

Discussion Drafts for Public Consultation

INTERNATIONAL VAT/GST GUIDELINES

**GUIDELINES ON PLACE OF TAXATION FOR
BUSINESS-TO-CONSUMER SUPPLIES OF
SERVICES AND INTANGIBLES**

**PROVISIONS ON SUPPORTING THE GUIDELINES
IN PRACTICE**

18 December 2014 - 20 February 2015



GUIDELINES ON PLACE OF TAXATION FOR BUSINESS-TO-CONSUMER SUPPLIES OF SERVICES AND INTANGIBLES

PROVISIONS ON SUPPORTING THE GUIDELINES IN PRACTICE

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18 December 2014

Public comments are invited on two new draft elements of the OECD International VAT/GST Guidelines (the Guidelines). These discussion drafts relate to (i) the place of taxation of business-to-consumer supplies of services and intangibles (B2C Guidelines) and (ii) provisions to support the application of the Guidelines in practice (Supporting provisions). The discussion draft of the B2C Guidelines notably provides a response to the key conclusion on VAT/GST formulated in the Report on Tax Challenges of the Digital Economy, which was prepared in the context of the work on Action 1 of the BEPS Action Plan (digital economy). This Report concluded that “The collection of VAT in business-to-consumer (B2C) transactions is a pressing issue that needs to be addressed urgently to protect tax revenue and to level the playing field between foreign suppliers relative to domestic suppliers. Work in this area by the Working Party No. 9 of the OECD Committee on Fiscal Affairs (CFA) shall be completed by the end of 2015, with the Associates in the BEPS Project participating on an equal footing with the OECD member countries”.

These draft Guidelines are intended to complement the first three chapters of the Guidelines that were approved by the CFA in January 2014 and that were endorsed as a global standard to address issues of double taxation and unintended non-taxation resulting from inconsistencies in the application of VAT to international trade at the second meeting of the OECD Global Forum on VAT on 17-18 April 2014 in Tokyo. Those chapters of the Guidelines notably present standards on VAT-neutrality and on place of taxation for cross-border business-to-business (B2B) supplies of services and intangibles

The discussion draft of the B2C Guidelines (part of Chapter 3 of the Guidelines) presents a set of common principles for determining the place of taxation for business-to-consumer supplies of services and intangibles, in accordance with the destination principle. It also presents the recommended approach for collecting the VAT/GST on cross-border B2C supplies of services and intangibles, focusing in particular on B2C supplies by non-resident suppliers. The discussion draft recommends that non-resident suppliers be required to register and remit the VAT/GST in the jurisdiction of taxation and suggests that countries implement a simplified registration and compliance regime to facilitate compliance for non-resident suppliers. It presents the possible key features of such a simplified registration and compliance regime. The draft B2C Guidelines finally recommend that jurisdictions take appropriate steps to strengthen the international administrative cooperation to ensure the effective collection of VAT/GST on cross-border supplies of business-to-consumer supplies of services and intangibles.

The draft Supporting provisions (draft Chapter 4 of the Guidelines) are intended to complement the Guidelines on VAT-neutrality and the Guidelines on place of taxation. They present approaches for facilitating the consistent implementation of the principles of these Guidelines in national legislation, as well as their consistent interpretation by tax administrations in order to minimise both the risk of double taxation or unintended non-taxation and the potential for resulting disputes. The draft Supporting provisions indicate explicitly that the Guidelines on neutrality and on place of taxation apply when parties involved act in good faith and all transactions are legitimate and with economic substance, and that it is not inconsistent with the Guidelines for jurisdictions to take proportionate measures to protect against evasion and avoidance, revenue losses and distortion of competition

This document is a discussion draft released for the purpose of inviting comments from interested parties. It does not necessarily reflect the final views of the OECD and its member countries.

Interested parties are invited to submit written comments by **20 February 2015** in Word format by e-mail to Piet Battiau, Head of Consumption Taxes Unit, OECD Centre for Tax Policy and Administration at piet.battiau@oecd.org. It is preferred that comments be provided in separate text containing references to paragraph numbers of the discussion drafts, rather than in the form of a mark-up of the text of the discussion draft themselves.

Please note that all comments received regarding this consultation will be made publicly available. Comments submitted in the name of a collective “grouping” or “coalition”, or by any person submitting comments on behalf of

another person or group of persons, should identify all enterprises or individuals who are members of that collective, or the person(s) on whose behalf the commentator(s) are acting.

A public consultation on the discussion draft will be held on 25 February 2015 at the OECD Conference Centre in Paris. Registration details for the public consultation will be published on the OECD website in due time. Speakers and other participants at the public consultation will be selected from among those providing timely written comments on the discussion draft.

CHAPTER 3

DETERMINING THE PLACE OF TAXATION FOR CROSS-BORDER SUPPLIES OF SERVICES AND INTANGIBLES

For ease of reference, the draft Guidelines for determining the place of taxation for cross border business-to-consumer supplies of services and intangibles have been integrated in the existing Chapter 3 of the International VAT/GST Guidelines. This has resulted in the following main changes to the structure of this chapter:

- The former Sections A (Introduction) and B (Destination principle) have been merged into one single Section A, which now discusses the destination principle as the core principle for determining the place of taxation in an international context for both business-to-business (B2B) and B2C supplies.*
- Section B sets out the main place of taxation principles for B2B supplies (with the B2B Guidelines shown in grey font for ease of reference).*
- Section C sets out the main place of taxation principles for B2C supplies.*
- Section D on Specific rules has been complemented with subsections dealing specifically with B2C supplies. Guideline 3.7., which sets out the evaluation framework for assessing the desirability of a specific rule, has been complemented with a paragraph on B2C supplies (last paragraph).*
- A new Annex 3 to Chapter 3 sets out the proposed main features of a simplified registration and compliance regime for collecting and remitting the tax.*

A. The destination principle

3.1 VAT neutrality in international trade is generally achieved through the implementation of the “destination principle”. As explained in Chapter 1, the destination principle is designed to ensure that tax on cross-border supplies is ultimately levied only in the taxing jurisdiction where the final consumption occurs, thereby maintaining neutrality within the VAT system as it applies to international trade. This principle is set out in Guideline 3.1.

Guideline 3.1

For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption.

3.2 In order to apply the destination principle to internationally traded services and intangibles, VAT systems must have mechanisms for identifying the jurisdiction of consumption, by connecting such supplies to the jurisdiction where the final consumption of the services or intangibles is expected to take place. VAT systems need place of taxation rules to implement the destination principle not only for business-to-consumer supplies, which involve final consumption, but also for business-to-business supplies, even though such supplies do not involve final consumption. Business-to-business supplies are taxed under the VAT’s staged collection process, and, in this context, the place of taxation rules should facilitate the ultimate objective of the tax, which is to tax final consumption. These Guidelines set out the recommended approaches that reflect the destination principle for determining the place of taxation for business-to-consumer and business-to-business cross-border supplies of services and intangibles.

3.3 Place of taxation rules are needed for supplies of goods as well as for supplies of services and intangibles. Implementing the destination principle with respect to cross-border supplies of goods is facilitated by the existence of border controls or fiscal frontiers. Implementing the destination principle with respect to international trade in services and intangibles is more difficult, as the nature of services and intangibles is such that they cannot be subject to border controls in the same way as goods. The Guidelines in this Chapter therefore concentrate on supplies of services and intangibles.¹ They set out recommended approaches that reflect the destination principle for determining the jurisdiction of taxation for international supplies of services and intangibles while ensuring that:

¹ For the purposes of these Guidelines, a supply of services or intangibles for VAT purposes takes place where one party does something, or gives something (other than something tangible) to another party, or refrains from doing something for another party, in exchange for consideration. It is recognised that a supply of services or intangibles in one country may in certain instances be regarded as a supply of goods in another country. Where this is the case, and while these Guidelines deal only with

- international neutrality is maintained;
- compliance by businesses involved in these supplies is kept as simple as possible;
- clarity and certainty are provided for both business and tax administrations;
- the costs involved in complying with the tax and administering it are minimal, and
- barriers to evasion and avoidance are sufficiently robust.

3.4 These Guidelines are not intended to provide detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest means for achieving them with a view to promoting a consistent implementation of the destination principle for determining the place of taxation for supplies of services and intangibles.

