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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

The technological developments in the field of e-invoicing and measures aimed at further simplifying, modernising and harmonising the VAT invoicing rules

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1. INTRODUCTION

Under Article 237 of Council Directive 2006/112/EC¹ ('the VAT Directive'), the Commission is required by 31 December 2008 at the latest to present a report and, if appropriate, a proposal amending the conditions for e-invoicing to take account of technological developments. A proposal amending the conditions for e-invoicing accompanies this Communication.

Both this communication and the proposal go further than the requirement contained in Article 237. This is justifiable since Council Directive 2001/115/EC² ('the Invoicing Directive'), now incorporated in the VAT Directive, is acknowledged as not fully achieving its aim of simplifying, modernising and harmonising the rules on VAT invoicing. The various options available to the Member States, and the application of those options, have allowed Member States to maintain different rules on invoicing.

These differences in the rules are particularly apparent for e-invoicing and have hampered the widespread use of cross border e-invoicing. In other areas, too, differences in the rules place extra burdens on businesses and prevent or hinder them from taking advantage of options such as self-billing, summary invoices and electronic storage.

2. TECHNOLOGICAL DEVELOPMENTS IN E-INVOCING

To meet the requirement to report on the technological developments in e-invoicing, the topic was included in a study on invoicing conducted for the Commission. The results of that study are available on the Commission website³.

A separate paper to the Phase 3 recommendations contained in the study, entitled 'Appendix: White paper on technology development', describes e-invoicing technology. The paper gives an overview of the history and the current state of play as regards systems to ensure the authenticity and integrity of data such as invoices transmitted by electronic means.

2.1. Invoicing study findings on new technologies for e-invoicing

The invoicing study does not mention any specific technology as the preferred method for the safe transmission and receipt of e-invoices. In fact for e-signatures the

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 15, 17.1.2002, p. 24.

³ http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm

study states that various signature systems are being used to guarantee authenticity of origin and the integrity of the content. These have various advantages and drawbacks in terms of security, complexity and speed. For instance, Public Key Infrastructure based on asymmetric but complementary keys has a high security level and is used in applications related to banking, but as it is inherently complex it is not as quick as other signature systems.

It also seems clear that there is at present no single business-friendly technology to support e-invoicing throughout the EU that satisfies both large and small businesses and has the full support of all the tax authorities. Moreover, there is no clear prospect of a suitable technology-based solution encompassing the needs of all parties in the next few years. Thus technology should not be relied upon to improve the take up of e-invoicing.

For these reasons a different approach seems more appropriate. Indeed the invoicing study stated: 'instead of looking for new technologies, issues with current technologies should be solved'. Moreover, the Expert Group on E-invoicing set up by Commission Decision⁴, in an open letter to the Commission, states that any solution to e-invoicing should be technology-neutral as a matter of principle. Business, likewise, would like to see e-invoicing become more accessible while still secure, but built around its needs and the controls already in place to ensure that invoices in general are compliant.

3. VAT OBSTACLES TO PROMOTING E-INVOCING

Given the lack of an obvious technological solution, it is not surprising that the VAT Directive, based on a technological approach to e-invoicing, has not led to a rapid uptake of e-invoicing. Moreover, where the technological approach allows various options, this in turn allows Member States to implement the rules on e-invoicing in different ways. This has created a mix of e-invoicing rules that have been difficult for businesses to comply with, especially in cross-border e-invoicing.

The invoicing rules applicable under the national legislation of the Member States were mapped as part of the invoicing study. In terms of e-invoicing, the study confirms there are an array of both different interpretations and the use of different options. This has led to a situation whereby it is difficult and costly for businesses to set up an EU-wide, compliant e-invoicing solution.

3.1. Solutions to the VAT obstacles to e-invoicing

There are a number of possible ways of removing the VAT obstacles to e-invoicing. The favoured option for businesses would be to treat e-invoices and paper invoices equally. Another option would be to develop a model agreement between the parties involved in e-invoicing, whilst a third option would be to keep e-signatures and EDI as transmission methods but remove the problematic options.

