considered to be a supply of goods with installation. Similar interpretations have also been seen in Austria, Germany and Greece.

Company A has tried to forward this question to the VAT Committee via the Ministry of Finance in company A's country of establishment. But up to know the question has still not been answered.

Q15. If this is not achievable, might guidance on new EU VAT legislation be useful even if it is not legally binding on the Member States? Do you see any disadvantages to issuing such guidance?

BUSINESSEUROPE takes the view that legally binding implementing rules are the best guarantee to achieve uniformity in the application of VAT rules and to ensure legal certainty. If this instrument is not achievable, then non-binding guidelines could give taxpayers an indication of the way the rules should be interpreted according to the European Commission. Moreover, the non-binding guidelines could help the courts to better understand the background to legislation.

In addition the guidelines, if available in time, could have a positive impact on the implementation of new VAT rules in the national legislations by reducing the differences. But guidelines are only a first step in the right direction.

Q16. More broadly, what should be done to improve the legislative process, its transparency and the role of stakeholders in the process, from the initial phase (drafting the proposal) to the final phase (national implementation)?

Legislation is dynamic and not static, it needs to change and develop as the world around it changes and develops, it exists to provide legal certainty in practice in a challenging and complex world. VAT rules should adapt to new business models as they develop and not pose a hindrance. To do so transparency, mutual understanding and cooperation are essential throughout the entire legislative process and even beyond – from the first thought to implementation and up to application in practice.

To promote growth it is very important that the legislative processes are in line with changes in the way business is acting, as well as how developments in technology are going. We would like to stress that the speed of change and reaction to new products, services and ways of doing business is slow. Business has learned to be flexible and to react to changing market conditions, tax authorities need to improve and to develop a similar way over time. Outdated legislation (e.g. VAT treatment of financial services, etc.) and disproportionate measures (e.g. deemed IC supplies for goods) creates major obstacles in the market, slow down growth and negatively impact on the EU´s competitiveness.

To be effective legislation needs to involve all stakeholders throughout the entire legislative process, including the most important partner for governments in the VAT system – business as tax collectors – who bring the money home to the exchequer day by day, on top of its main day to day task of doing business, which is key to keep the world turning and to bring prosperity and wealth to people and their countries.

There needs to be maximum transparency in the legislative process, so that business can feed in their thoughts at the right time in process (not when it is too late). Business need to be part of every stage of the legislative process. It is understood and fully respected that the decision is made by the legislator, however, this should be done after having taken on board business thoughts as well on the specific points under discussion.

The Commission tries hard to involve business through consultation processes and discussions in order to get input into the drafting of new proposals etc., and business very much appreciates the Commission´s efforts on this. However, when proposals are referred to the Council, they enter a black box. This lack of transparency is not unique to the Council process – it also exists when it comes to the VAT Committee.

Business can contribute with essential, practical information on how things work in practice, information that should be brought to the table in the decision process. Additionally, what is discussed in the Council and in the VAT Committee needs to be published on a timely basis, so that all the stakeholders can follow the discussions and can meaningfully support to ensure the best outcome in practice.

It is easy for lawmakers to work in isolation and produce legislation which has unforeseen effects, does not work or produces an unforeseen outcome. We know that lawmakers want the best, but as day to day experience shows the best is always achieved involving all interested parties into a discussion on a timely and ongoing basis.

The VAT package is a recent lesson learned on this and clearly shows that a better business involvement throughout the entire legislative process would have avoided quite some unpleasant surprises. This is valid both for VAT technical aspects and IT aspects, where for example – before going live – an involvement of business VAT and IT experts and a pilot on the system´s functionality and capability of the EU 8th Directive Refund Portal System would have been extremely helpful to support a smooth functioning of the system from the beginning.

The VAT package´s objectives were simplification and reduction of burden for business and tax administrations. Before referring the proposal to the Council the Commission did an impact assessment which supported these objectives. The proposal was substantially changed in the Council negotiation process and quite a lot of the initial objectives were watered down to reach a compromise, which undermined the initial impact assessment done by the Commission. BUSINESSEUROPE therefore suggests that after the Council has politically agreed on a proposal, a brief impact assessment on the changes should be done by the Council before a proposal gets adopted as a directive or regulation. Only after this is done one can evaluate if the original objectives are still met after the changes made by the Council. This would lead to and ensure a much better result from our perspective.

As a fall back if this is not possible (because of time constraints), the impact assessment presented by the Commission should be extended to cover the changes contemplated by the Council and the permanent EU business group could also be consulted to give input.

Another lessons learned from the VAT package is that Member States often tend to implement the EU VAT directive into their national laws at the last minute, which makes it hard and often impossible for business to be compliant from day one. Businesses need sufficient lead time to implement new legislation in their systems across the EU. This even more, considering that EU directives often leave Member States room for their own interpretation and implementation. The less harmonised the rules are across the EU, the more lead time is required for business and the more costly the implementation process for business becomes.

To smoothen the transition, particularly when it comes to the implementation of directives, MS should be obliged to take steps to implement new rules well in advance (minimum 6 – 12 months depending on the change) of their entry into force, this would leave more time for affected businesses to prepare for the changes. Therefore, it should be specifically mentioned in the directive that Member States have to implement the rules into their national law minimum 6 – 12 months before the Directive enters into force. (It should be noted, that for certain adaptations even 6-12 months is very short. If for instance the change requires a significant system change, then normally businesses would need 12 months to get the budget, 12 months to select the IT provider and make a blue print and another 6 months to test, implement and train the people)
The other option is to link the entry into force of new legislation to the adoption of common implementing measures, with a deadline laid down. However, this might only work if the implementing measures are done by the Commission on a majority decision basis otherwise there might be too long a delay until the new legislation enters into force.

BUSINESSEUROPE welcomes and greatly supports the idea of a permanent EU business group – focusing short term on more practical issues. Over time this group could also help improving transparency, gaining better mutual understanding and entering into a dialogue and cooperation process. In the long term, a permanent business group could also play a role in the overall EU legislative and practical troubleshooting process through being involved in:

- Preparing legislation: Build up dialogue with Commission and MS and discuss thoughts, assess potential impacts. Identify problems and examine draft proposals.
- Legislation to be adopted: ensuring the best outcome: link to Council developments, give expert opinions on discussed topics. Come up with potential impact assessment on business if certain decisions are taken.
- Implementation of adopted legislation: Together with Commission and Member States ensure smooth and harmonised transition of adopted EU rules into national laws. Particularly on IT related aspects, organize business pilots to see how things are working to ensure functionality when law gets effective (e.g. 8th directive portals). Link to Fiscalis programme, make business more part of the whole programme – include business better in discussions and workshops.
- Day to day developments in practice: Link in with VAT Committee and address potential problems in practice and e.g. court cases and their impacts on business practice which need to be discussed and might later lead to a legislative initiative of the Commission.

DEROGATIONS AND THE ABILITY OF THE EU TO REACT QUICKLY

BUSINESSEUROPE finds that, in principle, derogations should be avoided or at the very least only be of a transitional nature. This is due to the fact that derogations are contradicting the overarching aim of harmonisation and simplification. By making derogations transitional Member States would need to evaluate whether the derogation is beneficial and should be incorporated in the VAT legislation to the benefit for all, or whether the derogation is not beneficial for the EU, and should thus be abolished.

BUSINESSEUROPE recognises the political nature of the derogations and would as a start strongly suggest evaluating the present derogations and deciding on whether they should be abolished immediately, be abolished after a transitional period or be incorporated in the VAT directives.

BUSINESSEUROPE is concerned about using derogations as a short-term measure to combat fraud. As mentioned derogations increase the complexity of the VAT system, especially since the short-term derogations seems to stick to legitimate business, while fraudsters moves on. In our opinion, fraudsters should not be targeted by derogations, but by close cooperation between tax authorities in the Member States as well as with business. In specific cases, where a general change is needed in all Member States at once in order to combat fraud, then there could be a procedure in place that gave the possibility to react fast provided the general derogation is incorporated into the directives within a fixed time-frame.

Q17. Have you encountered difficulties as a result of derogations granted to Member States? Please describe these difficulties.

Derogations are undermining the EU VAT system and its Single Market approach, generating lack of harmonisation and complexity by allowing Member States to apply own national approaches. They have major impacts on the efficiency of the VAT system and often create additional costs and bureaucracy for business. In fact, they are often misused by Member States as a tool for their own national agendas (not having to change their laws on certain topics, or specifically wanting to change the law on a certain topic often requested with very doubtful arguments e.g. simplification of the VAT collection procedure or to prevent certain forms of tax evasion or avoidance – fraud is enthusiastically advanced as an argument.

Derogations seem to be the “joker” of the EU VAT system (or a symptom that the “unanimity rule” is not working well), which Member States can pull out whenever it suits them. They often do not cure the problem but make the problem move to a new product or the Member State next door (see VAT fraud). They mostly fail in fighting VAT fraud a target-oriented and efficient way. The difficulties we have experienced with derogations are:

- Different application of the reverse charge system (article 194) when having a foreign VAT registration, thus creating negative cash flow impacts
    - Businesses require or have very often VAT registrations in several countries and problems arise when trying to cope with all differences in Member States’ VAT legislation due to derogations (e.g. when it comes to the application of the reverse charge)

- Different application of the domestic reverse charge for specific goods or services by Member States (mostly introduced with the argument of fighting against fraud)
  - For example reverse charge for construction services (scope and qualification conflict what falls under a construction service), is applied in 8 countries in 8 different ways. In Italy for example the scope of this domestic reverse charge was not very clear, leading the Italian tax administration to intervene several times with different guidelines which created often misunderstandings in defining which kind of services where subject to reverse charge and which were not.
  - Domestic reverse charge in Italy and France delays VAT refunds for business and creates big cash flow costs for business
  - Reverse charge for telecoms in UK, also recently adopted in Italy, but also going to be used in Germany and Austria going forward. This provision aiming at preventing fraud on this sector is applied in different ways in each of the mentioned Member State (for instance, Germany and Austria have provided for a certain threshold under which the provision is not applicable, the scope of the Italian reverse charge is different from that required by the UK). This undermines the Single Market and its proper functioning. Best practices should be shared and not bad practices.
  - Foreign VAT reclaims difficult, different limitations of right to deduct

Q18. Do you think that the current procedure for granting individual derogations is satisfactory and, if not, how could it be improved?