3.5 The approaches used by VAT systems to implement the destination principle for business-to-business supplies and the tax collection methods used for such supplies are often different from those used for business-to-consumer supplies. This distinction is attributable to the different objectives of taxing business-to-business and business-to-consumer supplies: taxation of business-to-consumer supplies involves the imposition of a final tax burden, while taxation of business-to-business supplies is merely a means of achieving the ultimate objective of the tax, which is to tax final consumption. Thus, the objective of place of taxation rules for business-to-business supplies is primarily to facilitate the imposition of a tax burden on the final consumer in the appropriate country while maintaining neutrality within the VAT system. The place of taxation rules for business-to-business supplies should therefore focus not only on where the business customer will use its purchases to create the goods, services or intangibles that final consumers will acquire, but also on facilitating the flow-through of the tax burden to the final consumer while maintaining neutrality within the VAT system. The overriding objective of place of taxation rules for business-to-consumer supplies, on the other hand, is to predict, subject to practical constraints, the place where the final consumer is likely to consume the services or intangibles supplied. In addition to the different objectives of the place of taxation rules for business-to-business and business-to-consumer supplies, VAT systems often employ different mechanisms to enforce and collect the tax for both categories of supplies. These different collection mechanisms often influence the design of place of taxation rules and the compliance obligations for suppliers and customers involved in cross-border supplies. In light of these considerations, this Chapter presents separate Guidelines for determining the place of taxation for business-to-business supplies and for business-to-consumer supplies. This should not be interpreted as a recommendation to jurisdictions to develop separate rules or implement different mechanisms for both types of supplies in their national legislation.

3.6 In theory, place of taxation rules should aim to identify the actual place of business use for business-to-business supplies (on the assumption that this best facilitates implementation of the destination principle) and the actual place of final consumption for business-to-consumer supplies. However, these Guidelines recognise that place of taxation rules are in practice rarely aimed at identifying where business use or final consumption actually takes place. This is a consequence of the fact that VAT must in principle be charged at or before the time when the object of the supply is made available for business use or final consumption. In most cases, at that time the supplier will not know or be able to ascertain where such business use or final consumption will actually occur. VAT systems therefore generally use proxies for the place of business use or final consumption to determine the jurisdiction of taxation, based on features of the supply that are known or knowable at the time that the tax treatment of the supply must be determined. The Guidelines in this Chapter identify such proxies for determining the place of taxation of supplies of services and intangibles, both for business-to-business supplies and for business-to-consumer supplies.

3.7 For the purposes of these Guidelines business-to-business supplies are assumed to be supplies where both the supplier and the customer are recognised as businesses, and business-to-consumer supplies are assumed to be supplies where the customer is not recognised as a business. Such recognition may include the treatment for VAT purposes specifically or in national law more generally (notably in jurisdictions that have not implemented a VAT).

3.8 Jurisdictions that implement different approaches for determining the place of taxation and/or different collection mechanisms for business-to-business supplies and for business-to-consumer supplies are encouraged to provide clear practical guidance on how suppliers could establish the status of their customer (business or non-business). Jurisdictions may consider adopting a requirement for suppliers to provide a customer's VAT registration number or tax identification number, or other such indicia (*e.g.* information available in commercial registers) to

supplies of services and intangibles, countries are encouraged to ensure that the rules for identifying the place of taxation of such a supply of goods lead to a result that is consistent with these Guidelines.

establish their customer's status. Where a supplier, acting in good faith and having made reasonable efforts, is not able to obtain the appropriate documentation to establish the status of its customer, this could lead to a presumption that this is a non-business customer and that therefore the rules for business-to-consumer supplies apply. To facilitate suppliers' identification and verification of their customers' status, jurisdictions are encouraged to consider implementing an easy-to-use process that would allow suppliers to verify the validity of their customers' VAT registration or tax identification numbers.

B. Business-to-business supplies – The general rule

Note: B2B Guidelines below are shown in grey font in this discussion draft for ease of reference.

Guideline 3.2

For the application of Guideline 3.1, for business-to-business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles.

[...]

Guideline 3.3

For the application of Guideline 3.2, the identity of the customer is normally determined by reference to the business agreement.

[...]

Guideline 3.4

For the application of Guideline 3.2, when the customer has establishments in more than one jurisdiction, the taxing rights accrue to the jurisdiction(s) where the establishment(s) using the service or intangible is (are) located.

[...]

C. Business-to-consumer supplies – The general rules

C.1 Introduction

3.9 Implementing the destination principle set out in Guideline 3.1 to ensure that tax on services and intangibles is ultimately levied only in the jurisdiction where the final consumption occurs is theoretically more straightforward in the business-to-consumer context than in the business-to-business context.² In the business-to-business context, the place of taxation rules should facilitate the ultimate goal of taxing supplies in the jurisdiction where final consumption occurs while at the same time ensuring that the burden of the tax does not rest on the business that pays it, unless intentionally provided by legislation (see Guideline 2.1). In the business-to-consumer context, the objective is simply to tax the final consumption in the jurisdiction where it occurs with the tax burden resting on the final consumer. Accordingly, the primary objective for place of taxation rules in the business-to-consumer context is to predict with reasonable accuracy the place where the services or intangibles are likely to be consumed while taking into account practical constraints, and such rules should be simple and practical for taxpayers to apply, for customers to understand and for tax administrations to administer.

3.10 Achieving this objective for business-to-consumer supplies of services was reasonably easy in the past, when consumers typically purchased services from local suppliers and those supplies generally involved services that could be expected to be consumed in the jurisdiction where they were performed.³ Consequently, many jurisdictions chose to implement VAT systems that determine the place of taxation for such services primarily by reference to the

² For the purposes of the Guidelines, business-to-consumer supplies are assumed to be supplies where the customer is not recognised as a business. Such recognition may include the treatment for VAT purposes specifically or in national law more generally (notably in jurisdictions that have not implemented a VAT). See also paragraph 3.7 and 3.8.

³ This paragraph refers only to supplies of services rather than to supplies of services and intangibles, because services constituted the overwhelming proportion of such supplies to final consumers in the past.

supplier's location, on the assumption that this was where these services were normally performed and where final consumers were actually located when consuming the service. The place of taxation rule based on the supplier's location was often supplemented by a place of taxation rule based on place of performance for cases in which the supplier's location may have been a less reliable indicator of the location where services were likely to be consumed (e.g. entertainment or sporting events).

3.11 The emergence of the global economy with its growing reliance on digital supplies has created challenges for this traditional approach for determining the place of taxation for business-to-consumer supplies of services and intangibles. Advances in technology and trade liberalisation have increasingly enabled businesses to supply services and intangibles to customers around the world, leading to a strong growth in international business-to-consumer trade in remotely supplied services and intangibles. These developments created challenges for VAT systems, as the application of a proxy based on the supplier's location or the place of performance to determine the place of taxation is unlikely to lead to an appropriate result for such remote supplies. The supplier's location or the place of performance generally is not relevant for predicting the likely place of consumption of services or intangibles that can be supplied remotely to customers who may be located anywhere in the world when consuming the service or intangible. Additionally, the actual place of performance often may be unclear. For example, a technician in one country may take control of a computer in another country to resolve an issue via key strokes performed thousands of kilometers away whilst using information and communication infrastructure located in a number of different jurisdictions. In such a case, it could be difficult to reach a consistent conclusion on whether the place of performance is where the technician is, where the computer is or somewhere in between.

3.12 For supplies of services and intangibles whose consumption bears no necessary relationship to the location in which the supply is performed and in which the person performing the supply is located, a rule based on the customer's usual residence is the most appropriate approach for determining the place of taxation in a business-to-consumer context. The place in which customers have their usual residence is used by VAT systems around the world as a proxy for predicting the place of consumption of many types of services and intangibles supplied to final consumers. This approach reflects the presumption that final consumers ordinarily consume services and intangibles in the jurisdiction where they have their usual residence and it provides a clear connection to a readily identifiable place. It ensures that the services and intangibles acquired by final consumers from foreign suppliers are taxed on the same basis and at the same rate as domestic supplies, in accordance with Guideline 2.4 on VAT neutrality in international trade (see Chapter 2). There is therefore no tax advantage for final consumers in buying from low or no tax jurisdictions. A place of taxation rule based on the customer's usual residence is also reasonably practical for suppliers to apply, provided a simplified registration and compliance regime is available (see Section C.3.2 and Annex 3), and for tax administrations to administer, provided it is supported by effective international cooperation in tax administration and enforcement (see Section C.3.3).

3.13 Against this background, two general rules are recommended for determining the place of taxation for business-to-consumer supplies of services and intangibles:

- for supplies that are physically performed at a readily identifiable location and that are ordinarily consumed at the same time and place where they are physically performed in the presence of both the person performing the supply and the person consuming it ("on-the-spot supplies"), Guideline 3.5 recommends a place of taxation rule based on the place of performance;
- for supplies that are not covered by Guideline 3.5, Guideline 3.6 recommends a place of taxation rule based on the customer's usual residence.