The Commission's preferred solution is to treat the transmission of all invoices equally, whether they are sent on paper or by electronic means, and therefore abolish

⁴ Decision 2007/717/EC (OJ L 289, 7.11.2007, p. 38).

specific requirements for advance e-signature or EDI for e-invoices. This creates a technology-neutral solution.

As with paper invoices, the validity of an e-invoice should be checked against the accounting records of the business, such as the purchase order, payment and delivery note. Invariably, it is the controls within a business that help determine the validity of the invoice, regardless of the means of transmission.

The solution to the low take-up of e-invoicing should build on other ideas too: the principles identified by the Expert Group on E-invoicing can serve as useful pointers. The Group supports treating e-invoices in the same way as paper invoices. It also supports maintaining the cornerstone of current e-invoicing rules, i.e. that authenticity of origin and the integrity of the content should be guaranteed in a way that is technology-neutral.

The Group is looking towards using their set of principles to form a code of practice for e-invoicing. Whether this approach gains acceptance only time will tell. What is critical is that Member States, while agreeing to treat paper and e-invoices equally for VAT purposes, also agree on a common approach to e-invoicing so that a harmonised set of rules based on common principles can allow businesses to adopt e-invoicing solutions easily and cost effectively.

4. MEASURES TO FURTHER SIMPLIFY, MODERNISE AND HARMONISE VAT INVOICING RULES

As stated above, the need to further simplify, modernise and harmonise the rules on invoicing has meant that this report to Council now has a wider remit than was originally provided for in the VAT Directive. The following sections set out the problems businesses face with the current invoicing rules, look at possible solutions, and outline the Commission's preferred course of action. This is analysed from the point of view of the issue, content, and storage of invoices, and related invoicing rules to support anti-fraud measures.

4.1. Issue of an invoice

4.1.1. Problems related to issuing an invoice

No single article in the VAT Directive clearly states which Member State's rules on invoicing apply. Nevertheless, it is generally understood that the rules on invoicing are those applicable in the Member State where the tax is due, since that Member State checks the tax payable, and the various options also relate to that Member State.

However, this general acceptance of the prevailing rules being those where the tax is due presents certain difficulties for businesses. A taxable person making supplies on which the tax is due in another Member State has to meet that Member State's conditions on invoicing. Where the supplies are subject to the reverse charge procedure, the supplier must meet the invoicing rules without even being required to be identified for VAT in the Member State where the tax is due. Given that the

recently adopted VAT Package⁵ states as the basic rule that the place of business-to-business (B2B) supplies is where the customer is established, this problem may become more acute.

4.1.2. *Solutions to problems relating to the issue of an invoice*

There seem to be two approaches to providing businesses with transparency and legal certainty regarding the invoices they issue. The first is to provide a means by which information on invoicing rules is easily accessible and the requirements for compliance are simple to understand. This allows Member States to keep their different rules on invoicing. However, given the number of differences between Member States' invoicing rules, this would not significantly reduce burdens on business.

The alternative would be to move towards harmonised invoicing rules.

4.1.3. *Commission's view for B2B supplies*

The preferred way forward would be to create a complete set of harmonised rules whereby a taxable person issuing an invoice from the place where he is identified for VAT will have legal certainty that the invoice is valid throughout the EU.

The aim of a set of harmonised rules for B2B supplies is achievable. The Invoicing Directive has already achieved harmonisation in many areas, but there remain, within the requirement to issue an invoice, cases where the invoicing rules are not harmonised: exempt supplies, the time limit for issuing an invoice, summary invoices, self-billing and outsourcing to third parties outside the EU.

4.1.4. *Exempt supplies*

As a way of reducing burdens on business, the VAT Directive allows Member States to release taxable persons from the requirement to issue invoices for certain exempt supplies. Member States vary in their approach to this option: some make full use of it, others apply it restrictively and others do not apply it at all. Consequently businesses are often faced with selective exceptions to the general rule, and hence a greater administrative burden.