Business finds the current derogation procedure highly unsatisfactory. The more harmonisation, the fewer individual derogations are required – this should be the way forward. The more Member States know they can use derogations, the less is their will for harmonisation.

BUSINESSEUROPE urges the Commission to play a bigger role in the derogation process with an aim to reform it and to also involve business in it for an impact assessment before a requested derogation is granted. If at all, derogations should only be used in very limited circumstances by Member States with a strict time limit.

BUSINESSEUROPE therefore suggests the Commission to launch a comprehensive evaluation of the current individual derogations (+ impact assessment) and find out which of them are required for a proper functioning of the Single Market. Businesses should be involved in this evaluation process and in the underlying impact assessment, as they can give valuable feedback how things are working in practice.

VAT RATES

BUSINESSEUROPE finds the issues of rates to be a twofold discussion. First, there is the issue of different rates applying on the same product or service in different Member States. Secondly, there is the issue scope or tax base; how are goods and services eligible for reduced rates identified? BUSINESSEUROPE would like to stress, that especially the issue of scope or tax base is a problem that needs to be addressed at EU level. If there are different interpretations of the scope of a service subject to reduced rates, it becomes very burdensome for companies when doing business in other Member States.

Therefore, BUSINESSEUROPE would like to stress the need for clearly defining the goods and services that can be subject to reduced VAT, preferably organised in “packages” or groups of goods and services. This would allow businesses to streamline their processes, and for businesses engaging in activities in other Member States to understand the scope of a reduced rate. Further, this would ensure consistency between Member States applying a reduced rate.

Q19. Do you think that the current rates structure creates major obstacles for the smooth functioning of the single market (distortion of competition), unequal treatment of comparable products, notably online services by comparison with products or services providing similar content or leads to major compliance costs for businesses? If yes, in what situations?

Concerning compliance costs, it is clear that a single VAT rate is preferable in case the position on the rates structure is merely based on these costs. Companies operating in sectors, in which no reduced rates are applied, will therefore have a different opinion from companies allowed to apply a reduced rate on their supplies of goods and/or services. For the latter companies, including many SMEs, the impact of an abolition of reduced rates on consumer spending – and thus the result of the company – is essential. That impact may differ substantially in the 27 Member States. Therefore BUSINESSEUROPE is of the opinion that the power of the Member States to decide whether or not they will apply reduced rates has to be maintained for specific labour intensive and locally supplied services, where they have proven effects on growth and jobs without distorting the functioning of the Internal Market. The decision power should not be transferred to the EU level. Rates are instruments for a national financial-economic policy, which also includes the choice for a preferred tax mix. Further, when reviewing if exemptions should be deleted, BUSINESSEUROPE wants to point out the possibility to replace a social exemption with a social zero-rate (see Q6)

Having said this, it is important that the tax base for reduced rates are completely harmonised and clearly communicated to the member states. The primary reason for this is to reduce the risk of using the wrong rate and therefore reducing the risk and challenges from an ERP perspective.

Regarding the option to apply reduced VAT rates for the goods and services set out in annex III of the directive, Member States might have different understandings of the descriptions of the goods and services. For certain business segments, using the goods set forth in the list of Annex III by the Combined Nomenclature (CN) codes may be a way forward.

BUSINESSEUROPE would like to stress the need for clearly defining the goods and services that can be subject to reduced VAT on a European level, preferably organized in “packages” or groups of goods and services. This would significantly enhance the transparency and harmonisation of the VAT system, since this would ensure consistency between Member States applying a reduced rate, because they would have to pick the “packages” on which they would like to apply a reduced rate.

Furthermore similar products need to be treated equally, such as online services with a similar content as products or services providing similar content.
It should be noted that there are anomalies in all industries. For example, ice cream is taxed at 20% in the UK whilst competing alongside ready-to-eat chilled desserts sold at 0%. We

also believe that the current rate structure (more specifically the variety of standard and low rates between Member States and the frequency of changes by some Member States) leads to compliance costs and complexity with changes in invoicing and credit notes for business. The costs include substantial IT costs necessary to maintain the indirect tax functionality of ERP systems.

Q20. Would you prefer to have no reduced rates (or a very short list), which might enable Member States to apply a lower standard VAT rate? Or would you support a compulsory and uniformly applied reduced VAT rates list in the EU notably in order to address specific policy objectives as laid out in particular in 'Europe 2020'?

BUSINESSEUROPE is of the opinion that the power of the Member States to decide on the application of reduced rates has to be maintained (see the answer to question 19).

As noted before, at the EU level decisions should be made on equal treatment of similar products/services and on clear descriptions of the goods and services set out in annex III of the directive that will lead to common understandings by the Member States. Therefore the scope or tax base of a reduced rate needs to be set at European level.

A priority of "Europe 2020" is a sustainable growth accompanied by economical use of resources. To be clear, BUSINESSEUROPE does not support an extension of reduced rates into the field of "green" products, as these products do not meet our criteria listed above under question 19.

REDUCING 'RED TAPE'

Reducing 'red tape' is an important issue. However, BUSINESSEUROPE would like to highlight that a number of the burdens are effects of the underlying lack of harmonisation and also lack of trust and cooperation between Member States. An example is the single EU VAT return. It is fairly easy to agree on a format based on best practices. However, in order to function, the underlying rules need to be harmonised to ensure consistent reporting. Otherwise businesses will still struggle to figure out what the exact content of each field is in each Member State. Further, differences in administrative practice will also influence the process.

Similar, changing reporting obligation from paper to electronic formats does not remove the underlying problem of both verifying the data and – in the case of transactions in other member states – to ensure compliance with the specific requirements and interpretations in the other Member States.

Therefore, BUSINESSEUROPE supports the initiatives, especially concerning e-governance, but would like to stress that e-governance also requires harmonisation of the underlying rules, and that electronic reporting is not free of cost for business. The more detailed and frequent the reporting obligations get, the more resources will businesses have to invest in internal controls in order to validate the data transferred.

BUSINESSEUROPE would also like to point out, that especially **t**he cost of VAT compliance in cross border context is detrimental to the neutrality of the VAT system. According to a Swedish study of 2006 the compliance costs for VAT correspond to about 3 per cent of total VAT revenues of the Swedish state (in 1993 it was 2.5 per cent of total VAT revenues). The costs are even higher in most other Member States.

THE COMMISSION ACTION PROGRAMME FOR REDUCING ADMINISTRATIVE BURDENS AND STREAMLINING VAT OBLIGATIONS

VAT is a huge burden for companies and tax administrations alike. The complexity of handling VAT makes it one of the most costly administrative burdens for companies, accounting for almost two thirds of the total burdens covered by the EU's better regulation agenda and a yearly cost of 70 billion euro[2].

Over the last years, it has become less burdensome to do business with non-EU countries than within the Single Market. Formalities, technicalities and bureaucracy have taken precedence over proportionality and ease of administration. In general terms, the problem we face today is that the European VAT system – which leaves administrative aspects fully in the hands of Member States – does not fit the reality of a deeply integrated internal market.

From a business perspective, the current VAT system is making the internal market a less attractive place to invest. Businesses report that trade with non-EU partners is becoming

[2] Opinion of the High Level Group on Priority Area Taxation (VAT), 28/05/2009.

increasingly more interesting than trade with EU partners as a result of the costs and legal risks associated with VAT compliance.

VAT legislation in the EU is difficult. Legislation is implemented in 27 different ways, creating legal uncertainty for cross-border trade and making compliance ever more difficult. This piecemeal approach increases bureaucracy in business life. As a result, legal uncertainty prevails in business transactions and there is little scope for an upfront discussion with tax authorities in certain EU countries to address this problem.

An interesting aspect of this is whether rules that was in line with the proportionality principle when introduced is still in line with this principle. Legislative and technological developments may have altered the premises for this evaluation. Therefore a review of the formalities, etc., could prove to be productive, especially if this was linked to the information already available for tax authorities, provided they work closely and efficiently together.

Q21. What are the main problems you have experienced with the current rules on VAT obligations?

Due to the fact that the Member States have implemented the VAT directive's provisions on compliance obligations in different ways, a heavy administrative burden is put on businesses having activities and VAT registrations in several Member States. Many examples could be provided with this regard: a remarkable example is represented by the VIES and the heterogeneous information associated with the VAT number of each Member States.

Another significant issue, demonstrating how the practical application of common VAT rules varies across Europe, concerns the proof to support a zero-rated intra-EU supply, particularly when the supplier does not arrange the transport of the goods; some Member States are, in practice, satisfied of the simple provision of the VAT number, others require special declarations on the arrival of the goods to the customer's premises, etc.

As previously noted, VAT compliance is a burden for companies and tax administrations alike; the complexity associated with VAT obligations is often reflected at the time of audits. Late, unwieldy and time-consuming audits are in many circumstances a problem across the EU. BUSINESSEUROPE is aware that audits deeply depend on the attitude of the tax administration of each Member State, but a certain degree of standardisation (in point of procedure, terms, and statute of limitations) is advisable. With this regard, the best practices used across the Member States (e.g. the enhanced tax cooperation used by the Dutch tax administration) should be promoted as benchmarks for improving the average quality of audits in every Member State.

The main general issue concerning the current rules on VAT obligations is, therefore, the lack of harmonisation; this, on the one hand, generates a significant expense for those businesses that are VAT registered in more Member States and, on the other, represents a sensible obstacle for the internationalisation of many SMEs and to their capability of operating in different Member States.

Divergent approaches by the Member States' tax administrations, deep differences in the kind of forms used, various on-line filing solutions, different IT set ups and, in general, the absence of minimum standard requirements for VAT-related forms are all issues highlighting

the need for a closer cooperation between Member States for the adoption of more harmonised compliance.

Strictly related to the low degree of harmonisation across the EU Member States, there is the problem in the access to the relevant information relating to VAT compliance that many businesses operating in several Member States often encounter. This complicates and makes hard to follow the compliance rules applicable in all the Member States, adding complexity to an already difficult situation, where it is often not possible to simply look at the legislation or published guidance and apply it to a business scenario.