3.14 These general rules effectively result in the allocation of the taxing rights over business-to-consumer supplies of services and intangibles to the jurisdiction where it can reasonably be assumed that the final consumer is actually located when consuming the supply. This is the place where the final consumer consumes the on-the-spot supply, or the final consumer's usual residence where he or she is presumed to consume a remotely supplied service or intangible.

C.2 Business-to-consumer supplies – On-the-spot supplies

3.15 The place of physical performance of the supply is the appropriate proxy to determine the place of consumption for on-the-spot supplies of services and intangibles to final consumers. For the purposes of these Guidelines, on-the-spot supplies are services and intangibles that are normally physically performed at a readily identifiable location and that are ordinarily consumed at the same time and place where they are physically performed, in the presence of both the person performing the supply and the person consuming it. While providing a reasonably

accurate indication of the place of consumption, a place of taxation rule based on the place of physical performance is also simple and practical for suppliers to apply and for tax administrations to administer.

Guideline 3.5

For the application of Guideline 3.1, the jurisdiction in which the supply is physically performed has the taxing rights over business-to-consumer supplies of services and intangibles that

- **are physically performed at a readily identifiable location, and**
- **are ordinarily consumed at the same time as and at the same place where they are physically performed, and**
- **ordinarily require the physical presence of the person performing the supply and the person consuming the service or intangible at the same time and place where the supply of such a service or intangible is physically performed.**

3.16 Guideline 3.5 is aimed primarily at supplies that are typically made for immediate consumption at an identifiable place of performance, rather than supplies that can be provided remotely or that may be consumed in the future. Examples include services physically performed on the person (*e.g.* hairdressing, massage, beauty therapy, physiotherapy); accommodation; restaurant and catering services; entry to cinema, theatre performances, trade fairs, museums, exhibitions, and parks; attendance at sports competitions.

3.17 The final consumption of these supplies ordinarily requires the physical presence of both the person performing the supply, who is usually the supplier, and the person consuming it. The application of Guideline 3.5 thus results in the allocation of the taxing rights to the jurisdiction where the final consumer is located when consuming the supply and where the person performing the supply is located at the time of final consumption. Jurisdictions may therefore choose to employ a proxy based on the location of the person performing the supply for these types of supplies as an alternative to a proxy based on place of performance, as both proxies generally lead to the same result and are simple and practical for suppliers to apply and for tax administrations to administer.

3.18 On-the-spot supplies can be acquired for business use as well as for private consumption. Jurisdictions could therefore adopt the approach that is recommended by Guideline 3.5 for business-to-consumer supplies, as a specific rule in the business-to-business context (see paragraph 3.45-46). Such an approach would relieve suppliers of on-the-spot supplies, which are often small or medium businesses, of the compliance burden of having to distinguish between final consumers and businesses when making their taxing decision.

C. 3 *Business-to-consumer supplies - Supplies of services and intangibles other than those covered by Guideline 3.5*

3.19 The place of physical performance or the supplier's location do not provide a good indication of the likely place of consumption of supplies of services and intangibles that lack an obvious connection with a readily identifiable place of physical performance and that are not ordinarily consumed at the place where they are physically performed in the presence of the person performing the supply and of the person consuming it. This includes, for example, supplies of services and intangibles that are likely to be consumed at some time other than the time of performance; or when consumption and/or performance are likely to be ongoing; or when services and intangibles can easily be, or frequently are, supplied remotely.

3.20 For such business-to-consumer supplies of services and intangibles, the place of usual residence of the customer is the appropriate proxy for the jurisdiction of consumption, as it can be assumed that these types of services and intangibles will ordinarily be consumed in the jurisdiction where the customer has his or her usual residence.

Guideline 3.6

For the application of Guideline 3.1, the jurisdiction in which the customer has its usual residence has the taxing rights over business-to-consumer supplies of services and intangibles other than those covered by Guideline 3.5.

3.21 Examples of supplies of services and intangibles that are not covered by Guideline 3.5 may include: consultancy, accountancy and legal services; financial and insurance services; long-term rental of movable property; telecommunication and broadcasting services; online supplies of software and software maintenance; online supplies of digital content (movies, TV shows, music *etc.*); digital data storage; and online gaming.

C.3.1 Determining the jurisdiction of the usual residence of the customer

3.22 The jurisdiction of the usual residence of the customer of a business-to-consumer supply is generally where the customer regularly lives or has established a home. Such customers are not considered as having their usual residence in a jurisdiction where they are only temporary, transitory visitors (*e.g.* as a tourist or as a participant to a training course or a conference).

3.23 In the business-to-consumer context, suppliers are less likely to have an established relationship with their customer than in the business-to-business context. In business-to-consumer trade, the evidence of the customer's place of usual residence that is available to suppliers is likely to depend on the business model, on the type and value of the supplies and on the suppliers' delivery model. Particularly in e-commerce, where activities often involve high volume, low-value supplies that rely on minimal interaction and communication between the supplier and its customer, suppliers might not be able to rely on one single source of information, such as a contract, to reliably determine the place of usual residence of the customer of a business-to-consumer supply. Jurisdictions should provide clear and realistic guidance for suppliers on the information that is required to determine the place of usual residence of their customers in a business-to-consumer context. Suppliers should be able to rely on information that is known or that can reasonably be known at the time when the tax treatment of the supply must be determined, thereby taking into account the different types of supplies and the circumstances in which such supplies are typically delivered. In the business-to-consumer context, jurisdictions are encouraged to permit suppliers to rely, as much as possible, on information that they routinely collect from their customers in the course of their normal business activity, as long as such information provides reasonably reliable evidence of the place of usual residence of their customers. In addition, jurisdictions could consider adopting rules that, if they are satisfied that a business is following these principles, this business should expect challenges only where there is misuse or abuse of such evidence. Ultimately, any guidance provided by the tax authorities will need to take account of the realities of the law and practice in the relevant jurisdictions, particularly regarding the protection of personal privacy, while safeguarding flexibility for businesses with respect to the information that is accepted for identification of their non-business customers and for determining their place of usual residence.

3.24 The information provided by the customer generally may be considered as important evidence bearing on the determination of the jurisdiction of the customer's usual residence. This could include information collected within business processes (*e.g.* the ordering process), such as jurisdiction and address, bank details (notably country of the bank account) and credit card information. Jurisdictions may require that the reliability of such information be further supported through appropriate indicia of residence. In certain cases such indicia may constitute the only indication of the jurisdiction of the customer's usual residence. These indicia will vary depending on the type of business involved. These may include the contact telephone number, the Internet Protocol address⁴ of the device used to download digital content or the customer's trading history (which could, for example, include information on the place of predominant consumption, language of digital content supplied, billing address or information provided by third-party payment providers). These indicia are likely to evolve over time as technology and business practices develop.

C.3.2 VAT collection in cases where the supplier is not located in the jurisdiction of taxation

3.25 The correct charging, collecting and remittance of VAT and the associated reporting obligations are traditionally the responsibility of suppliers. While requiring suppliers to carry out these responsibilities is relatively straightforward in cases where the supplier is located in the jurisdiction of taxation, the matter may be more complex in cases where a business makes supplies that are taxable in a jurisdiction where it is not located. According to the traditional approach, the non-resident supplier is required to register in the jurisdiction of taxation and charge, collect and remit any tax due there. It is recognised, however, that it may often be complex and burdensome for non-resident suppliers to comply with such obligations abroad and for tax administrations to enforce and administer them.

3.26 For cross-border business-to-business supplies of services and intangibles that are taxable in the jurisdiction where the customer is located in accordance with Guideline 3.2, these Guidelines recommend the implementation of a reverse charge mechanism to minimise the administrative burden and complexity for non-resident suppliers, where

⁴ An Internet Protocol address, also known as an IP address, is a numerical label assigned to each device (*e.g.* computer, mobile phone) participating in a computer network that uses the Internet Protocol for communication.

this is consistent with the overall design of the national VAT system (see para. 3.[60-61 of the consolidated Guidelines]). This mechanism shifts the liability to pay the tax from the supplier to the customer. The application of the reverse charge mechanism should thus relieve the non-resident supplier of any requirement to be identified for VAT or to account for tax in the customer's jurisdiction. If the customer is entitled to full input tax credit in respect of this supply, it may be that the local VAT legislation does not require the reverse charge to be made.