In order to harmonise the rules, bearing in mind the need to balance simplification with adequate control, it is therefore proposed that for exempt B2B supplies an invoice be required in all cases, but that this need only be a simplified invoice where the customer is in the same Member State as the supplier and the supplier does not have a right to deduction at the preceding stage.

4.1.5. *Time when an invoice must be issued*

The VAT Directive allows Member States to decide the time limit for issuing an invoice. This naturally creates different rules across the EU and the possibility for different tax points. Where the tax becomes chargeable on cross-border supplies of services, this has already given rise to a proposal to amend the rules to create a

⁵ OJ L 44, 20.2.2008, p. 11.

common tax point in order to ensure accurate exchange of information on recapitulative statements for services.

With the aim of creating a common date on which tax becomes chargeable on intra-Community supplies of goods and cross-border supplies of services subject to the reverse charge procedure it is important that the invoice is issued in time to provide proof of these supplies. This proposal therefore lays down that taxable persons must issue an invoice at the latest by 15 calendar days in the month following that in which the chargeable event occurred. In this way both the supplier and customer have sufficient time to record the supply in the same tax period.

To allow Member States different rules for domestic supplies from those for cross-border supplies would create additional burdens for business. For this reason, the time limit is the same for all invoices.

4.1.6. Summary invoices

The VAT Directive allows Member States to lay down conditions for summary invoices, resulting in different sets of conditions in different Member States.

The proposal aims to create a harmonised approach to summary invoices so that businesses gain advantage from this practice across the EU. To this end, summary invoices will be allowed during a calendar month on the basis that the details required for the separate supplies are included in the summary invoice. Member States will not be allowed to impose any further conditions on summary invoices.

4.1.7. Self-billing

Under the current rules, an invoice can be issued by the supplier, by the customer, or by a third party on behalf of the supplier. It is recognised that for commercial reasons it is important to keep these options.

However, for self-billing (invoices issued by the customer), the conditions applicable vary between the Member States. The proposal aims to withdraw the Member States' option of imposing conditions on self-billed invoices so as to achieve a more harmonised set of rules across the EU. At the same time, in order to facilitate control of self-billed invoices, the customer is required to enter the words 'self-billed invoice' on the invoice so that the supplier and tax authorities are aware of the issuer. The customer's VAT number is also required on the invoice.

4.1.8. Outsourcing to third parties outside the EU

In general, both business and Member States take the view that imposing specific conditions on third parties outside the EU issuing invoices on behalf of taxable persons making supplies in the EU is unnecessary. Indeed sufficient control measures already exist to hold the taxable person required to issue the invoice responsible.

Therefore, it is proposed that no specific conditions be imposed on third parties issuing invoices on behalf of a taxable person. The current rules set out in Articles 225 and 235 are removed.

4.1.9. *The Commission's view of Business to Consumer (B2C) supplies*

The aim of a set of harmonised rules for B2C supplies is unlikely to be achievable in the short term. Here the rules are less harmonised. Member States can decide whether or not they require the taxable person to issue an invoice. Some Member States make wide use of this option, others require the invoice to be issued for certain supplies, such as for building work, or where the value is above a certain threshold, while other Member States do not require B2C invoices.

It is recognised that Member States need flexibility to be able to control the tax. At the same time, the aim of reducing burdens on business and simplifying the invoicing rules is important. In balancing these needs, the aim is to keep the option to require taxable persons to issue an invoice for B2C supplies but require only a simplified invoice giving a limited amount of information. In addition, established and non-established taxable persons must be treated equally.

Treating established and non-established taxable persons equally means that non-established taxable persons can only be required to issue VAT invoices if, for an equivalent supply, an established taxable person making a B2C supply is required to issue an invoice. This, coupled with the requirement to issue only simplified invoices, should reduce the burden on distance sellers.

