



RESPONSE TO GREEN PAPER COM (2010) 695 – On the Future of VAT

## Introduction

The European Council of Optometry and Optics (ECOO) would like to thank you for this opportunity to submit views. As an organisation we represent the 75,000 optometrists, opticians and optical retail outlets in 30 countries of Europe.

We welcome moves by the European Commission to review the VAT systems of the European Union and Member States, as an important initiative that could reduce the cost of doing business, and thereby boost growth and productivity across the EU.

We also welcome the desire to deliver greater efficiency for a more coherent Single Market while simultaneously seeking to reduce the scope for fraud in the system.

Our views and comments on the specific questions are outlined below. While we agree in general with reform of the system, we would like to highlight in our response that some of the complexities in the current system are in place to serve a specific purpose, for example the exemption of healthcare services (which would include optometric and optical services) is designed to allow a fair price for and access to healthcare professionals for all.

## VAT Treatment of Cross Border Transactions in the Single Market

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

The current arrangements create issues because of differences in interpretation between Member States of similar transactions and differences in how VAT is accounted for and by whom.

For example, there is a variety of treatments in respect of triangulation and chain transactions which can result in differences in VAT treatment and VAT registration requirements.

There are also considerable differences in how the extended reverse charge in Article 194 is applied with

- not all countries applying the mechanism
- and there being considerable difference in how the mechanism is applied when it is used.

We consider that the reverse charge should apply to supplies of goods and services made by non-established suppliers in all countries and the application should be consistent. There should also be common rules for recovery of VAT so that non-established suppliers are able to recover any local VAT that they incur even though they do not charge VAT on their supplies in the country.

There needs to be consistency of treatment in all material respects so that businesses can set up common systems for dealing with VAT around the EU, encouraging intra-EU expansion and greater



competition within the Single Market. Non Established Taxable Persons are eligible to register for VAT in some countries where as in other countries they are not. This can mean VAT in some countries is recovered through local VAT returns yet in other countries VAT can only be recovered through a claim under the EU Recovery Directive.

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

We favour the Member State destination system because of difficulties with the origin system particularly with the issue of convergence of rates and issues in administration between the Tax Authorities and perceived problems in the relationships between the Member States. However, there needs to be much more consistency of treatment between the Member States on how supplies are treated. In addition, there also needs to be a more robust Refund Mechanism so that if VAT is incurred in Member States where there is no VAT registration, it should be possible to recover the VAT quickly and efficiently. However, there would need to be safeguards to ensure that VAT fraud is minimised.

## **How to Ensure Neutrality of the VAT System**

**3. Do you think that the current VAT rules for public authorities and holding companies are acceptable, particularly in terms of tax neutrality?**

We believe that activities undertaken by public authorities that compete with the private sector should be taxed in the same way.

The Green Paper says that public bodies have an incentive to limit outsourcing in order to avoid paying VAT that they cannot deduct. Whilst VAT is a factor in decision making it is by no means the only factor and often not the main factor. In some Member States (e.g. the UK) VAT incurred by certain public bodies including the National Health Service is recoverable under special Government spending decisions (contracted out services provisions). This ensures that VAT is not itself the determining factor. It is also necessary to take into account that, for public bodies that are funded by the taxpayer, any VAT that is chargeable by them or not refundable to them ultimately accrues to the Government in any event.

Our view is that there should be clear guidance in law provided in respect of the VAT treatment position of holding companies. Although numerous cases have been brought before the ECJ, there is still considerable confusion about how holding companies should be treated. This is such a fundamental issue that it should be legislated for in primary European legislation, although it would be necessary to have input from key stakeholders. We feel that this could reduce the administrative burden on both businesses and national authorities.

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

From our perspective we see two broad areas of concern. Firstly, the ECJ has looked at holding companies on a number of occasions mainly in the context of whether holding companies undertake economic activities. These decisions do offer some guidelines but we feel they are insufficient (see recommendation above for clear guidance in law).