3.27 Such a reverse charge mechanism does not offer an appropriate solution for collecting VAT on business-to-consumer supplies of services and intangibles from non-resident suppliers. The level of compliance with such a reverse charge mechanism for business-to-consumer supplies is likely to be low, as private consumers have little incentive to declare and pay the tax due, at least in the absence of meaningful sanctions for failing to comply with such an obligation. Moreover, enforcing the collection of small amounts of VAT from large numbers of private consumers is likely to involve considerable costs that would outweigh the revenue involved.

3.28 Work carried out by the OECD and other international organisations, as well as individual country experience, indicate that, at the present time, the most effective and efficient approach to ensure the appropriate collection of VAT on such cross-border business-to-consumer supplies is to require the non-resident supplier to register and account for the VAT in the jurisdiction of taxation.

3.29 When implementing a registration-based collection mechanism for non-resident suppliers, it is recommended that jurisdictions consider establishing a simplified registration and compliance regime to facilitate compliance for non-resident suppliers. The highest feasible levels of compliance by non-resident suppliers are likely to be achieved if compliance obligations in the jurisdiction of taxation are limited to what is strictly necessary for a proper collection of the tax. Appropriate simplification is particularly important to facilitate compliance for businesses faced with obligations in multiple jurisdictions. Maintaining traditional registration and compliance procedures for non-resident suppliers of business-to-consumer services and intangibles would risk creating barriers that may lead to non-compliance or to certain suppliers declining to serve customers in jurisdictions that impose such burdens.

3.30 A simplified registration and compliance regime for non-resident suppliers of business-to-consumer services and intangibles would operate separately from the traditional registration and compliance regime, without the same rights (*e.g.* input tax recovery) and obligations (*e.g.* full reporting) as a traditional regime. Experience with such simplified registration and compliance regimes has shown that they provide a practical and relatively effective solution for securing VAT revenues on business-to-consumer supplies of services and intangible by non-resident suppliers, while minimising economic distortions and preserving neutrality between resident and non-resident suppliers. Such mechanisms allow tax administrations to capture a significant proportion of tax revenues associated with supplies to final consumers within their jurisdiction while incurring relatively limited administrative costs.

3.31 It is recognised that a proper balance needs to be struck between simplification and the needs of tax administrations to safeguard the revenue. Tax administrations need to ensure that the right amount of tax is collected and remitted from suppliers with which they may have no jurisdictional relationship. Against this background, the guidance note in the Annex 3 to this Chapter sets out the possible main features of a simplified registration and compliance regime for non-resident suppliers of business-to-consumer services and intangibles, balancing the need for simplification and the need of tax administrations to safeguard the revenue. This guidance is intended to assist taxing jurisdictions in evaluating and developing their framework for collecting VAT on business-to-consumer supplies of services and intangibles from non-resident suppliers with a view to increasing consistency among compliance processes across jurisdictions. Greater consistency among country approaches will further facilitate compliance, particularly by businesses that are faced with multi-jurisdictional obligations, reduce compliance costs and improve the effectiveness and quality of compliance processes. For tax authorities, consistency is also likely to support the effective international cooperation in tax administration and enforcement.

C.3.3 International cooperation to support VAT collection in cases where the supplier is not located in the jurisdiction of taxation

3.32 While simplification is a key means of enhancing compliance by non-resident suppliers with a registration-based collection mechanism for cross-border business-to-consumer supplies of services and intangibles, it is necessary to reinforce taxing authorities' enforcement capacity through enhanced international cooperation in tax administration in the field of indirect taxes.

3.33 Improved international cooperation could focus in particular on the exchange of information and on assistance in recovery. Mutual administrative assistance is a key means to achieve the proper collection and remittance of the tax on cross-border supplies of services and intangibles by non-resident suppliers. It will also be helpful in identifying suppliers, in verifying the status of customers, in monitoring the volume of supplies, and in ensuring that

the proper amount of tax is charged. The exchange of information between the tax authorities of the jurisdictions of supply and consumption has a key role to play. This could include the use of spontaneous exchanges of information.

3.34 Chapter 4, Section B of these Guidelines describes the principal existing OECD instruments for exchange of information and other forms of mutual administrative assistance that may assist jurisdictions in strengthening the international administrative cooperation in the field of indirect taxes. These Guidelines recommend that jurisdictions take appropriate steps towards making greater use of these and other available legal instruments for international administrative cooperation to ensure the effective collection of VAT on cross-border business-to-consumer supplies of services and intangibles by non-resident businesses. Such cooperation could be enhanced in particular through the development of a common standard for the exchange of information that is simple, minimises the costs for tax administrations and businesses by limiting the amount of data that is exchanged, and which can be implemented in a short timeframe. Against this background, the OECD's Committee on Fiscal Affairs (CFA) intends to conduct work on further detailed guidance for the effective exchange of information and other forms of mutual assistance between tax authorities in the field of indirect taxes.

D. Business-to-business and business-to-consumer supplies - Specific rules

D.1 Evaluation framework for assessing the desirability of a specific rule

Guideline 3.7

The taxing rights over internationally traded services or intangibles supplied between businesses may be allocated by reference to a proxy other than customer location as laid down in Guideline 3.2, when both the following conditions are met:

- a. The allocation of taxing rights by reference to customer location does not lead to an appropriate result when considered under the following criteria:**
 - **Neutrality**
 - **Efficiency of compliance and administration**
 - **Certainty and simplicity**
 - **Effectiveness**
 - **Fairness.**
- b. A proxy other than customer location would lead to a significantly better result when considered under the same criteria.**

Similarly, the taxing rights over internationally traded business-to-consumer supplies of services or intangibles may be allocated by reference to a proxy other than the place of performance as laid down in Guideline 3.5 and the usual residence of the customer as laid down in Guideline 3.6, when both the conditions are met as set out in a. and b. above.

3.35 According to Guideline 3.2, the jurisdiction where the customer is located has the taxing rights over services or intangibles supplied across international borders in a business-to-business context. This is the general rule for determining the place of taxation for business-to-business supplies of services and intangibles. In a business-to-consumer context, two general rules are set out in Guidelines 3.5 and 3.6 respectively for two main types of supplies of services and intangibles:

- According to Guideline 3.5, the jurisdiction in which the supply is physically performed has the taxing rights over business-to-consumer on-the-spot supplies of services and intangibles.⁵
- According to Guideline 3.6, the jurisdiction in which the customer has its usual residence has the taxing rights over business-to-consumer supplies of services and intangibles other than those covered by Guideline 3.5.

3.36 It is recognised that these general rules may not give an appropriate tax result in every situation and, where this is the case, the allocation of taxing rights by reference to another proxy might be justified. A rule that allocates taxing rights using a proxy other than those recommended by Guideline 3.2, for business-to-business supplies, and by

⁵ On-the-spot supplies are services and intangibles that are normally physically performed at a readily identifiable location and that are ordinarily consumed at the same time and place where they are physically performed, in the presence of both the person performing the supply and the person consuming it (see para. 3.15).

Guidelines 3.5 and 3.6, for business-to consumer supplies, is referred to in these Guidelines as a “specific rule”. Such a rule will use a different proxy (*e.g.* location of movable or immovable tangible property or place of effective use and enjoyment) to determine which jurisdiction has the taxing rights over a supply of a service or intangible that is covered by the rule. Any such specific rule should be supported by clear criteria and its application should be limited to the greatest extent possible. Guideline 3.7 describes these criteria and sets out how they may justify the implementation of a specific rule.

3.37 Under Guideline 3.7, a two-step approach is recommended to determine whether a specific rule may be justified:

- The first step is to test whether the relevant general rule leads to an appropriate result under the criteria set out under Guideline 3.7. Where this is the case, there is no need for a specific rule. Where the analysis suggests that the relevant general rule would not lead to an appropriate result, the use of a specific rule might be justified. In such case, a second step is required.
- The second step is to test the proposed specific rule against the criteria of Guideline 3.7. The use of a specific rule will be justified only when this analysis suggests that it would lead to a significantly better result than the use of the relevant general rule.

3.38 These Guidelines do not aim to identify the supplies of services or intangibles for which a specific rule might be justified. Rather, they provide an evaluation framework for jurisdictions to assess the desirability of a specific rule against the background of a constantly changing technological and commercial environment. The next paragraphs describe this framework in further detail.