The special scheme for e-services and its wider scope under the VAT Package may require businesses to issue invoices in Member States where they are not identified for VAT. As with distance sellers, it is important the rules are transparent and easy to comply with. This should be addressed by requiring Member States to make available, on a web site, detailed information regarding invoicing rules for B2C supplies. In fact the 'one-stop-shop scheme' Commission proposal⁶ already provides for this and so the 'mini-one-stop-shop scheme' will in any case require something similar.

4.1.10. *Member State whose rules are applicable*

With a harmonised set of invoicing rules for B2B supplies, it would be possible to move towards establishing that the applicable rules on invoicing are those in the Member State where the supplier making the supply is identified for VAT. This would build on the concept of the one-stop-shop scheme, where VAT obligations can be met in the Member State of establishment rather than where the tax is due.

B2C supplies should also establish the rules based on where the supplier making the supply is identified for VAT, since generally registration is required in the Member State of the customer.

⁶ COM(2004) 728, OJ C 24, 29.1.2005, p. 8.

4.2. Invoice details

4.2.1. *Problems relating to the details required on an invoice*

In general the details required on an invoice cause fewer problems for business. The details listed in Article 226 of the VAT Directive seem to meet the needs of tax authorities without being too burdensome for business.

However, what is noticeable is that when Member States require invoices to be issued for certain supplies, typically B2C, there is a corresponding disparity between the contents of the invoices as Member States can opt to require fewer details. However, this does not often have the intended burden reduction benefits because of the cost to businesses of setting up and adjusting billing systems to the different rules.

4.2.2. *Solutions to the problems relating to the details of an invoice*

The ideal solution could be thought to be a standard set of invoice details in all cases. However, to adopt a single list of invoice details could cause practical difficulties in achieving a balance between different types of supplies such as B2C, B2B or VAT-exempt. Consequently a standard set of invoice items might entail numerous exceptions to reflect commercial practices.

The current rules lay down a harmonised list of invoice details, with Member States allowed to require fewer details for certain types of supply. The drawback is that Member States have different approaches to exercising this option, with the result that businesses often do not realise the benefits.

Another solution could be to bridge the gap between a single list and the many exceptions put in place by Member States.

4.2.3. *Commission view*

The proposal aims to create two categories of invoices: those for which a right of deduction is likely and control is thus required both on the supplier and customer, and those for which a right of deduction is unlikely and control is essentially limited to the supplier. The former is referred to as a full VAT invoice, the latter as a simplified VAT invoice.

Member States will not be allowed to require different types of invoices falling between a full VAT invoice and a simplified VAT invoice. Businesses, of course, will still be free to add other details on the invoice.

4.2.4. *Full VAT invoice*

4.2.4.1. Requirement to issue a full VAT invoice

The principle is maintained that a taxable person is required to issue an invoice where the supply is taxable for VAT purposes and the recipient is a taxable person or a non-taxable legal person. These invoices must contain a full set of details.

There are exceptions to this rule for certain exempt supplies where the customer is in the same Member State, for credit notes and for small value invoices below EUR 200. These fall under the rules on simplified invoices.

4.2.4.2. Information required on a full VAT invoice

A harmonised list of the information required on an invoice is set out in Article 226 of the VAT Directive. There is no reason to make substantial changes to this list. Nevertheless, to help with control of the tax and to simplify business requirements, three main changes are proposed.

Firstly, the supplier is obliged to state the customer's VAT identification number on the invoice. This is being introduced for several reasons. It will help the tax authorities to better control the tax by allowing them to check that the customer's VAT number on the invoice matches that of the business claiming a right of deduction. It harmonises invoicing rules throughout the EU, so requirements are the same for supplies to customers in the same Member State as for supplies to a customer in another Member State. It also serves to indicate to the business whether a full VAT invoice may be required, since for B2C supplies the customer will not have a VAT number.

Furthermore, as the proposal aims to help increase the use of e-invoicing, it becomes more important to have a unique number to identify the customer, especially where service providers need to exchange e-invoices on behalf of their business clients. The VAT number could serve as the unique number by which e-invoices are exchanged and, should the use of e-invoicing increase as is hoped, a unique identity number would already be in place.