Furthermore, businesses are experiencing a tendency – common to some Member States – on an increased desire of administrations to track cross border trade not only through the use of intra-EU listings, as provided for by the VAT directive, but also using additional and more complex forms.

This not only complicates VAT compliance, but it also seems an anti-tax fraud policy with doubtful effects: the effectiveness of anti-fraud policy relies, perhaps, on the quality of the information at disposal of tax administrations and not on the quantity of hard-to-manage data.

Article 273 of the VAT directive, allowing Member States to impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion might be advocated improperly, going further than necessary to attain such objectives.

For instance, after the adoption of the VAT package, businesses established in Italy must file extremely detailed intra-EU listing for services, providing to the tax authorities information for every single service supplied or purchased. Furthermore, in the same Member State VAT taxable persons have recently been required to communicate – either monthly or quarterly, depending on their turnover – to the Italian tax authority every transaction incurred with subjects established, domiciled or with residence in a so-called tax haven jurisdictions. For the purpose of this reporting obligation, one should also note that Luxembourg – an EU Member State, whose transactions are already monitored through EC listings – is regarded as a tax haven jurisdiction. The absurdity of this communication makes any additional comment superfluous!

These are just some examples on how reporting obligation have been increasing across EU-Member States, thus further complicating the current VAT system, despite the proportionality principle.

Q22. What should be done at EU level to overcome these problems?

First of all, since most of the administrative burdens relating to VAT obligations arise from differences in implementing rules adopted by the Member States, more efforts should be put on the harmonisation of compliance

Member States should better cooperate in order to achieve this goal, starting from the principle that they are all parts of the Single European market whose smooth functioning is crucial for European businesses. Member States should be keener to leave apart their individual interest in favour of the common objective of a closer cooperation using harmonised compliance tools.

The principle of subsidiarity, or, in simplified words, the degree of discretion applied by the Member States in the implementation of the VAT directive's provisions, cannot extend so far that it undermines the Single Market through national approaches. This also goes for specific reporting obligations introduced by single Member States because they are deemed necessary to prevent evasion in the Member State. In light of this BUSINESSEUROPE finds that a review of the effects these national measures entail for the entire Single Market functioning should be carried out and that the European Commission should take a more active role in promoting these kind of evaluations. The review should include cost-benefit analyses to estimate the impact and the effectiveness of the specific reporting obligations introduced by single Member States.

At EU level, administrative burden could be streamlined and reduced only if the European Commission is provided with sufficient instruments for a more active role (e.g. the possibility to adopt regulations for certain specific subjects, for very specific kind of provisions, the abandoning of the unanimity principle in the Council in certain cross-border areas in order to ensure the functionality in the VAT-area, etc).[3] Only with a more effective authority, the European Commission could play its role of protection and promotion of the proper functioning of the Single Market at best.

In the light of the smooth functioning of the Single Market, we also deem of fundamental importance that law makers better understand the need for more timely decisions: businesses operate in a global market and after the problem emerges, they cannot wait too long (possibly years) for it to be fixed.

With this regard, a clear example has been the adoption of directive 2010/23/EC of 16 March 2010, concerning the possibility for Member States to adopt the reverse charge mechanism on the supplies of CO_2 emission rights. This directive could be agreed upon only after more than one year was passed from the detection of the first carousel frauds in the carbon sector.

Other short term initiatives could include:

- Changing the INTRASTAT reporting obligations, by making INTRASTAT declarations voluntary and reimburse the compliance costs for companies that voluntarily submit INTRASTAT information
- Incorporating a template or so called model invoice in the EU VAT law which meets the requirements in all Member States and that the companies could always use on a voluntary basis.
- Providing the option for a legal entity to file one VAT return for all transactions in all Member States (i.e. transactions abroad could also be reported in the VAT return in country of establishment).
- Providing the option to pan-European / multinational companies to file one VAT return for all group companies transactions in all Member States (i.e. one consolidated VAT return for all group members).
- Simplify month in which an invoice must be reported by using the month of the invoice date, and reduce the details of the sales listings to the total sales and purchases per VAT number.

[3] With this regard, please refer to our response to questions from n.13 to no. 16.

Q23. What are your views particularly on the feasibility and relevance of the suggested measures including those set out in the reduction plan for VAT (N° 6 to 15) and in the opinion of the High Level Group?

Below, we have commented on some of the key proposals made by the High Level Group of Independent Stakeholders. We refer to the annex to our response for our brief comments on the other recommendations not commented in this section.

INTRODUCING A REAL-TIME VAT COLLECTION SYSTEM (RECOMMENDATION 11)

With this proposal VAT payment and refund would be changed to the point at which payment is settled in real time through the banking system. This would according to the proposal automate most of the things that businesses currently have to do to comply with VAT legislation. All taxable persons would be affected by this measure, notably with regard to the submission of VAT returns and listings and the bookkeeping and consolidation activities required calculating the VAT amount due.

BUSINESSEUROPE strongly opposes the proposal of real-time VAT collection. This pessimistic position is based on the many implications that the proposal does not seem to consider and we fear that they will heavily affect everyday business activity.

First off all we would like to note, that the change to real-time VAT would not – according to prior experiences with other electronically solutions – be the elimination of the obligations currently imposed on business to comply with the VAT legislation. In particular, we think that the real time management of each transaction could imply the need to cope with excessive details since the reporting is in real time. Thus, a number of the controls currently performed on a monthly basis to ensure compliance would have to be frontloaded.

Secondly, we think that the huge costs related to the implementation of a similar proposal could all be transferred to businesses; in particular, we fear that businesses might also been required to pay additional commissions (as currently happens when using credit card circuits) only for collecting VAT for governments (a services that now they are only paying through administrative burden but – hopefully – without being charged).

Thirdly, the consequences on cash flows are a major concern for BUSINESSEUROPE. To underline the importance of the cash flows, BUSINESSEUROPE would like to remind the reader of the initiatives taken during the financial crisis, where Member States prolonged the VAT credit periods in order to increase the liquidity in the companies.

To conclude, we would be very hesitant to change the fundamental model on the present grounds. Further studies on the efficiency of the VAT-system should be conducted, but BUSINESSEUROPE is not convinced that this model should be pursued due to the negative impact and the administrative burdens associated with this model.

INCREASING THE USE OF E-GOVERNMENT SOLUTIONS (RECOMMENDATION 13)

The VAT Directive allows and partly provides for the various VAT returns and lists to be submitted in electronic form to tax authorities. However, uptake of this option varies between Member States and is low in some. Further, the coordination between Member States is even lower. Identifying best practice in the Member States and encouraging others to adopt it would increase the use of e-government solutions. More businesses would benefit from

the cost savings made by switching from a paper to electronic communication with tax authorities.

BUSINESSEUROPE supports the recommendation to increase the use of e-government, because it can facilitate the harmonisation and standardisation of VAT compliance obligations. In order to increase the coordination between Member States, the Commission should act more proactively to promote benchmarks and best practices (for instance, the electronic filing of VAT returns, the use of standardised informatics languages are significant examples of the kind of procedures that should be harmonised). However, one should be aware of the transition costs involved to change ERP systems, which should be catered for.

Other examples would be the use of electronically filed sales listings, where tax authorities automatically validates the VAT numbers with VIES and instantly informs businesses of instances where sales are reported to a non-valid VAT number. This would reduce the exposure period for both businesses and governments without increasing the burden on business. This would also increase the understanding and accept of the reporting requirements, when business can see that the reporting is being put to efficient use.

ADDITIONAL RECOMMENDATIONS SUGGESTED BY THE HIGH LEVEL GROUP PUBLISHED ON OPINION OF 22 OCTOBER 2010.

Other obligations imposed by Member States (Article 273 of the VAT Directive)

- As an alternative way forward, a maximum list of standardised obligations in article 273 is being suggested. This suggestion is based on the work carried out by the consortium on article 273, which highlighted the great variation between Member States. The consequence is significant difficulties and high level of complexity in complying with VAT law, especially for businesses trading in many Member States. Instead of dealing with the individual obligations on a stand-alone basis, it is suggested that the obligations are dealt with in a more systematic way by defining a maximum list of standardised obligations in the VAT directive. Member States would be free to impose any of these obligations.

  BUSINESSEUROPE finds that this approach should be explored further. A maximum list of pre-defined obligations, would give businesses the chance to establish accounting and reporting IT systems and processes for VAT purposes that cover all their obligations across the EU. This would allow reporting obligations for VAT to be standardised across the European Union and help reduce the burden on business. However, the list of standardised obligations should entail a minimum set of best practices – commonly recognised as such – without options available for Member States to opt for additional ones. Thus BUSINESSEUROPE would be very reluctant to support derogations, because according to our experience, even the specific and targeted cases where Member States has required extra reporting obligations to combat tax evasion or avoidance, the fraudsters usually have moved on before the reporting obligations have been put in place, but the obligation seems to stick on legitimate business. Therefore, if the list of uniform obligations ends up in a bad compromise, providing for a long list of all (or a greater part of) the derogations currently applied in the Member States, the effect could in the end be negative, making the current panorama of VAT obligations more burdensome.

- A standardised EU VAT declaration. The proposal should be viewed in close connection with question 27 relating to the One Stop Shop. BUSINESSEUROPE finds the idea positive because it would represent a real harmonisation. However, there might be the risk that the uniform declaration is the result of a bad compromise, requiring businesses to provide an over detailed list of information (thus resulting in an increase of the compliance burden especially for businesses operating in more Member States). Even if the declaration is based on the best practice, which BUSINESSEUROPE would support, an agreement would also have to be reached on how to fill it in, which may be hard due to the lack of a harmonised legislation. The harmonisation should also ensure that Member States wouldn't request backup information along with the VAT return. Therefore, this initiative will have a longer time perspective. If the single EU VAT return is introduced without the underlying harmonisation, it will only be beneficial from a system perspective by clarifying the data needed to fill in a VAT return, which in itself may be beneficial.

SMALL BUSINESSES

BUSINESSEUROPE believes that the regulations concerning VAT should be designed in as simple a way that all companies – large and small – should be able to apply the rules without undue costs or burdens. If this were to be achieved there would be no need for special rules for small businesses and farmers. Thus, focus should be on how to reduce or remove the burdens for businesses associated with VAT. Having said this, simplifications in the form of small business schemes for the smallest companies where the cost of having a VAT registration and the additional work/risk in the hands of the authorities is not economically viable should be considered. The threshold should be straight forward to calculate.