3.39 The evaluation framework for assessing the desirability of a specific rule builds on the overall objective of the Guidelines on place of taxation, as described in paragraph 3.3. In accordance with this objective, the evaluation framework for assessing the desirability of a specific rule on place of taxation consists of the following criteria:

- **Neutrality:** The six Guidelines on neutrality and their comments (Guidelines 2.1 to 2.6).
- **Efficiency of compliance and administration:** Compliance costs for taxpayers and administrative costs for the tax authorities should be minimised as far as possible.
- **Certainty and simplicity:** The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.
- **Effectiveness:** The tax rules should produce the right amount of tax at the right time and the right place.
- **Fairness:** The potential for tax evasion and avoidance should be minimised while keeping counter-acting measures proportionate to the risks involved.

3.40 Ensuring that the tax treatment of internationally traded supplies is in accordance with these criteria requires a consistent definition and implementation of place of taxation rules. The general rules in Guidelines 3.2, 3.5 and 3.6 set out recommended approaches for ensuring a consistent determination of place of taxation for internationally traded services and intangibles. The use of specific rules that use different proxies from these main approaches should be limited to the greatest possible extent, since the existence of specific rules will increase the risk of differences in interpretation and application between jurisdictions and thereby increase the risks of double taxation and unintended non-taxation.

3.41 When assessing the desirability of a specific rule on the basis of the evaluation framework set out above, one should consider each of the criteria while also recognising that they form a package. No single criterion can be considered in isolation as the criteria are all interconnected. For example, neutrality, as described in the Guidelines on neutrality, and efficiency of compliance and administration are complementary to one another. Similarly, efficiency depends on the degree of certainty and simplicity, whereas certainty and simplicity are also fundamental to achieving effectiveness and fairness. It is therefore unlikely that evaluating the performance of a general rule (or an alternative specific rule) in a particular scenario would result in a very low ranking when judged against one or two criteria but a much higher ranking when judged against the other criteria. Rather, it is expected that the evaluation will reveal either a good or a poor outcome overall.

3.42 Consequently, it is recommended that jurisdictions consider implementing a specific rule for the allocation of taxing rights on internationally traded services and intangibles only if the overall outcome of the evaluation on the basis of the criteria set out in Guideline 3.7 suggests that the relevant general rule would not lead to an appropriate result and an evaluation on the basis of the same criteria suggests that the proposed specific rule would lead to a significantly better result.

3.43 While there remains a level of subjectivity as to what is and what is not an “appropriate result” and what is “a significantly better result”, Guideline 3.7 provides a framework for assessing the desirability of a specific rule that should make the adoption of such a rule more transparent, systematic and verifiable. It is neither feasible nor desirable to provide more prescriptive instructions on what should be the outcome of the evaluation for all supplies of services and intangibles. However, the paragraphs below provide further guidance and specific considerations for particular supplies of services and intangibles for which a specific rule might be appropriate in some circumstances and conditions. The evaluation should be considered from the perspective of both businesses and tax administrations.

D.2 Circumstances where a specific rule may be desirable

3.44 It is recognised that the general rules on place of taxation as set out in Guideline 3.2, for business-to-business supplies, and in Guidelines 3.5 and 3.6, for business-to-consumer supplies, will lead to an appropriate result when considered against the criteria set out in Guideline 3.7 in most circumstances. However, the following paragraphs describe a number of specific circumstances where jurisdictions might find that the application of these general rules is likely to lead to an inappropriate result when considered against these criteria and that a specific rule might lead to a significantly better result.

D.2.1 Examples of circumstances where a specific rule could be desirable in a business-to-business context

3.45 In a business-to-business context, the general rule based on customer location may not lead to an appropriate result when considered against the criteria of Guideline 3.7 and a specific rule may lead to a significantly better result in situations where all the following circumstances are met:

- particular services or intangibles are typically supplied to both businesses and final consumers,
- the service requires the physical presence of both the supplier and the customer in some way, and
- the service is used at a readily identifiable location.

3.46 If businesses that usually supply services or intangibles to a large number of customers for relatively small amounts in a short period of time (*e.g.* restaurant services) were required to follow the general rule based on customer location for business-to-business supplies, it would impose a significant compliance burden on suppliers. Any customer, business or non-business, could simply state that it was a business located in another country and request that no VAT be charged. It would put the supplier at considerable risk of having to bear the under-declared tax if it was subsequently shown that the customer was not a business located in another country (breach of certainty and simplicity). This would also make tax administration controls more difficult as evidence of location may be difficult to produce (breach of efficiency). The same could apply for services that consist of granting the right to access events such as a concert, a sports game, or even a trade fair or exhibition that is basically designed for businesses. If a ticket can be purchased at the entrance of the building where the event takes place, businesses as well as final consumers can be recipients of the service. In these cases, under the general rule based on customer location for business-to-business supplies, the supplier is confronted with the difficulty and risk of identifying and evidencing the customer’s status and location. Efficiency, as well as certainty and simplicity, may then not be met. Fairness could be at risk. The adoption of a specific rule allocating the taxing rights to the jurisdiction where the event takes place could lead to a significantly better result when considered against the criteria of Guideline 3.7. In such circumstances, jurisdictions might consider using a proxy based on the place of physical performance, which would apply both for business-to-business supplies and business-to-consumer supplies (see Guideline 3.5).

D.2.2 Examples of circumstances where a specific rule could be desirable in a business-to-consumer context

3.47 In a business-to-consumer context, jurisdictions might find that the general rules set out in Guidelines 3.5 and 3.6 do not lead to an appropriate result when considered against the criteria of Guideline 3.7 in certain specific circumstances, where they lead to an allocation of taxing rights that is inefficient and overly burdensome from an administrative standpoint (breach of efficiency and of certainty and simplicity) and/or are not sufficiently accurate in predicting the likely place of final consumption (breach of effectiveness and of neutrality). For example, this might occur in the following circumstances:

- The general rule based on the place of physical performance (Guideline 3.5), in respect of on-the-spot supplies of services and intangibles, may not lead to an appropriate result when considered against the criteria of Guideline 3.7 in cases where this physical performance occurs in multiple jurisdictions and tax obligations could therefore arise in multiple jurisdictions (breach of efficiency and of certainty and simplicity). An example is the international transport of persons.
- The general rule based on the place of the usual residence of the customer (Guideline 3.6), in respect of supplies of services and intangibles other than those covered by Guideline 3.5, may not be sufficiently accurate in predicting the place of final consumption in cases where this consumption is most likely to occur somewhere other than in the customer's usual place of residence (breach of effectiveness and of neutrality). Examples may include services and intangibles that are performed at a readily identifiable location and that require the physical presence of the person consuming the supply but not the physical presence of the person performing it, such as the provision of internet access in an internet café or a hotel lobby, the use of a telephone booth to make a phone call or the access to television channels for a fee in a hotel room. In such cases, it is reasonable to assume that suppliers will know or are able to know the actual location of the customer at the likely time of consumption and jurisdictions may then consider using the actual location of the consumer at the time of the supply as a proxy for place of consumption.

D.3 Special considerations for supplies of services and intangibles directly connected with tangible property

3.48 Jurisdictions often choose to rely on the location of tangible property for determining the place of taxation for supplies of services and intangibles connected with tangible property or with the supply of such property. The business use or final consumption of such services is then considered to be so connected with the business use or the final consumption of the tangible property, that the location of this tangible property is considered as the most appropriate place of taxation.

3.49 The following sections look specifically at services and intangibles connected with immovable property, as this is a particularly complex area where a specific rule is already applied by many jurisdictions both in a business-to-business context and in a business-to-consumer context (Sections D.3.1-4). This is complemented by a section on services and intangibles connected with movable tangible property, which explains that a rule based on the location of the movable tangible property may be particularly appropriate for identifying the place of taxation in a business-to-consumer context (Section D.3.5).

D.3.1 Specific rule for supplies of services and intangibles directly connected with immovable property

Guideline 3.8

For internationally traded supplies of services and intangibles directly connected with immovable property, the taxing rights may be allocated to the jurisdiction where the immovable property is located.

3.50 According to this specific rule, taxing rights are allocated to the jurisdiction where the immovable property is located.

3.51 This Guideline does not list particular supplies of services and intangibles that may or may not fall under such a specific rule. Instead, it identifies their common features and establishes categories of supplies of services and intangibles for which the conditions set out in Guideline 3.7 might be met and for which implementation of such a specific rule might therefore be justified.

D.3.2 Circumstances where a specific rule for supplies of services and intangibles directly connected with immovable property may be appropriate

3.52 When internationally traded services and intangibles are directly connected with immovable property, there may be circumstances where a specific rule allocating the taxing rights to the jurisdiction where the immovable property is located may be appropriate.