Secondly, problems have arisen in relations to management services provided within groups of companies or from a Head office in one country to a branch of the same company in another country's tax jurisdiction.

**5. What should be done to overcome these problems?**

Where Member States allow VAT grouping, these provisions minimise the problems created by management charges. We consider that there should be consistency of treatment so that VAT grouping is permitted in all Member States and that it should operate in the same way in all Member States. For international groups, the problems would be eased by allowing foreign companies into VAT groups or by allowing pan European VAT groups. Pan European VAT groups would need common entry criteria to be applied consistently across all Member States.

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

We consider that there are no clear reasons for the continuing exemption of financial services as the barrier historically has been difficulties in taxing the transactions rather than any social benefit.

In addition, the reason for the exemption of cultural services is unclear and we would favour a reduced rate to be commonly applied throughout the EU.

There is a strong argument for abolishing Exemptions totally and replacing the Exemptions with a Zero rate of tax which would allow the supplier a deduction of VAT on the costs incurred. This would require an increase in the super reduced or reduced VAT rates in Member States to reflect the loss of Input VAT under current Partial Exemption rules.

The cost sharing exemption falls under Article 132 (Art 132(1)(f)) but this has not been implemented in all Member States. The current cost sharing exemption is probably too restrictive to be very useful to exempt and partly exempt groups. We would therefore favour a review of the cost sharing exemption.

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

*The current mechanism means that VAT is often not accounted for in the country where the transportation takes place. The current system is effectively unworkable and very complex for businesses given the differences in the rates of VAT that can apply across the EU.*

**8. What should be done to overcome these problems?**

*Our view is that consideration should be given to VAT applying in the Member State of departure of the transportation. In addition, there should be a common rate for intra community transportation. Member States should be free to set the VAT rate of domestic transport.*

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



The lack of consistency between Member States is the main problem with the deduction system. The other key problem is in determining the non-deductible element in a tax neutral way. For example for partly exempt businesses the deductible element may vary depending on specific rules in Member States. There are further complications with VAT recovery on capital items. There are also issues about the evidence required in order to secure deduction e.g. the provision of hotel accommodation in some Member States is fully deductible yet in others there is a partial restriction on the amount of VAT that can be recovered and yet other Member States deny any recovery on these costs.

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

We consider that agreement should be reached in line with Article 176 on a common system for the right of deduction. This would mean that the rules would be consistent in all Member States. There should also be consistency of treatment for partly exempt businesses or if our alternative proposals as outlined in the answer to Question 6 were adopted Partial Exemption would become obsolete.

In addition, there should be common rules on the evidence required in order to secure recovery.

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

For B2B services the main problem is the lack of consistent treatment. Despite the 2010/2011 changes, there remain a number of different regimes determining the place of supply of services. For example, there are differences in the treatment of stand rental at exhibitions and conferences. There are also considerable differences in the treatment of TOMS although we are aware that the Commission is taking action against a number of Member States in this regard. This is further complicated by local place-of-supply rules i.e. where some countries have extended the reverse charge provisions for non-established suppliers.

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

For B2B supplies we would recommend a fully implemented destinations system with the exception of supplies of car hire, catering and hotel accommodation. There is no reason why admission to events for B2B transactions and land related services other than hotels should not be General Rule. We also recommend that the application of the reverse charge is unified so that the same rule applies throughout the EU where the supply is made by a non-established supplier.

We would also recommend consistent implementation of the use or enjoyment provisions or their removal entirely. Confusion arises in determining which countries have adopted use-or-enjoyment provisions and to what extent they are applied in that country.

**What degree of harmonisation does the Single Market require?**

**13. Which, if any, provisions of EU VAT law should be laid down in a Council Regulation instead of a Directive?**



As noted in the Green Paper EU Directives and Regulations need agreement by all Member States. This can hold up and in some cases prevent agreement. For example the provisions of the draft 12th Directive have never been agreed. One of the main problems with the VAT system in the EU is the lack of consistent interpretation within the EU. In our view as much as possible should be agreed by Regulations as these are legally binding on Member States but the Regulations should be drafted so that there is consistency of treatment.