Q24. Should the current exemption scheme for small businesses be reviewed and what should be the main elements of that reassessment?

Essentially, the problems identified for large businesses are amplified for small businesses. Often questions arise, that ought to be simple, like for instance how to obtain a refund in another Member State. But also questions linked to verifying information concerning the buyer, has proven to be burdensome. For instance in Spain a VAT-able person can have either a domestic VAT number or a European VAT number. Only the latter is registered in VIES. If a Danish SME is supplying to a Spanish customer with only a domestic VAT number, the VAT number cannot be verified in VIES. However, as the VAT number is a valid Spanish customer, the customer in question is entitled to receive the goods with reverse charge. The consequence is that unless the SME perform extra work to ensure that the customer is really VAT-registered, then the liability potentially still sticks with the supplier. A special issue for the SME in this case is to become familiar with the specific Spanish system with two types of VAT numbers, as this is different from the rules in the Member State of establishment in the example

Therefore, simplification schemes like the domestic VAT scheme could have knock-on effects on other businesses including SMEs, as SMEs also engage in cross-border activities. The current exemption-scheme (threshold) is beneficial for SMEs and does not create the problems illustrated above, as businesses being covered by the scheme have to pay VAT on the acquisitions. This also illustrates one of the shortcomings with the thresholds, as they only benefit companies in B2C trade. Companies in B2B may benefit from a compliance

perspective, but the cost is a lack of input-VAT deduction that competitors in the B2B-segment benefit from. Further, as the application is diversified and the thresholds vary, the model is less transparent. Efforts should be made to harmonise the thresholds. Further, a simplified turnover reporting – for instance in connection with the tax return – could be introduced for control purposes, if this is not already reported as part of the tax return – in order to be able to focus the resources on companies close to the thresholds.

However, due attention needs to be given to special schemes that gives the incentive for businesses to grow and trade across the borders. Therefore, focus should be on how to use the structure of the VAT system, but to limit the costs to an absolute minimum. Thus, SMEs would benefit from a general streamlining of the VAT system.

Q25. Should additional simplifications be considered and what should be their main elements?

Special focus could be given to cash accounting schemes (introduced with the invoicing directive) as well as a general, simple VAT registration system with a SME one-stop-shop. This would on top be an efficient way to test the one-stop-shop in areas outside electronic services, and the initiatives should not impact customers. However, BUSINESSEUROPE would suggest focusing first on the mini-OSS.

Q26. Do you think that small business schemes sufficiently cover the needs of small farmers?
N/A

OTHER POTENTIAL SIMPLIFICATION INITIATIVES

ONE-STOP-SHOP MECHANISM

Q27. Do you see the one stop shop concept as a relevant simplification measure? If so, what features should it have?

The OSS can be a simplification if it is permitted to be such, even though it does not alter the place of taxation. A well functioning OSS is vital and the essential element for a destination based VAT system, especially if goods and services need to be taxed when being shipped to another Member State. Therefore, to make a destination-based VAT system where everything is taxed when transferred work in practice the OSS needs to work smoothly and needs to be easy to handle in practice, otherwise the burden on business (suppliers) will continue to increase.

It needs to cover both output VAT and input VAT, and should cover all VAT obligations in the Member State (both B2B and B2C) for all goods and services; otherwise we have a system in the system. We recommend following the Commission proposal which is also supported by the HLG.

The OSS system should be an optional system for business to decide if they want to apply it or not (otherwise direct foreign VAT registration). It needs to be based on a standardised EU IT platform with standardised return forms. It is of utmost importance that there needs to be a lesson learned out of the very bad implementation experience on the 8th Directive EU Refund Portals. If things are not approached differently on the OSS it will bitterly fail.

For the supplier to be able to handle the OSS efficiently a database with rates – or even a virtual rate adviser - and other relevant information (exemptions, input-VAT deduction rules) of the Member State of destination is required and should be published by all the EU Member States. This could and should also be incorporated in the mini-one-stop-shop already voted through in the area of electronically supplied serves.

In general BUSINESSEUROPE finds that:

- The more the VAT rules are harmonized the smoother the OSS will work.
- There should be one EU OSS standardised OSS application/registration approach.
- The OSS could be linked to STAF approach to ensure smart audits/controls.
- There should be a single payment of VAT under the OSS to the MS of establishment (from where OSS is run).
- It is essential and of highest importance that a proper refund system is in place if business which operate via the OSS are in a refund position. Refunds should be granted as straight forward as via the regular taxation procedure

However, no matter what level of formal harmonization is achieved, the key issue is whether the Member States trust each other and can handle the close cooperation between MS that is essential to make the OSS work efficiently.

The easier the OSS is to handle the more voluntary compliance is encouraged. As the experience of the current e-commerce Non-EU OSS shows, most non-EU businesses which participate in this system are registered via the UK portal, as it is easy to handle and there are no language barriers.

Operating a destination based system with a well functioning OSS would mean that the current transitional system and some of its burdensome reporting requirements (e.g. EC sales listings, possibly Intrastat as well) could be abolished.

As simplification and in order to increase efficiency and reduce bureaucracy it could be allowed for intra-Community transactions between affiliated parties to apply the reverse charge system, so that the OSS would only be applied B2C and B2B between non-affiliated parties.

The key aspects for a hopefully more successful implementation process of the OSS are:

- Start early with the implementation process
- Build a working group consisting of all stakeholders (Commission – Member States – business) with different background (VAT and IT)
- Involve business (both VAT and IT experts) at an early stage and through the whole process
- Establish an EU IT framework – avoid bilateral solutions – standardize as much as possible, use common technology (e.g. XBRL)
- Run pilots early in the process and test the system thoroughly
- The first shot needs to be a goal, remodelling the system later is a “no go”

ADAPTING THE VAT SYSTEM TO LARGE AND PAN-EUROPEAN BUSINESSES

Business structures of today are much more complex than business structures in the past. Business operations takes place around the world and the structure of business are not driven of tax rules but of other concerns, business decisions built upon the most efficient way to please customers. The VAT systems within EU with its complex structure are not adaptable to business of today. The VAT rules within EU create a very high administrative burden to business. The VAT directive only has a few provisions that concerns large business. Rules regarding VAT grouping are not harmonised in the Member States and is very often only beneficial for specific business activities.
As the single market is not harmonised large companies in their way of doing business have to deal with 27 different sets of rules and special reporting obligations for the internal cross-border transactions.

The internal cross-border transactions could consist of as much as 70% of a company's total transactions. A well functioning single market which is designed to the structure of today's business is needed.

Large companies testify that very large part of the EU cross-border trade is intra-group. Within the EU, indicated as many as 70-80% of all EU cross-border trade. Several of our member companies confirm this number. If simplification can be done within the framework of such transnational group registrations and it would facilitate access to find and combat VAT fraud, BUSINESSEUROPE believes that opportunities should be explored further.

Q28. Do you think that the current VAT rules create difficulties for intra-company or intra-group cross-border transactions? How can these difficulties be solved?

A significant amount of cross-border activities relate to intra group activities so this is an important area for business where the compliance burden of tracking and reporting transactions outweighs the benefits to tax administrations. It is arguable that the threat of fraud lies elsewhere than this sector of business so the cost to both business and tax administrations of the current rules does little to prevent fraud. They are also an obstacle to the operation of the Single Market. Due to the fact that internal cross-border transactions represent a huge amount of the large companies' transactions and having in mind all the reporting obligations that should be submitted to Member States' tax authorities, one could imagine the resources that must be used to collect and review this information. If less reporting or other simplification rules could be a fact these resources could be better spent tackling real fraud.

Cross border grouping

One possible option would be to permit cross border grouping of companies as an effective simplification of cross border transactions within the EU. Tax administrations could then focus on the transactions of the group externally rather than intra group by largely ignoring intra group transactions except where risks are identified. To achieve this tax administration need to be more adept at identifying true risks and use their resources more effectively where true risks are identified rather than trying to track all transactions, particularly within fully taxable businesses.

If cross border VAT grouping is to be an effective measure it must focus on best practice and not replace one administratively complex system with another. Cross-border VAT

grouping must not be an optional simplification it must be permitted in all Member States and tax administrations should only be able to prevent grouping where it is necessary to protect revenue against fraud or [significant] tax loss. VAT grouping arrangements should not be an option for Member States but for business. It should be a common rule for all Member States and as well be applicable for a group of companies within one Member State as in several Member States. For tax administrations it could provide an effective alternative to one-stop shopping and address issues arising from cost-sharing arrangements on a permissive basis. It should be noted that the current prerequisite for VAT grouping in article 11 (the economic and organisational links) are legally rather uncertain and a lot of court cases particularly spin around the organisational links. Thus, it might provide greater legal certainty if taxable persons closely bound by just financial links would be enough to define a VAT group in article 11.

Intra-company charges

Intra-company charges between various establishments (branch to branch and head office to branch) currently present significant complexities particularly when trying to identify where a supply should be taxed. Today transactions between various establishments of a single legal entity are seen as supplies that are within the same legal entity and therefore not a supply for VAT purposes. This is the case when the various establishments re one Member State as well as in several Member States. There could be differences of the interpretation of these rules in different MS but very often the rules are applied in a common way. The most problematic question is the interpretation of what is an establishment (branch and so on). With no easy means of arbitration when two Member States both seek to tax such an activity clarification and simple rules are needed. The issue arises because intra-company supplies of services across borders are not taxed, even though goods are. OECD is currently considering the issue of how to tax having decided where tax is correctly due. Whilst this work may not have a direct impact on intra EU supplies of services it should serve as a strong indicator in order to prevent additional complexities for cross-border supplies of services.

BUSINESSEUROPE would suggest to let intra-company transactions, including intra-group charges be covered by reverse charge, regardless of whether the supply is cross-border or domestically.

Internal recharge

In considering the taxation of such supplies the current EU principle that intra-company supplies of services are not taxed must remain in place. So no tax should apply to an internal recharge for labour related services, for instance. It is also important that any changes should ensure simplicity for business to apply, consistency of application by tax administrations and without the need for any additional reporting by businesses.