3.53 This is most likely to be the case when there is a supply of services or intangibles belonging to one of the following categories:

- the transfer, sale, lease or the right to use, occupy, enjoy or exploit immovable property,

- supplies of services that are physically provided to the immovable property itself, such as constructing, altering and maintaining the immovable property, or
- other supplies of services and intangibles that do not fall within the first two categories but where there is a very close, clear and obvious link or association with the immovable property.

3.54 The second condition for the implementation of a specific rule under Guideline 3.7 requires that such a specific rule would lead to a significantly better result than the relevant general rule when evaluated against the criteria of Guideline 3.7. While it is reasonable to assume that this second condition is met for the first two categories of supplies identified above, its fulfilment for the supplies mentioned in the last category above is likely to require an evaluation as set out under Guideline 3.7 before the implementation of a specific rule can be considered.

D.3.3 Common features of supplies of services and intangibles directly connected with immovable property

3.55 The supplies of services and intangibles for which Guideline 3.8 may apply are referred to as “services directly connected with immovable property”. This expression does not have an independent meaning but aims simply to narrow the scope of the specific rule in the sense that it contemplates that there should be a very close, clear and obvious link or association between the supply and the immovable property, and that the specific rule should be applied in a restrictive way. This very close, clear and obvious link or association is considered to exist only when the immovable property is clearly identifiable.

3.56 For the supply to be considered as directly connected with immovable property, it is not sufficient that a connection with immovable property be merely one aspect of the supply among many others: the connection with immovable property must be at the heart of the supply and must constitute its predominant characteristic. This is particularly relevant with respect to composite supplies involving immovable property. If a connection with immovable property is only one part of the supply, this will not be sufficient for the supply to fall under one of the three categories.

D.3.4 Further description of the supplies of services and intangibles directly connected with immovable property for which a specific rule may be appropriate

3.57 The transfer, sale, lease, or the right to use, occupy, enjoy or exploit immovable property, encompasses all kinds of utilisation of immovable property, i.e. supplies of services and intangibles “derived from” the immovable property (as opposed to other circumstances where the supplies are directed to the immovable property). The terms “transfer”, “sale”, “lease”, and “right to use, occupy, enjoy or exploit” therefore should not be understood narrowly within the meaning of national civil laws. It should be noted however, that these supplies fall under this Guideline only when they are considered to be supplies of services or intangibles under national law, *i.e.* when they are not considered to be supplies of goods or of immovable property.⁶

3.58 Supplies of services such as the construction, alteration and maintenance of immovable property cover services that are typically physical in nature, as opposed, for example, to intellectual services. Such supplies of services are physically provided to immovable property. These are services that aim to change or maintain the physical status of the immovable property. Typical cases in practice will include, for example, the construction of a building⁷ as well as its renovation or demolition, the painting of a building or even the cleaning of it (inside or outside).

3.59 In addition to the utilisation of immovable property and services that are physically performed on immovable property, there may be other supplies of services and intangibles where there is a very close, clear and obvious link or association with immovable property and where taxation in the jurisdiction of the immovable property leads to a significantly better result than the relevant general rule when considered under the criteria defined in Guideline 3.7. When considering the adoption of a specific rule, jurisdictions may in particular wish to take into account, in addition to the requirement of a very close, clear and obvious link or association between the supply and the immovable property, whether such a specific rule has a sufficiently high potential to be manageable and enforceable in practice. For example, certain intellectual services,⁸ such as architectural services that relate to clearly

⁶ Other rules will be applicable to such supplies, although they may lead to the same result.

⁷ If this is not treated as a supply of goods or of immovable property, for which other rules might apply, although they could lead to the same result.

⁸ The adjective “intellectual” has a broad meaning and is not limited to regulated professions.

identifiable, specific immovable property, could be considered to have a sufficiently close connection with immovable property.

D.3.5 Services and intangibles connected with movable tangible property

3.60 Examples of services and intangibles connected with movable property include services that are physically carried out on specific movable property such as repairing, altering or maintaining the property, and the rental of specific movable property where this is considered a service.

3.61 Jurisdictions might consider implementing an approach based on the location of movable tangible property for identifying the place of taxation of supplies of services and intangibles connected with movable tangible property. Such an approach ensures that the place of taxation rules for such supplies provide a reasonably accurate reflection of the place where the consumption of the services or intangibles is likely to take place and is relatively straightforward for suppliers to apply in practice, particularly in the case of business-to-consumer supplies. Services or intangibles connected with movable tangible property supplied to final consumers, such as repair services, will generally be consumed in the jurisdiction where the property is located. Movable tangible property that is shipped abroad after the service is performed will generally be subject to import VAT under standard customs rules when crossing the customs border. This ensures that the taxing rights accrue to the jurisdiction of consumption when the tangible property moves across the customs border. Jurisdictions generally complement these rules by giving temporary VAT relief in the jurisdiction where the supply is performed and where the movable property is temporarily located, if this property is subsequently exported. This treatment lies outside the scope of these Guidelines.⁹

3.62 For business-to-business supplies of services and intangibles connected with movable property, the application of the general rule based on customer location will generally lead to an appropriate result.

⁹ Also the treatment of services that are incidental to the export or import of goods (*e.g.* packaging, loading, transport, insurance *etc.*) is outside the scope of these Guidelines.

ANNEX 3 [TO CHAPTER 3]

MAIN FEATURES OF A SIMPLIFIED REGISTRATION AND COMPLIANCE REGIME FOR NON-RESIDENT SUPPLIERS

1. The Guidelines on place of taxation for business-to-consumer supplies of services and intangibles set out that a registration-based collection mechanism is the most effective and efficient approach for collecting the tax from non-resident suppliers on remotely supplied business-to-consumer services and intangibles. Such a mechanism requires non-resident suppliers to register and account for the tax in the jurisdiction of taxation. These Guidelines also recommend that jurisdictions consider establishing a simplified registration and compliance regime to facilitate compliance (see paragraphs 3.29-30). This guidance explores the key measures that taxing jurisdictions could take to simplify the administrative and compliance process of a registration-based collection regime for business-to-consumer supplies of services and intangibles by non-resident suppliers.

2. This guidance is intended to assist jurisdictions in evaluating and developing their framework for collecting VAT on business-to-consumer supplies of services and intangibles by non-resident businesses and to suggest the possible main features of a simplified registration and compliance regime. It also considers whether the scope of such a simplified registration and compliance regime could be extended to cross-border business-to-business supplies and recalls the proportionality principle as a guiding principle for the operation of a registration-based collection mechanism for non-resident suppliers. It identifies the possible simplification measures for each of the following core elements of a simplified administrative and compliance regime:

- Registration
- Input tax recovery - Refunds
- Returns
- Payments
- Record keeping
- Invoicing
- Availability of information
- Use of third-party service providers.

3. This guidance recognises the important role of technology for the simplification of administration and compliance. Many tax administrations have taken steps to exploit the use of technology to develop a range of electronic services to support their operations, in particular those concerned with tax collection processes and the provision of basic services to taxpayers. The reasons for this are fairly obvious: applied effectively, these technologies can deliver considerable benefits both to tax administrations and taxpayers (*e.g.* lower compliance and administrative costs and faster and more accessible services for taxpayers). But the use of technology will be effective only if the core elements of the administrative and compliance process are sufficiently clear and simple. This guidance therefore focuses mainly on possible simplification of administrative and compliance procedures while devoting less attention to technological features, recognising that these technologies are likely to continue to evolve over time.

Registration procedure

4. Simple registration procedures can be an important incentive for non-resident suppliers to engage with the tax authority of a jurisdiction where they may have no link other than the supply of services or intangibles to final consumers. The information requested could be limited to necessary details, which could include:

- Name of business, including the trading name
- Name of contact person responsible for dealing with tax administrations
- Postal and/or registered address of the business and its contact person

- Telephone number of contact person
- Electronic address of contact person
- Web sites URL of businesses
- National tax identification number, if any.

5. The simplest way to engage with tax administrations from a remote location is most likely by electronic processes. An on-line registration application could be made accessible on the home page of the tax administration's web site, preferably available in the languages of the jurisdiction's major trading partners.

Input tax recovery - Refunds

6. It is reasonable for taxing jurisdictions to limit the scope of a simplified registration and compliance regime to the collection of VAT on business-to-consumer supplies of services and intangibles by non-resident suppliers without making the recovery of input tax available under the simplified regime. Where applicable, the input tax recovery could then remain available for non-resident suppliers under the normal VAT refund or registration and compliance procedure.