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

Yes but there is a need for quicker and more complete guidance. For example, the Implementing Provisions which have recently been finalised took several years to agree and in some areas do not provide sufficient guidance.

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

There is a risk that guidance which is not legally binding will add to the confusion that can arise in the differences of treatment between various Member States. Also guidance tends to lead to questions of interpretation and also ultimately in litigation which is both expensive and time consuming.

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

The legal process could be improved by earlier consultation with taxpayers and advisers. The Commission does consult in some cases and in other cases Member States consult. The whole process could be improved by earlier and more effective consultations. However, it is necessary to take into account the length of the legislative process.

There also needs to be reform of the European Court of Justice so that decisions are made more quickly. The ECJ should also be able to make decisions which are binding on the final court to remove doubt. It also needs to be able to decide which cases it should take and be able to reject cases that are not appropriate. We believe that there should be a comprehensive consultation on how to make the ECJ system more effective.

In our view there need to be more systematic engagement between the ECJ and Member States. For example, in instances where the ECJ has invited comment on a particular matter from Member States, there is generally only limited response. There is a concern that the issue may not have been considered by all Member States, or that the respondents to the request are the only parties to which consideration is given by the ECJ in reaching a decision. All Member States should respond if only to say they have no comment so as the taxpayer is assured the matter has been considered by all Member States.

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



We believe that derogations should be kept to a minimum. We accept that temporary derogations may be useful to act quickly against fraud until permanent measures can be agreed. However, they can cause increased complexity for businesses operating in a number of Member States. Where possible, we consider that changes should be made to legislation rather than allowing for derogations although we understand that there can be difficulties in changing legislation with sufficient speed to meet the needs of the Member States.

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

In our view derogations should be kept to a minimum. The EU Table of Derogations is more than 25 pages long. The UK alone has 12 derogations. We believe there is far too much derogation throughout the EU. In addition, the procedure for granting derogations does not allow for consultation with taxpayers and their representatives.

The main area where derogations should be allowed is in respect of tax fraud where individual Member States have identified specific problems which need a speedy resolution to avoid significant tax loss.

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

The ability of each Member State is aligned to its own Finance Ministry's needs. With a common treatment of the liability of goods and services the divergence of the standard and reduced rates should not cause major economic differences. Problems arise where goods and/or services may be exempt from VAT in one Member State but subject to either a reduced or standard rate of VAT in another.

The treatment of online services does cause some distortion of competition between EU and non-EU businesses. There is evidence that suppliers of on line services outside of the EU do not clearly advise customers that prices displayed do not include the payment of Customs Duties and VAT thereby creating an initial distortion of competition. However we do not believe that the differences create major problems and the consumer should be at liberty to purchase from whatever country they wish.

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

Our preference would be for reduced rates to continue as this ensures a more progressive VAT system. The issue with no reduced rates and a single, lower standard rate is that it would make VAT regressive. We would favour uniform application across the Member States.

## **Reducing 'red tape'**



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

The main problem with the current rules on VAT obligations is the lack of consistency between Member States. Member States have considerable freedom in deciding how to meet the obligations in the Directive. Therefore there is no consistency in the frequency of VAT return filing and on the information and format of the return. There are also considerable differences in the requirements for invoices.

In addition, there are differences in the requirements for registration for businesses in the EU, with some countries imposing additional burdens on businesses from other Member States having to register in their Member State. There are also differences in the requirements between Member States for non-EU businesses having to register for VAT in the EU.

There are also issues in obtaining information from the Tax Authorities and the need to submit EC Sales Lists and Intrastat declarations. With regard the latter there should be a uniform threshold whereby transactions have to be reported.

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

There should be standardised formats for VAT returns and invoices so that businesses can format their systems in a consistent manner. There should also be standardised VAT return periods and a standard period whereby repayments of VAT are made to businesses.