BUSINESSEUROPE could see that some kind of simplification for group company transactions must be implemented in order to ensure a real harmonised level of playing field for businesses across the single market. BUSINESSEUROPE are of course aware of that the rules should not be created in the way that unfair advantages would be seen only for a certain kind of business. But as the large companies of today must be able to comply in the single market and that the MS Tax Authorities must be able to tackle fraud in an effective way changes must be done to decrease the administrative burden.

If rules regarding either exemption of intra group transactions or extending the VAT grouping arrangement will be implemented the today's problem with cost sharing could be easier to handle for this kind of business. But cost sharing arrangement for specific kind of businesses such as the financial sector and out sourcing will still be an issue that needs to be solved. This must be done in a way that shows the VAT principle of neutrality, simplification and harmonisation.

SYNERGIES WITH OTHER LEGISLATION

The VAT system is either handled via Member States' tax authorities or via Member States' customs authorities. In some Member States, both VAT and customs are handled by the same authority as for instance in Denmark and the UK. A paid import VAT to the customs authority should be deducted in the VAT return submitted to the tax authority. It seems to be obviously that a strong connection between the two set up of legislation is needed. You can also say that it seems to be natural that only one authority should handle VAT both import VAT and "normal" VAT. If handled by one authority it will lead to an effective and less costly administration of VAT in the Member States.
Many rules within the VAT area is connecting to or are depending of other rules such as excise duties rules especially rules for certain warehouses, accounting rules and Intrastat rules.

Different reporting obligations for goods such as sales list and Intrastat need to be incorporated to one list, if a list is needed at all, in order to minimise the administrative burden for business.

Q29. In which areas of VAT legislation do synergies with other tax or customs legislation need to be promoted?

The free circulation of goods is one of the four freedoms within EU and in 1993 when the internal market were implemented the introduction of a Customs Union and the Modernized Customs Code was adopted.

Centralized customs clearance

BUSINESSEUROPE has in its position paper from 17 November 2010 on the consultation of simplification of VAT collection procedures in relation to centralised customs clearance stated that BUSINESSEUROPE believes that VAT collection rules should be amended and that a centralized model is the way forward. The model should be a model in which customs and import VAT obligations are fulfilled in the Member State of authorisation.

This could be enlarged to a more common handling of import VAT via the tax authority. A self assessment of import VAT in all Member States will ease the administrative burden for business. This will be a ground for a real simplification in practice.

It should be noted that with the central clearing mechanism and the principle of declaring and paying custom duties to the local customs administration of their establishment, customs procedures has become much more flexible in regard of the flow of goods. The VAT-legislation should be as flexible, but unfortunately the existing framework is very rigid. For instance the "fictitious supplies" in articles 17 and 21 of the VAT-directive are in most Member States incorporated with a very rigid legal framework.

Example
If a company export goods from Member State 1 through a central warehouse in Member State 2, and the export clearance is conducted in Member State 2, then for instance Belgium, France and UK would require a VAT registration in Member State 2.

Problems regarding liability of import VAT

One area where the VAT legislation and the customs legislation causes problem for business concerns the rules of who is liable for payment of the import VAT and then the rules of deductibility in the VAT legislation in some Member States, this means that a import VAT will not be deductible.
Rules regarding excise duties and the handling with certain goods in different kinds of warehouse could differ from the VAT rules when it comes to who is liable and when the tax liability occurs. This disparity cause problem for business and increase the administrative burden.

Invoicing rules and accounting legislation

VAT practice including invoicing rules are also impacted by other areas of legislation and local accounting laws and it is important that simplifications in VAT practice are not negated by other legislative requirements which mean that any perceived simplification benefits are negated.
Invoicing including e-invoicing is a particular area where local accounting and business legislation imposes requirements above and beyond those for VAT so adding to invoicing complexity. In respect of e-invoicing the variable application and use of e-signatures also hinders simplification and the use of paperless invoicing.

VAT and Intrastat

The interaction of Intrastat reporting and customs requirement with VAT and the need to reconcile the two adds to the administrative burden on business without corresponding benefits. The apparent demand from governments for increasing amounts of statistical information does nothing to help business efficiency. There is a need for such reporting to be commensurate with the work involved in capturing it and the benefit to the users.

Where synergies can be achieved they can be of benefit to business in reducing time and cost of compliance; whilst the same benefits can be enjoyed by tax authorities and other government organisations who will have to spend relatively less time checking the validity of information sometimes more than once by different parts of the same government.

To this end, there needs to be more coordination between the different organisations which impose reporting requirements on business to see if their requirements can be achieved by using and adapting existing information rather than demanding more. In this respect the interaction and to some extent, duplication between VAT and Intrastat could be simplified to use one report for both and that should be based as far as possible on commercially held information. The single market should not be seen as a market depending on reporting obligations.

A MORE ROBUST VAT SYSTEM

Throughout the document we have advocated for more harmonised rules, as we find the lack of harmonisation to be the biggest threat to the VAT system. Therefore, we also welcomes a debate on whether the present collection methods needs to be changed or whether it is still the best way to collect VAT. However, any discussion should be based on verifiable facts and realistic assumptions. It should also be considered, whether problems identified in the collection of VAT is founded in shortcomings of the collection method or shortcomings in the underlying rules and administrative practices.

BUSINESSEUROPE has dedicated a significant amount of time to understand the section on the VAT gap including the underlying studies, but we are not in agreement with the conclusions in the green paper nor the recommendations. First of all, studies needs to be undertaken by the member states to understand the composition of the VAT gap based on a bottom-up approach. These studies should include the black economy. Secondly, realistic measures need to be brought forward, measures that at the same time cater for legitimate business and reduces the VAT gap.

In the feasibility study, one of the basic assumptions is complete harmonisation. BUSINESSEUROPE believes that efforts should be put into solving the underlying problems before changing or addressing the collection methods fundamentally. Therefore we cannot support some of the models introduced – such as the split-payment model – that requires high investments and fundamentally changes the collection in part of the economy – shifting the basis to a payments-based system, and finds that discussions should be postponed until a point in time when the basic assumptions and preconditions are in place.

BUSINESSEUROPE do however see some merits in proposals that are seen as an evolution of the current systems. Therefore it could be suggested to look further into the data warehouse model and the certified taxable person model, provided that the models do not increase the administrative burden on business. However, we need to stress, that problems with the underlying VAT legislation needs to be addressed first and would, in our opinion, significantly improve the VAT system and reduce the VAT gap.

Underlying changes should also prove beneficial to bona fide traders, and BUSINESSEUROPE favours other initiatives to alleviate the burden for bona fide traders. One of BUSINESSEUROPE's key concerns is the joint and several liability – especially SMEs – when trading in the EU. Clear, simple guidelines on how to ensure that they will not be subject to joint and several liability would therefore be highly appreciated, especially since the detailed legislation varies from Member State to Member State.

REVIEWING THE WAY VAT IS COLLECTED

Q30. Which of these models looks most promising in your view and why, or would you suggest other alternatives?

BUSINESSEUROPE welcomes a debate on the effectiveness of present VAT collection methods. The starting point should be how to most efficiently raise revenue with the lowest

possible impact on business, taking cash flow, administrative burdens, new risks and commercial impacts into consideration.

Before proposing comprehensive reform, it is important to consider whether the present model is "broken" or whether improvements could be made to increase the efficiency for both business and the tax authorities.

SIGNIFICANT SHORTCOMINGS WITH THE ANALYSIS

Going through the proposals as well as the underlying staff paper and feasibility study, BUSINESSEUROPE finds that the fundamental analysis – unfortunately - fails on a number of points. Therefore the results in the feasibility study are highly questionable.

- The feasibility study is based on an assumption of total harmonisation All other aspects of the green paper attempt to address the lack of harmonisation. Therefore this basic assumption does not hold. Any VAT collection approach must still be robust in an environment where full harmonisation has not yet been achieved.
- The harmonisation effect is not analysed in detail, nor is it separated out in the study. Thus, any of the effects shown include two effects: The harmonisation effect and the effect caused by a change of collection method. BUSINESSEUROPE is of the opinion that the harmonisation effect is by far the biggest contributor.
- The data regarding the VAT gap are highly questionable. Significant flaws in the data were identified at the time the Reckon report was published. Especially the modelling of the black economy in the Reckon report caused a lot of concern.
- The contributing factors to the VAT gap are based on a UK bottom-up approach. However, the fifth contributing category added by PWC in order to reconcile the UK bottom-up approach with the top-down approach in the Reckon report, is already included in the other four contributing categories from the UK bottom-up approach.
- The coverage of the black economy in the models is questionable.

These shortcomings are recognised by PWC in their report. To quote paragraph 22 in the PWC executive summary: "Taking into account these data collection issues and assumptions, the conclusions and recommendations should be read with extreme caution."

This is alarming for BUSINESSEUROPE due to the risk of taking serious decisions with a significant business impact, without proper analysis and based on unreliable data.

THE BASIC APPROACH IS FLAWED

Another important aspect is the fundamental question being asked in the study:
"The more fundamental questions are:

- *which model will be most effective in combating specific parts of the VAT gap?*
- *And how it can be implemented cost-efficiently?" (PWC Executive summary paragraph 24)*

As we mentioned in the beginning, the starting point should be how to most efficiently raise revenue with the lowest possible impact on business, taking cash flow, administrative burdens, compliance costs and commercial considerations into account. Any discussion on the collection of VAT should recognise the effect on business and the efficiency of the current system and if anything seek to simplify and streamline the process, not render it more complex. The amount of revenue raised is – given the restraints highlighted in our other answers – very high. Therefore the starting point should be whether we can improve

the efficiency of collection from legitimate businesses. If there are improvements to be made, we should then see whether the improvements have a knock-on effect in other areas.

One of the key-problems with the current model is the joint and several liabilities in intra-EU trade. Because of the obligations in place, as we highlighted in our answer to question 1, companies abstain from entering into cross border trade. The effect is a reduced efficiency of the internal market, leading to reduced economic activity including a loss of VAT revenue (leaving beside the loss of jobs and competitiveness). Therefore, increasing the efficiency for legitimate business should be the highest priority.