Return procedure

7. As requirements differ widely among jurisdictions, satisfying obligations to file tax returns in multiple jurisdictions is a complex process that often results in considerable compliance burdens for non-resident suppliers. Tax administrations could consider authorising non-resident businesses to file simplified returns, which would be less detailed than returns required for local businesses that are entitled to input tax credits. In establishing the requirements for information under such a simplified approach, it is desirable to strike a balance between the businesses' need for simplicity and the tax administrations' need to verify whether tax obligations have been correctly fulfilled. This information could be confined to:

- Supplier's registration identification number
- Tax period
- Currency and, where relevant, exchange rate used
- Taxable amount at the standard rate
- Taxable amount at reduced rate(s), if any
- Total tax amount payable.

8. The option to file electronically in a simple and commonly used format will be essential to facilitating compliance. Many tax administrations have already introduced or are introducing options to submit tax returns electronically.

Payments

9. The use of electronic payment methods is recommended, allowing non-resident suppliers to remit the tax due electronically. This not only reduces the burden and the cost of the payment process for the supplier, but it also reduces payment processing costs for tax administrations. Jurisdictions could consider accepting payments in the currencies of their main trading partners.

Record keeping

10. Tax administrations must be able to review data to ensure that the tax has been charged and accounted for correctly. Jurisdictions are encouraged to allow the use of electronic record keeping systems, as business processes have become increasingly automated and paper documents generally have been replaced by documents in an electronic format. Jurisdictions could consider limiting the data to be recorded to what is required to satisfy themselves that the tax for each supply has been charged and accounted for correctly and relying as much as possible on information that is available to suppliers in the course of their normal business activity. This could include the type of supply, the date of the supply, the VAT payable and the information used to determine the place where the customer has its usual residence. Taxing jurisdictions could require these records to be made available on request within a reasonable delay.

Invoicing

11. Invoicing requirements for VAT purposes are among the most burdensome responsibilities of VAT systems. Jurisdictions could therefore consider eliminating invoice requirements for business-to-consumer supplies that are covered by the simplified registration and compliance regime, in light of the fact that the customers involved generally will not be entitled to deduct the input VAT paid on these supplies.

12. If invoices are required, jurisdictions could consider allowing invoices to be issued in accordance with the rules of the supplier's jurisdiction or accepting commercial documentation that is issued for purposes other than VAT (e.g. electronic receipts). It is recommended that information on the invoice remain limited to the data required to administer the VAT regime (such as the identification of the customer, type and date of the supply(ies), the taxable amount and VAT amount per VAT rate and the total taxable amount). Jurisdictions could consider allowing this invoice to be submitted in the language of their main trading partners.

Availability of information

13. Jurisdictions are encouraged to make available on-line all information necessary to register and comply with the simplified registration and compliance regime, preferably in the languages of their major trading partners. Jurisdictions are also encouraged to make accessible via the internet the relevant and up-to-date information that non-resident businesses are likely to need in making their tax determinations. In particular, this would include information on tax rates and product classification.

Use of third-party service providers

14. Compliance for non-resident suppliers could be further facilitated by allowing such suppliers to appoint a third-party service provider to act on their behalf in carrying out certain procedures, such as submitting returns. This could be especially helpful for small and medium enterprises and businesses that are faced with multi-jurisdictional obligations.

Application in a business-to-business context

15. The implementation of a simplified registration and compliance regime for non-resident suppliers is recommended primarily in the context of business-to-consumer supplies of services and intangibles by non-resident suppliers. These Guidelines recommend the reverse charge mechanism for cross-border business-to-business supplies of services and intangibles that are taxable in the jurisdiction where the customer is located in accordance with Guideline 3.2. If the customer is entitled to full input tax credit in respect of this supply, it may be that the local VAT legislation does not require the reverse charge to be made. Jurisdictions whose general rules do not differentiate between business-to-business and business-to-consumers supplies in their national legislation may consider allowing the use of the simplified registration and compliance regime for both types of supplies.

Proportionality

16. Jurisdictions should aim to implement a registration-based collection mechanism for business-to-consumer supplies of services and intangibles by non-resident suppliers, without creating compliance and administrative burdens that are disproportionate to the revenues involved or to the objective of achieving neutrality between domestic and foreign suppliers (see also Guideline 2.6).

17. This objective should be pursued primarily through the implementation of simplified registration and compliance mechanisms that are consistent across jurisdictions and that are sufficiently clear and accessible to allow easy compliance by non-resident suppliers, including small and medium enterprises. Some jurisdictions have implemented a threshold of supplies into the jurisdiction of taxation below which non-resident suppliers would be relieved of the obligation to collect and remit tax in that jurisdiction, with a view to further reducing compliance costs. Relieving suppliers of the obligation to register in jurisdictions where their sales are minimal in value may not lead to substantial net losses of revenue in light of the offsetting expenses of tax administration. The introduction of thresholds needs to be considered carefully. A balance will need to be struck between minimising compliance costs for non-resident suppliers while ensuring that resident businesses are not placed at a competitive disadvantage.

CHAPTER 4

SUPPORTING THE GUIDELINES IN PRACTICE MUTUAL COOPERATION, DISPUTE MINIMISATION, AND APPLICATION IN CASES OF EVASION AND AVOIDANCE

A. Introduction

4.1. The objective of the Guidelines is to provide guidance to jurisdictions in developing practical legislation that will facilitate a smooth interaction between national VAT systems in their application to international trade, with a view to minimising the potential for double taxation and unintended non-taxation and creating more certainty for business and tax authorities. This objective should be achieved principally through adherence to the internationally agreed principles on VAT neutrality set forth in Chapter 2 and through implementation of the principles for determining the place of taxation of cross-border supplies set forth in Chapter 3.

4.2. In an ideal world, achieving the objective of the Guidelines would be simple. The principles on VAT neutrality set forth in Chapter 2 and on allocating VAT taxing rights in both the business-to-business (B2B) and business-to-consumer (B2C) contexts set forth in Chapter 3 would be applied consistently to the widest extent possible. A range of adequate relief mechanisms would also be available for businesses that incurred VAT in jurisdictions where they were not located. Furthermore, the parties involved in the cross-border transactions would all be acting in good faith, and all transactions would be legitimate and possess economic substance.

4.3. In practice, however, there may be differences in the way jurisdictions implement or interpret the neutrality or place-of-taxation principles in the Guidelines (*e.g.* determining customer status and location). There may also be differences in the way jurisdictions treat the specific facts of particular cross-border transactions (*e.g.* differences in the characterisation of supplies) and in the interpretation of the domestic rules by parties to a cross-border supply. Where these differences arise, they may lead to double taxation or unintended non-taxation and, in some instances, to disputes.

4.4. In light of the practical recognition that the Guidelines on neutrality and place of taxation will not entirely eliminate the risk of double taxation or unintended non-taxation in the application of VAT to cross-border supplies of services and intangibles, or the disputes that inconsistent interpretation of the Guidelines may engender, it is appropriate to identify other mechanisms that may be available to facilitate the consistent implementation of the principles of the Guidelines in national legislation, as well as their consistent interpretation by tax administrations, in order to minimise both the risk of such double taxation or unintended non-taxation and the potential for resulting disputes.

4.5. In addition to the practical issues that may arise in implementing or interpreting the Guidelines when all parties are acting in good faith and all transactions are legitimate and possess economic substance, some cross-border transactions may reflect efforts to evade or avoid taxation, even when national legislation would achieve the objective of the Guidelines for parties engaged in legitimate cross-border transactions with economic substance. In such instances, it is appropriate to recognise that it is not inconsistent with the Guidelines for jurisdictions to take proportionate counter-measures to protect against evasion and avoidance, revenue losses and distortion of competition.

4.6. It is important to emphasise that this chapter is intended specifically to complement the Guidelines set forth in Chapters 2 and 3. As such, it is directed to concerns of neutrality, place of taxation, and other issues that support the consistent interpretation in practice of these Guidelines, as well as concerns of evasion and avoidance. It is not addressed to concerns outside the scope of the Guidelines in Chapters 2 and 3, such as questions whether a particular jurisdiction should provide concessionary treatment for any particular type of supply (*e.g.* exemptions or reduced rates) or whether a particular jurisdiction has the right to limit the deductibility of certain input VAT. Nor does it address purely domestic situations without any cross-border aspect. In short, this chapter focuses essentially on mechanisms for avoiding double taxation and unintended non-taxation, for facilitating the minimisation of disputes over potential double taxation or unintended non-taxation, and for dealing with evasion and avoidance.