The thresholds for VAT registration, distance selling, EC Sales Lists and Intrastat should be standardised and there should be common forms.

There should also be standardised application forms for VAT registration.

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

We feel that some of the measures are sensible and achievable (for example, abolishing the annual summary VAT return, simplify proof of exports, reduce VAT return frequency). However, there would need to be consistency of treatment throughout the EU.

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

Any measures which reduce the burden for small businesses should be adopted but there needs to be consistency of treatment between the various Member States. Smaller businesses need greater access to relevant information in Member States as the costs of seeking professional advice in these respects can be hard to come by and expensive, resulting in there being a disincentive to trade across borders or to trade in contravention of local VAT legislation. An example being small enterprises involved in distance selling.

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



There should be a one stop shop in respect of the distance selling of goods. This would significantly reduce the costs of complying with the distance selling rules and also improve compliance. There should be a central database of country compliance requirements with details of the relevant contacts in Tax ministries.

**26. Do you think that small business schemes sufficiently cover the needs of small farmers?**

We have no experience of the needs of small farmers so do not feel able to comment.

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

We consider that the one stop shop should be used more widely because it considerably reduces the burden on businesses having to comply with their obligations in multiple Member States. We consider that it is most useful for B2C transactions such as distance selling. In these circumstances there is no requirement to recover local VAT as the customer is not registered for VAT.

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

The current VAT grouping provisions are not consistently applied throughout Member States. Member States have a lot of freedom in whether to allow VAT grouping and what conditions should be applied thereby causing confusion and additional administrative costs.

These issues could be resolved by consistency of treatment in respect of VAT grouping and also allowing pan European VAT grouping. There could be restrictions on bought in services in order to avoid potential avoidance.

There should also be consistent treatment of service supplied between a head office and its branch i.e. it should be disregarded as it is not a supply.

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

Synergies are obviously needed with customs duties as the same system is used for import duties and import VAT. We are aware of the proposal to declare VAT centrally to align with the customs clearance but this should have been done at the same time in order to make systems compatible from the outset.

## **A more robust VAT system**

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

The only model which we consider is feasible is option 4 which has been implemented in the UK by virtue of the Senior Accounting Officer (SAO) procedures. However, this only applies to large businesses and is only effective if there is a good control system in place by the Tax Authorities and when the Tax Authorities have adequate resource to be able to monitor the process.



We do not consider the split payment model to be workable in practice and would be very onerous both for businesses and Tax Authorities.

It is not realistic to expect all B2B transactions to be subject to e-invoicing as businesses will make transactions for cash etc which means that there would be a need for two separate systems to record the amount of VAT due and recoverable. In our view, it is also unrealistic to assume that a central VAT monitoring database is achievable given the degree of cooperation and coordination that it would require between the Tax Authorities.

We do not see a significant benefit in a secure VAT data warehouse being maintained by the taxable person given the costs that would be involved and the fact that it does not do anything to solve missing trader fraud.

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

We are not in favour of the split payment system. This would be difficult for taxpayers to comply with and difficult to audit. In addition, it does not deal with all payment types for example payment by cash or credit card so there would still be a need for a separate system to deal with these payment types. Consequently, we see it as being impractical.

## **An efficient and modern administrating of the VAT system**

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

The introduction of SAO type procedures (in the UK) would improve the relationship between traders and Tax Authorities as it would require a close working relationship to agree that the processes in place are adequate to effectively manage risk. However, it is not realistic that this could apply to all businesses because of the resources that would be required by the Tax Authorities. There is also the additional cost and timescale in training staff to the appropriate level of competency.

## **Other issues**

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

Our main issue is to ensure that, as far as possible, there is consistency of treatment between Member States as this will minimise the impact for businesses and allow them to have common systems to deal with their VAT obligations. Essential to this is a uniform system of reporting and also uniform application of a VAT system.

This response has been submitted by Mr Ulrich Adam on behalf of ECCO. ECCO is happy for this response to be made public. ECCO would also be available to supply additional information.