When suggesting changes to the collection method without due attention to the underlying problems, fraud may be reduced in one area, but BUSINESSEUROPE is highly concerned with the effects that changes may have elsewhere in the VAT system, both relating to new fraud opportunities and reduced efficiency of the system.

When targeting the VAT gap, we should first of all understand the size of the gap and contributing factors in each member state as the factors vary from one Member State to another. These studies need to be conducted by the tax authorities in the member states in consultation with business representatives.

As part of this, we need to evaluate whether the VAT gap identified is caused by shortcomings in the VAT rules or in the collection method. As our answers to many other questions in the green paper indicate, the complexity and diversity of the VAT legislation in Europe combined with the differences at the tax authority level creates significant obstacles. BUSINESSEUROPE is concerned by the fact that by focusing on the collection method from a fraud point of view, we might be trying to solve the wrong problem with changing collection methods, when the appropriate medicine is to be found elsewhere. If we for a moment look at missing trader fraud, BUSINESSEUROPE is alarmed by the fact that the countermeasures enacted by the Member States essentially only hurt legitimate business, while the fraudsters move on and are rarely prevented nor punished. We have repeatedly pointed out that this type of fraud could and should be targeted by efficient, risk-based cross-border VAT audits, not by shifting the burden to legitimate businesses. The consequence is that tax authorities under the present model do not have an incentive to catch the fraudsters as they can more readily recover the VAT from legitimate businesses.

Once the contributing factors to the VAT gap are indentified, a discussion is necessary on whether these factors can be reduced. For instance, it should be discussed whether VAT avoidance schemes, which are based on the VAT legislation in place, are a collection or a legislative problem.

Next, the trend of the VAT-gap should be closely monitored at Member-State level due to the fact that the trend is the important indicator and to guide the allocation of resources by tax authorities. The ongoing monitoring of the trend is necessary as a gap area today may be different or arise in another area tomorrow.

AREAS OF CONCERN WITH THE PRESENT COLLECTION METHOD

From a business perspective the present collection method has flaws caused by both the reporting obligations and the amount of precursory measures taken to avoid joint and several liabilities, especially if the reporting is not being used effectively by tax authorities.

As an example, BUSINESSEUROPE is aware of instances, where sales are being reporting electronically by the company on a quarterly basis, listing the EU VAT numbers of the customer. However, the tax authority in question does not automatically validate the VAT numbers with the VIES database. Only after two years does the tax authority in question react. This is an example of inappropriate use of the information received, because appropriate action taken immediately by the tax authority in question would have stopped a missing trader fraud after the first quarter. Thus, due to joint and several liability, the incentive for the tax authorities to improve the audits is reduced as, failing prosecution of the fraud perpetrator, legitimate business is targeted.
Another concern is the sales listings of services, where BUSINESSEUROPE questions the use of this reporting obligation. We would like to suggest to the Commission to conduct an evaluation of the effectiveness of the listings.

COMMENTS ON THE MODELS SUGGESTED

Before evaluating the suggested models we would like to highlight, that the comments are based on the assumption that we are / will be operating in a reverse charge environment with the destination principle underlying this.

CERTIFIED TAXABLE PERSON MODEL

This model builds on known principles and is to some extent already in operation today, for instance in UK. It is in line with the enhanced relationship model and follows global trends in the area. Further, the concept of relying on internal controls is already known in the VAT legislation in the recently adopted new invoicing rules. Therefore, business finds this model to be a natural development of the working relationships between legitimate business and tax authorities. BUSINESSEUROPE could thus support further efforts in this area provided it does not lead to a lot of bureaucracy.

However, BUSINESSEUROPE needs to stress that any system should not increase the administrative burdens for businesses and should not distort competition between companies, for instance new entrants or SMEs, but should be to the benefit of all businesses. It is also a concern that businesses may be seen as potential fraudsters simply based on their industry affiliation or on the fact that they may choose not to certify their processes. Furthermore, BUSINESSEUROPE is concerned with the time and costs for both tax authorities and business associated with the certifying procedure and maintaining the certification. A specific risk would also be if certification was to force businesses into certain processes thereby impacting business decisions.

It is therefore important that a certified taxable person model does not impact business decisions as the tax system should be neutral to business. It is also important that the certification process is not compulsorily externalised as this would essentially be the same as outsourcing the tax control function and the funding of the function. This would thus leave business with the costs, which would in fact be an extra tax.
We suggest that any certified taxpayer model should look at controls that businesses already have in place as part of their own internal control systems and for the purposes of statutory requirements (e.g. Sarbanes-Oxley). Also, that best practices in other jurisdictions be examined to see what may be effective.

DATA WAREHOUSE MODEL

Another promising development of the present collection model is the introduction of a standard audit file (or the data warehouse model). Properly developed this could be in line with business developments and could increase the efficiency of tax audits significantly. BUSINESSEUROPE notes that according to the feasibility study it is the model that generates the highest net present value of those in the feasibility study, but the model could give rise to significant administrative burdens. Therefore, further studies will be needed. The studies should provide more solid assurance that the tax payers will benefit from this model. The studies should also address SMEs, for instance by having a data garage for SMEs.

CENTRAL VAT MONITORING DATABASE

First of all, BUSINESSEUROPE is deeply concerned regarding the IT security with this model, as anyone gaining access to the data will have instant access to all European business transactions, containing highly confidential information.

The central VAT monitoring database has additional weaknesses due to the fact that it only works if e-invoicing is made obligatory for B2B transactions. Further, the consequence and effect on B2C is not considered. From a BUSINESSEUROPE perspective, we are concerned about whether Member States will be able to cope with and make use of the sheer amount of data this model would generate.

A possible variant could be that the e-invoice issued and received are both automatically sent to the central database and cleared as a result of which there is no effective requirement to pay VAT by the supplier and no actual input VAT recovery by the recipient until the final stage of consumption. Thus VAT payments are replaced by the invoice reporting. This could have a positive impact on the compliance burden of companies and could facilitate audits efficiently. This model will also help eliminate missing trader fraud regarding B2B transactions.

However, given the recent experiences with it-projects, BUSINESSEUROPE have little confidence in the efficiency of such a system.

SPLIT-PAYMENT METHOD

The split-payment model raises many concerns due to the significant cash-flow impact, administrative burdens and commercial/credit issues associated with it. Among other problems, in essence the number of payments is doubled and the amounts of reconciliations are equally doubled.

If such a model was to be considered it would as a minimum need to incorporate a real time clearing mechanism. This appears problematic in cross border situations given the recent experiences with refund portals. Further, the level of investments required by businesses under this model seems to be inappropriate, especially since it is not even the best of the proposed models.

On top of that, as a number of transactions are not covered by the split payment model, the system is opened up for new fraud. For instance, intercompany settlements, credit card payments, cash payments and barters are not covered by the split payment model, therefore areas with high fraud potential would not be addressed.

The amount of work for businesses is actually recognized in the PWC study. In the executive summary, paragraph 30, it is noted that "(…) considerable operational costs as the taxable person needs to manage this additional blocked VAT bank account (…) plus the additional clearing costs that will arise from each payment (…)".

It should also be mentioned that the split payment method is cash-based which shifts payments compared to the current method. This will have an effect on the national accounts in the year of change by postponing payment.

The method also raises other issues around credit management and banking for businesses Therefore, BUSINESSEUROPE cannot support the split payment method and does not find any merit in progressing with the split payment method due to the uncertainties and costs associated with the model. In any event discussions should be postponed until a point in time when the basic requirement for the model, namely, full harmonisation, is met.

PROTECTING BONA FIDE TRADERS AGAINST POTENTIAL INVOLVEMENT IN VAT FRAUD

Q31. What are your views on the feasibility and relevance of an optional split payment?

The real question in this section is actually directly linked to the headline, namely how do we protect bona fide traders against potential involvement in VAT fraud. By narrowing the question to an optional split payment method the paper seems to pre-empt other measures to be taken to relief bona fide traders.

However in the first paragraph in the green paper under section 5.4.2, a reference to legal practice is made. According to this, ECJ has confirmed that where "the tax administration is able to prove that the customer knew or should have known that his or her purchase was part of a transaction connected with fraudulent evasion of VAT, it can refuse the right to deduct." The green paper then highlights the burden of proof laid on the tax authorities in each individual case combined with the risks for businesses by leaving them in a vulnerable position. Thus the green paper acknowledges that bona fide traders may inadvertently be dealing with fraudsters which would put bona fide traders back into the equation.

Therefore, one of BUSINESSEUROPEs key concerns is joint and several liability. This liability is a key concern for businesses – especially SMEs – when trading in the EU. Clear, simple guidelines on how to ensure that they will not be subject to joint and several liability would therefore be highly appreciated, especially since the detailed legislation varies from Member State to Member State. In order to combat the fraud, focus should also be on the control activities of a "bonus pater" tax authority before focusing on what businesses could do. As we have mentioned elsewhere in our answer, a starting point could be to improve the controls on the VAT-returns by automatically matching with the VIES-system, and to keep the VIES system completely up-to-date. This would already better cater for the aim of protecting bona fide traders.

The green paper suggests that the "far reaching, compulsory mechanism of split payment" effectively eliminates missing trader fraud and that an optional split-payment method would allow customers to protect themselves against risks like joint and several liability. However

the green paper recognizes that the optional solution may have a negative impact on business relations as well as cash flow consequences for suppliers.

In addition to the concerns raised under question 30, BUSINESSEUROPE is highly concerned with the proposed optional split payment model due to a number of reasons:

- The negative impact on business mentioned in the green paper is essential and a key concern for BUSINESSEUROPE. The solution should not have this strong negative impact on business relations because then this will in itself become a factor in a business relationship.
- Grave concerns around robustness of the public IT systems and interfaces due to the fact, that if it is being introduced as an option it will need to be implemented by both businesses and tax authorities. The track record from the European Commission and the European tax authorities is not promising and business will with this model –again – face the bill for implementing optional systems, which the counterpart may use.
- The uncertainty on which VAT scheme (regular or split payment) the customer chooses have a direct impact on the supplier, especially in how to handle this option in the ERP systems, VAT reporting, etc.