4.7. This chapter is not intended to interfere with the sovereignty of jurisdictions. As in other areas of tax administration, jurisdictions are, however, encouraged to apply the General Administrative Principles approved in

2001 by the OECD Forum on Tax Administration¹⁰ (*GAP001 Principles of Good Tax Administration – Practice Note*), which are reproduced in Chapter 2, Box 2.1.

B. Mutual cooperation, exchange of information, and other arrangements allowing tax administrations to communicate and work together

B.1 Background

4.8 Mechanisms for mutual cooperation, exchange of information and other forms of communication among tax administrations may offer helpful approaches to facilitate a consistent interpretation of the Guidelines on neutrality and on place of taxation, to minimise disputes, and to address issues of evasion or avoidance arising in the context of the Guidelines.

4.9 Because the Guidelines are not legally binding (soft law) these approaches for achieving a consistent interpretation of the Guidelines in national law cannot include any mechanism that depends on the existence of a binding legal commitment (hard law) between countries (*e.g.* a bilateral tax treaty). For this reason, formal dispute resolution mechanisms cannot constitute mechanisms for producing a consistent interpretation of the Guidelines.

4.10 Jurisdictions nevertheless are encouraged to utilise existing mechanisms for mutual cooperation, information exchange, and mutual assistance, which provide tax administrations with a means of communicating and working together, to facilitate a consistent interpretation under national law or practice of the Guidelines on neutrality and on place of taxation, to facilitate the minimisation of disputes arising within the scope of such Guidelines, and to address issues of evasion and avoidance in the context of the Guidelines.

4.11 Jurisdictions are further encouraged to explore a variety of approaches beyond the existing mechanisms identified immediately below, to effect a consistent interpretation of the Guidelines on neutrality and on place of taxation. These approaches might include the development of additional guidance, under the auspices of the OECD's Committee on Fiscal Affairs (CFA) and its subsidiary bodies, in the form of "best practices" or recommended approaches for implementing the Guidelines as a means of assuring their consistent interpretation.

B.2 Existing mechanisms for mutual cooperation

4.12 The following paragraphs describe the principal existing OECD mechanisms for mutual cooperation, information exchange and other forms of mutual assistance that may assist tax administrations in interpreting and implementing the principles of the Guidelines consistently and thereby minimise the potential for double taxation and unintended non-taxation, as well as disputes that may arise as a result of inconsistent interpretations; they also address questions of evasion and avoidance within the context of the Guidelines. Jurisdictions are also encouraged to use other bilateral, regional or multilateral arrangements that may exist to effect a consistent interpretation of the Guidelines on neutrality and on place of taxation and to address issues of evasion and avoidance in the context of the Guidelines.

B.2.1 Multilateral cooperation

4.13 The *Convention on Mutual Administrative Assistance in Tax Matters* (the Convention), which was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010, provides for all possible forms of administrative cooperation between the Parties in the assessment and collection of taxes, in particular with a view to combating tax evasion and avoidance. The Convention has been open to all countries since 2011. The Convention has a very wide scope and covers all forms of compulsory payments, including VAT, to general governments (*i.e.* the central government and its political subdivisions).

B.2.2 Bilateral cooperation

4.14 The *OECD Model Tax Convention* (MTC) deals with exchange of information in Article 26. The scope of the provision is exceedingly broad as it applies to "such information as is foreseeably relevant ... to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States." Its application is not restricted to taxes covered by the Convention, and the provision therefore applies as well to the exchange of information with respect to VAT.

4.15 For countries that have adopted a bilateral tax treaty based on the MTC and an information exchange article based on Article 26, the mechanism appears to offer a promising platform for Parties to exchange information both in

¹⁰ <http://www.oecd.org/dataoecd/34/39/1907918.pdf>

individual cases and in broader classes of cases arising under VAT, including cases that raise issues implicating the Guidelines. A bilateral agreement thus provides a possible mechanism for enhanced cooperation and development of solutions to common problems arising under the Guidelines with a view to minimising risks of double taxation and unintended non-taxation.

4.16 The OECD also developed a *Model Agreement on Exchange of Information on Tax Matters* to promote international cooperation in tax matters through exchange of information. This Agreement is not a binding instrument but contains two models for *Tax Information Exchange Agreements* (TIEAs), a multilateral version and a bilateral version. A considerable number of bilateral agreements have been based on this Agreement. These TIEAs provide for exchange of information on request and tax examinations abroad, principally for direct taxes but they may also cover other taxes such as VAT. Furthermore, TIEAs provide for forms of exchange other than exchange on request.

C. Taxpayer services

4.17 In addition to supporting the consistent interpretation of the Guidelines through mutual cooperation, tax administrations may be able to support such consistent interpretation through taxpayer services focused on the Guidelines, when provision of such services is not inconsistent with national law or practice.

4.18 Such taxpayer services may include, but are not limited to, the following:

- the provision of readily accessible and easily understood local guidance on the domestic VAT rules that fall within the scope of the Guidelines;
- the creation of points of contact with taxing authorities where consumers and businesses can make inquiries regarding the domestic VAT rules within the scope of the Guidelines and receive timely responses to such inquiries;
- the creation of a point of contact with tax authorities where businesses can identify perceived disparities in the interpretation or implementation of the principles of the Guidelines. Such information can notably support the development of additional guidance on “best practices” or recommended approaches under the auspices of the CFA and its subsidiary bodies, as set out in paragraph 4.11 above.

4.19 Such initiatives are likely to reduce possible differences in the understanding of the Guidelines, enhance administrative consistency, and lower the probability of disputes. Jurisdictions are therefore encouraged to provide taxpayer services designed to facilitate a consistent interpretation of the Guidelines on neutrality and on place of taxation, when provision of such services is not inconsistent with national law or practice.

4.20 Jurisdictions have a variety of existing tax administration procedures for interpreting domestic law, including, in some jurisdictions, national advance ruling procedures. Jurisdictions are encouraged to take account of the Guidelines in interpreting domestic law through such existing procedures, including advance ruling procedures when they are available.

4.21 In connection with the development of taxpayer service initiatives directed at the Guidelines, taxing authorities might look to the OECD’s Forum on Tax Administration (FTA). Created by the CFA in 2002, the FTA is a forum for cooperation and the development of new ideas and approaches, including aspects of service delivery, to enhance tax administration throughout the world. The FTA’s work program is supported by several subgroups and specialist networks, and it produces a variety of materials highlighting developments and trends in tax administration and providing practical guidance for tax authorities on important tax system management issues.

D. Application of the Guidelines in cases of evasion and avoidance

4.22 The Guidelines on neutrality and on place of taxation and the related commentaries apply when parties involved act in good faith and all transactions are legitimate and with economic substance.

4.23 In response to, or to prevent, evasion or avoidance, it is not inconsistent with the Guidelines for jurisdictions to take proportionate measures to protect against evasion and avoidance, revenue losses and distortion of competition.

4.24 This section is concerned with evasion and avoidance only in the context of these Guidelines. It is not intended to provide more general guidance on the concept of evasion or avoidance, or on jurisdictions’ overall anti-evasion or anti-avoidance policies.

D.1 *Meaning of evasion and avoidance*

4.25 There are no common OECD definitions of the terms evasion and avoidance. However, these concepts are covered in the OECD's *Glossary of Tax Terms*,¹¹ as follows:

Evasion: A term that is difficult to define but which is generally used to mean illegal arrangements where liability to tax is hidden or ignored, *i.e.* the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from tax authorities.

Avoidance: A term used to describe an arrangement of a taxpayer's affairs that is intended to reduce his liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow.

4.26 In the context of the Guidelines, the foregoing definitions are used for illustrative purposes only. They may not reflect the specific definitions that may exist in a national context or beyond the application of rules based on an interpretation of the Guidelines.

D.2 *Illustration of the concepts of evasion and avoidance in a VAT context*

4.27 Evasion could include the falsification or suppression of evidence or making false statements that result in VAT not being remitted to governments or that lead to inappropriate refunds being obtained from governments.

4.28 Avoidance could include situations resulting in a VAT advantage that is contrary to the intention of a law that is consistent with the Guidelines. Indications of VAT avoidance could include transactions that have been entered into solely or primarily to avoid VAT, or to gain a VAT advantage, and that are artificial, contrived, or lack economic substance. However, advantages provided for by law would not be deemed avoidance unless they are exploited to achieve an unintended result.

¹¹ <http://www.oecd.org/ctp/glossaryoftaxterms.htm>