Alternative measures

Upgrade VIES as such

- As far as this is not already the case today, VIES should be synchronised with the national databases with maximum one day delay (Last update date should be mentioned on the VIES record visible to the taxpayers)

EFFICIENT AND MODERN ADMINISTRATION OF THE VAT SYSTEM

The way forward is not to implement a new way of collection VAT in the way that the administrative burden for business will increase. Instead of better cooperation between businesses and Member States, tax authorities should be created. Member States and businesses have the same goal – the fight against fraud and legal certainty for bona fide businesses. An administration that is not burdensome for businesses and that allows tax authorities to secure their revenue. Simple and effective VAT collection and VAT compliance needs to be built up with input from businesses. Cooperation is not only needed between businesses and tax authorities but also between tax authorities and other authorities such as customs and police to be able to fight against VAT fraud, black market trade and other illegal tax avoidance.

To create an EU internal market the catchwords should be – simplification and harmonisation, legal certainty and stream lined administration, cooperation and better understanding.

BUSINESSEUROPE recognises that there are a number of barriers to overcome. There are cultural differences in the Member States, differences that become a barrier to trust both between tax authorities themselves and between tax authorities and businesses, BUSINESSEUROPE supports the initiatives taken to reduce the barriers, especially by initiatives such as Fiscalis and recently the Business Expert Group. BUSINESSSEUROPE is hoping that the initiatives will stimulate the dialogue between tax authorities, businesses and the EC enabling us to develop a long term partnership build on trust.

We would like to highlight that an efficient and modern administration of the VAT system is the most important key to bringing the VAT system forward, as all other initiatives at the end of the day builds on the day-to-day administration of the rules.

Q32. Would you support these suggestions to improve the relationship between traders and tax authorities? Do you have other suggestions?

BUSINESSEUROPE welcomes and strongly supports the suggestions made by the Commission to improve the relationship between business and the tax authorities.
Both business and tax authorities have common goals and face common constraints. Working together in close cooperation based on mutual trust is the way to a more safe, fair and efficient VAT system and a win – win for both business and tax authorities. It is very important that all Member States buy into such an approach and those Member States which make decisions in isolation without consulting businesses in their country should be encouraged to embrace this wind of change.

Establishing a permanent discussion forum between Member States and business at EU level with the Commission as facilitator, as platform to discuss practical issues and share best practices across the EU (soft policy) could be a big step forward to improve efficiency, to build trust, to gain a common understanding and to also increase legal certainty. It would help managing VAT in today´s world more straight forward (e.g. smart audits with focus on those who have no internal controls in place) and would free up resources on both sides.
These resources could be working together on common risk management processes, on further developing and enhancing the VAT partnership concept across the EU and on IT related matters, identifying how today´s technology can be used in a more harmonised way to create greater efficiency.

All of these efforts would tremendously help to fight against the fraudsters side by side – business and tax authorities – in a more pro-active, coordinated, target oriented and finally more successful way, which would be a big win for the entire society.

In the long term the permanent discussion forum could also play a key role to make the current legislative process more transparent by being involved and linked in as expert committee into the discussions in the Council, at the VAT Committee and in the Fiscalis seminars (see answer to question 16), sharing practical knowledge, being involved in impact assessment, making sure there is the required business understanding for the decisions to be made in the legislative process and when it comes to implementation and application of the adopted rules.

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OTHER ISSUES

Q33. Which issues, other than those already mentioned, should be addressed in considering the future of the EU VAT system? What solution would you recommend?

International aspects of VAT: multinational companies are increasingly moving away from local structures to regional or global organisation models. Global models and global approaches lend themselves to a more global framework for indirect taxes. Currently, there are issues which are considered on a much broader level via the OECD (e.g. indirect tax implications of cross-border services). When considering the future of the EU VAT system it is recommended to consider developments in other regions as well, in order to ensure that all regions can move in the same direction. This will be appreciated by global multinationals.

Given the EU's long history and experience with VAT, it would make sense if the EU (probably in co-operation with the OECD) would take the lead towards a globally harmonised indirect tax system.

Sanction Systems

BUSINESSEUROPE would like to encourage the Commission to look in more detail into the sanction systems (penalty and interest) existing across the EU. We understand that these aspects are to the discretion of the Member States, however, keeping in mind that VAT is a transaction-based tax collected by business, with a big volume of transactions – both incoming and outgoing – running through the business process, a fair and equitable sanction system needs to be in place across the EU, linking the sanction to the gravity of the mistake and to the fact whether there was a danger for the tax budget.

This is crucial particularly considering the neutrality and proportionality principles inherent in the VAT system. There is evidence that these principles are highly violated in some EU countries. This topic is also one that was highlighted in the OECD Lucerne Communiqué.

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APPENDIX 1 – DETAILS TO THE ANSWER OF QUESTION 23

Annex

Question 23: What are your views particularly on the feasibility and relevance of the suggested measures including those set out in the reduction plan for VAT (N° 6 to 15) and in the opinion of the High Level Group?

This annex relating to question 23 summarizes our brief view on the recommendations of the High Level Group of Independent Stakeholders, reported in the annex to COM(2009) 544 final of 22 October 2009 which we consider having a minor impact on the reduction of red tape for businesses.

ABOLISHING ANNUAL SUMMARY VAT RETURNS (RECOMMENDATION 6).

The VAT Directive allows Member States to require that taxable persons submit an annual summary VAT return, containing the information provided in the periodic VAT returns and where necessary adjusting it. However, most of the information required on these returns is redundant or could be better obtained in other ways. Some Member States do not require them. Abolishing annual summary VAT returns could be part of the options under review. Businesses would no longer have to submit summary annual returns. They would make corrections or amendments in the periodic returns, as practiced in those Member States which do not require an annual summary return.

BUSINESSEUROPE's opinion: Even though a simplification is welcome in itself, we deem that this proposal does not represent a major cost factor. The important part is finding an easy way to deal with corrections that will occur regardless of the level of scrutiny devoted to the monthly VAT returns.

REDUCING THE FREQUENCY OF THE PERIODIC VAT RETURN (RECOMMENDATION 7)

Taxable persons are required to submit a periodic VAT return (article 250 of the VAT directive) in which they set out all the information needed to calculate the VAT chargeable and the deductions to be made. The most common frequencies used by Member States are monthly and quarterly. Frequencies could be harmonised, revised downwards and based on turnover thresholds. The frequency could be annual for enterprises with a turnover of up to 500 000 euro, quarterly for those with a turnover of up to 2.5 million euro and monthly for those above that threshold. Businesses would, however, be allowed to opt for more frequent submission. Changing the frequency could reduce the number of VAT returns. Businesses would therefore spend less on consolidating VAT accounts, compiling the return and checking or correcting mistakes.

BUSINESSEUROPE's opinion: In principle, we look at the proposal with favour because it represents a simplification and goes toward a harmonisation of VAT compliance.
However, we would like to stress the need for a pragmatic approach when taxpayers close their periodic VAT return in a refund position; in this circumstance easy solutions for getting a timely refund are required.
Anyhow, Member States should be left with the option to choose the filing frequency.

SIMPLIFYING THE PROOF REQUIRED FOR THE VAT EXPORT EXEMPTION (RECOMMENDATION 8)

Taxable persons applying the VAT export exemption are required to prove to their tax authorities that they have dispatched the goods outside the European Union. The burden of providing this proof depends on the number and type of documents required. The export document, drawn up for customs purposes, could normally be regarded as sufficient proof of exportation. It could be sent by the customs authorities to the VAT authorities via the electronic information exchange system.

Paperwork related to the application for a VAT export exemption would significantly be reduced.
BUSINESSEUROPE's opinion: This proposal could represent a real simplification, but can be implemented only if an effective information flow between customs and tax authorities is set up, so that e-customs solutions are also used for VAT purposes.

ABOLISHING THE INTRA-EU ACQUISITIONS LISTING (RECOMMENDATION 9)

The VAT Directive allows Member States to require that taxable persons submit a list of acquisitions of goods or transactions from sellers established in other Member States. However, tax authorities could obtain the information provided by this listing from other sources, such as the intra-EU supplies listing or the VAT Information Exchange System.

BUSINESSEUROPE's opinion: Since the information requested by this kind of listing can be found through other sources, we would be in favour for an abolition of such obligation that should be accompanied by an overhaul on the functioning of the VIES database.

ABOLISHING 'NIL' INTRA-EU SALES LISTINGS (RECOMMENDATION 10)

The VAT directive requires taxable persons to file lists of all supplies made to taxable persons in other Member States. Member States may require the list to be submitted even for periods in which no intra-EU supplies took place. Businesses perceive this as irritating.
Businesses could be exempted from intra-EU supplies listings for periods in which they made no intra-EU supplies. Tax authorities could deduce the fact that there were no supplies from the periodic VAT return.

BUSINESSEUROPE's opinion: As mentioned for recommendation 6, we also look with favour this recommendation even though we consider this simplification not crucial in term of cost reduction.

FACILITATING USE OF THE POWER OF ATTORNEY TO SUBMIT VAT RETURNS AND LISTINGS (RECOMMENDATION 12)

Use of the power of attorney to submit VAT returns and listings is currently restricted, limiting the way businesses use external tax consultants. In so far as these limitations stem from national measures implementing EU law, the Commission could consider a soft-law approach to disseminate best practice in this area and have more Member States opting for a lighter implementation approach. SMEs, which are most likely to make extensive use of external VAT consultants, would benefit most from this measure. They could grant limited powers of attorney. They could also appoint several persons separately as authorised to sign VAT returns and sales listings.

BUSINESSEUROPE's opinion: We consider this recommendation useful for SMEs.

INCORPORATING VAT REGISTRATION INTO GENERAL BUSINESS REGISTRATION (RECOMMENDATION 14)

Taxable persons are obliged to inform the tax authorities when they begin their activity as taxable persons. Some Member States have incorporated this VAT registration into the general business registration. The Commission could promote this practice in more Member States by disseminating the insights gained so far. Enterprises would no longer have to communicate the same information to different authorities, which creates unnecessary cost and irritation. In particular, it would make it easier to set up a new business.

BUSINESSEUROPE's opinion: This recommendation appears a good form of simplification, aiming at avoiding the duplication of obligations. One however should be aware that this possibility cannot cover every situation (e.g. foreign VAT registrations) and it requires a working information flow between authorities.

HARMONISING MEASURES TO COMBAT VAT FRAUD IN LINE WITH BEST PRACTICE (RECOMMENDATION 15)

The VAT Directive allows Member States to impose such obligations on taxable persons as are deemed necessary to ensure the correct collection of VAT and to prevent tax evasion. These obligations are the source of major differences for businesses engaged in intra-EU trade, so harmonising them could be envisaged. All business would profit from more efficient, less burdensome anti-fraud obligations. Businesses conducting intra-EU trade would also benefit from having the same obligations in all Member States in which they operate.

BUSINESSEUROPE's opinion: BUSINESSEUROPE believes that before trying an attempt to harmonise these obligations, a preliminary evaluation of all the current derogations applied by the Member States under article 273 of the VAT directive and on their effects in ensuring the correct collection of VAT or in preventing tax evasion should be carried out. Such evaluation should be made by every single Member States in cooperation with the European Commission so that comparable outcomes might be reached. Please also refer to our comment to the previous point "Other obligations imposed by Member States (article 273 of the VAT directive)".

ADDITIONAL RECOMMENDATIONS SUGGESTED BY THE HIGH LEVEL GROUP PUBLISHED ON OPINION OF 22 OCTOBER 2010

VAT package issues.

The VAT package entered into force on 1 January 2010. Even though the package has simplified cross-border Business to Business (B2B) services to some extent, it also leads to new and unnecessary administrative burdens. Sellers and buyers have to report cross border sales and acquisition already in the same period the service was supplied. This obligation is impossible to meet for business as no information is available for booking at that time at the purchaser's end of the transaction and the company providing the service cannot access information on the services provided at such short notice. The HLG urges the Commission to initiate changes as the present rules cannot be applied.
Furthermore, stakeholders underline the high level of compliance cost arising from the package. One example is that the VAT package has increased the number of businesses obliged to submit periodic VAT statements on top of their normal VAT returns. Business are

required to submit periodic VAT statements from the first euro of supply of services B2B cross border and the periodic statement requires specification of the sale for each buyer, identified by VAT registration number. This is an increased reporting obligation and increase of the administrative burdens for business. The HLG urges the Commission to investigate the possibility of introducing a threshold for business with minor amounts of cross-border turnover or other means of simplification to avoid excessive information obligations that may otherwise discourage small business from starting to trade across borders.

BUSINESSEUROPE's opinion: We think that both these recommendation should be brought forward. BUSINESSEUROPE has already informed the Commission on how the rule on the chargeability to tax for cross border services is hard to be complied with by businesses and need a revision. We also deem appropriate for all businesses a reduction on the burden of EC sales lists reporting.

Other obligations imposed by Member States (Article 273 of the VAT Directive)

The consortium's reduction recommendations and the opinion of the High Level Group concentrate on obligations in the VAT directive that specify the nature of information to be provided, for instance the VAT declaration or recapitulative statement.
However, in addition, the consortium identified other instances in which the VAT directive does not specify the information obligation (IO) but allows Member States to do so: so-called 'implicit IOs'. A good example is article 273, which allows Member States to impose other obligations to ensure correct collection of VAT and to prevent evasion, without specifying what those obligations might be.

Information obligations with a very low transposition variable — only one or two Member States impose the obligation (Report section 3.4.2)

During this study, national VAT experts have identified certain IOs implemented in only one or a few Member States which create an extremely high burden for the national taxpayers or a certain target group.

In general, the fact that IOs stemming from article 273 are only implemented in one or a few Member States raises questions regarding the need for those IOs for the fight against fraud.
Therefore we recommend to abolish all of these types of IOs resulting in a reduction of administrative burden EUR 23 700 139.

BUSINESSEUROPE's opinion: As previously pointed out in the main section of our response to this consultation, we consider harmonisation of VAT obligations a crucial need for the proper functioning of the Internal Market. We therefore consider this recommendation highly important; Member States have to try to reach a more uniform use also of the clauses provided by article 273 of the VAT directive.

Reporting obligations (section 3.4.3)

Obligation to report transactions with local registered VAT taxable persons (Recommendation 101)

Current reduction ideas resulting from this study can be summarised as follows:

- Abolishment of the IO;
- Abolishment of the obligation to file 'nil' listings;
- Abolishment of the obligation to send the relevant invoices to the VAT authorities;

- Encourage the use of e Government solutions by implementing user-friendly uniform and easy accessible applications;
- Introduction of a specific reporting threshold per supplier/customer.

The point of view of the VAT experts in this respect is however that this IO should be abolished. This is substantiated by the recent abolition of this obligation in Italy. Research showed that the tax authorities make only little use of these listings and even have other means at their disposal to obtain the same information. Hence, the IO appears not to be essential from a VAT audit point of view, whereas it generates significant costs for the VAT taxpayers. Therefore it could be considered to introduce a provision in Council Directive 2006/112/EC whereby Member States are prohibited to impose measures in the framework of this IO. Costs caused by this IO, assessed at EUR 279 566 576 will be reduced to zero.

BUSINESSEUROPE's opinion: We consider this recommendation with great favour. As noted before, we think that the effectiveness of anti-fraud policy relies on the quality of the information at disposal of tax administrations and not on the quantity of hard to be managed data. Therefore it could be considered to introduce a provision in Council Directive 2006/112/EC whereby Member States are prohibited to impose measures in the framework of this IO.

Drafting obligations (Report section 3.4.4)

Obligation to draft and issue a document when the goods are dispatched in the framework of a sale on trial or a sale on consignment (Recommendation 103).
The obligation to draft and issue a document when the goods are dispatched in the framework of a sale on trial or a sale on consignment, in addition to a regular invoice, is experienced highly irritating by businesses. Hence, both the content to be mentioned and the data to be collected with respect to these documents are in general quite similar. Besides as means of control on the VAT treatment applied (account for VAT due and deduct VAT), tax authorities use this document in order to follow the flow of goods. In order to reduce the administrative burden resulting from this IO the abolishment of this IO could be considered.
Costs caused by this IO, assessed at EUR 2 953 870 could be reduced to zero.

BUSINESSEUROPE's opinion: The abolition of pro-forma invoices might be a form of simplification. However, this proposal should be considered in harmonisation with other sectoral legislation (e.g. transport legislation that might impose specific obligation in point of transport documents).

Storage for inspection obligations (Report section 3.4.5)

Obligation to store the confirmation that a credit note was received by the addressee (Recommendation 102)

The obligation to store the confirmation that a credit note was received by the addressee in order to substantiate the VAT adjustments is considered highly irritating from a business point of view. Moreover, this IO creates a financial burden since the adjustments of VAT paid can only be carried out once the confirmation receipt has been received. Consequently, the burdens caused by this IO are disproportionate to its purpose, i.e. creating an audit trail for VAT adjustments. The VAT adjustments can sufficiently be substantiated by means of the mere existence and storage of a credit note. This viewpoint is founded by the fact that this

approach is applied in most Member States. Based on these considerations, this IO should be abolished.
Costs caused by this IO, assessed at 3,059,990 euro will be reduced to zero.

BUSINESSEUROPE's opinion: Please refer to our comments concerning report section 3.4.2

Notification obligations (Report section 3.4.6)

Obligation to notify the tax authorities in case of change of the VAT return regime.
Even though the notification of the change in the VAT return regime in principle does not have to be submitted on a regular basis, it is often regarded as burdensome, especially where the change in VAT return regime is compulsory. Hence, in the latter case, the VAT authorities should be able to extract the necessary information from their system. In these cases, the IO is excessive and should be abolished. When the VAT taxpayer can opt for a change in the VAT return regime, the notification should be performed by means of a written letter (standard or freely chosen format). In this respect, it could be considered to harmonise on an EU-level the maximum requirements which should appear on the document. More specifically, the name, address and VAT identification number and a detailed justification of the option should suffice. Furthermore the e-filing of this request should be possible.
Costs caused by this IO, assessed at 2,501,484 euro could be reduced by 60%.

BUSINESSEUROPE's opinion: We do not see this as a really crucial issue.

Keeping registers obligation (Report section 3.4.7)

Obligation to keep a record of capital goods (Recommendation 103)
In order to create an audit trail for the capital goods of a business during the term of revision, some Member States impose an obligation on VAT taxable persons to keep a record of capital goods. From a VAT expert point of view, this IO can be substantiated by its purpose, and in practice is experienced as a part of the accounting procedure. However, given the significant differences between the information requirements in national VAT law, it should be considered to determine the maximum information requirements to be reported in the record in the Council directive.

Taking into account the purpose of the record, the following maximum requirements could be imposed:

- a specification of the capital good;
- a reference to the purchase invoice;
- the date on which the right of deduction has arisen (e.g. date of purchase);
- amount of VAT paid and deducted;
- the ratio of VAT deduction (if applicable).

Costs caused by this IO, assessed at 214,060,406 euro could be reduced by 20%.

BUSINESSEUROPE's opinion: We believe this recommendation does not represent a major cost-cutting topic.

Other Information Obligations stemming from Article 273 Council Directive 2006/112/EC (Report section 3.4.8)

Obligation to provide information to the tax authorities upon their request (Recommendation 101)

Currently, the national VAT law of most Member States contains a general IO which requires taxpayers to provide information to the tax authorities upon their request. There are no specifications regarding the kind of information, the time frame in which the information should be provided, etc. This lack of specification creates an irritation factor and administrative burden for taxpayers. Following reduction proposals were assessed by the national VAT experts:

- a clear indication in the directive of a minimum time frame which the taxpayer is granted in order to gather the information requested;
- a clear indication in the directive of the type of information that the VAT authorities are allowed to request;
- the implementation of an obligation for the tax authorities to provide a written request that provides a clear and detailed description of the information requested;
- the implementation of the possibility for the taxable person to file a request to extend the period granted to gather the requested information.

Costs caused by this IO, assessed at EUR 64 241 071 could be reduced by 30%.

BUSINESSEUROPE's opinion: We do not see this as a really heavy burden in practice. Furthermore, one should consider that these requests of information often also relates to direct taxation audits, where the sovereignty of Member States makes this a difficult issue to discuss.