Secondly, the date of the supply of goods or services is replaced by the date on which the tax becomes chargeable. Since the rules on when the right of deduction can be exercised depend on the time when the tax becomes chargeable, logically this date should be given on the invoice. It will also help with the right of deduction for the customer where VAT is declared by the supplier on receipt of payment, another measure included in the proposal.

Thirdly, for 'reverse charge' supplies where the customer in another Member State is liable for the VAT, to make it easier for the supplier they can replace the VAT rate and the VAT amount payable, as required on a full VAT invoice, with the amount for each type of good or service provided.

4.2.5. *Simplified VAT invoice*

4.2.5.1. Use of a simplified VAT invoice

Simplified invoices can be used in two cases. Firstly, Member States can require the use of a simplified invoice, but only by taxable persons making B2C supplies. Secondly, for certain B2B supplies the taxable person may issue a simplified invoice instead of a full VAT invoice.

For B2C supplies, the risk of fraud rests mainly with the supplier since the customer is unlikely to have a right of deduction. The invoice should only give the details required to ensure the supplier has correctly accounted for the tax and consequently

the level of detail required is less than that required where a right of deduction is allowed.

For B2B supplies, simplified invoices can be used for supplies where the risk of fraud is minimal. In such cases, the supplier should be allowed to choose to issue a simplified invoice, for instance for certain exempt supplies, since there is no corresponding right of deduction, although where the customer is in another Member State, a full invoice is still required.

In cases where the invoice amount is less than EUR 200, and the VAT amount that could be deducted is small, as is the resulting risk to Member States' budgets, the supplier can opt to issue a simplified invoice. This builds on the VAT Committee consultations in which the majority of Member States requested use of simplified invoicing for minor amounts.

Another instance where a supplier may issue simplified invoices is where a credit note is issued. Here the original invoice referred to in the credit note contains the necessary details.

4.2.5.2. Content of a simplified VAT invoice

The details required on a simplified invoice are those listed in Article 238 of the VAT Directive, under which Member States may, after consulting the VAT Committee, allow simplified invoices in certain cases. The only addition is the requirement to include the value of the type of goods or services supplied.

4.2.6. *Use of tax reference numbers*

Few Member States avail of the option set out in Articles 239 and 240 of the VAT Directive to use a number other than the VAT number to identify the supplier on an invoice. Given this situation, this option is being withdrawn and, instead, the national VAT identification number must be stated on the invoice in all cases, so there is a uniform approach.

4.3. **Storage of invoices**

4.3.1. *Problems relating to the storage of invoices*

The options available to Member States allow for different rules on storage. This creates barriers not only for larger businesses that would like to have common storage procedures throughout the EU, but for smaller businesses which may be prevented by the conditions laid down from making efficiency savings, e.g. from electronic archiving.

4.3.2. *Solutions to the problems relating to the storage of invoices*

The aim here is to reduce burdens on business without undermining the tax authorities' ability to control the tax. Businesses in any case need to store invoices for commercial reasons but want greater flexibility as to the means and location of storage and, if they are established in more than one Member State, common storage periods.

In effect any solution needs to strike a balance between simplification and control. The aim should be to harmonise the rules to the greatest possible extent without compromising the tax authorities' ability to ensure tax collection.

4.3.3. *Commission view*

The Commission believes that common rules can be achieved in certain areas. One is a harmonised storage period, which based on the average current storage periods for the Member States, can be set at 6 years. This should also allow uniform exchange of invoices between Member States that need to check cross-border transactions.

The rules on storing invoices in electronic form should be changed to allow businesses to use this medium as of right. Businesses would therefore be allowed to convert paper invoices into electronic form provided the invoices were accessible without undue delay and the content of the original invoice could be guaranteed as being the same as that of the e-storage.

The Member State in which the rules applying to the storage of invoices should also be clearly laid down in law. For the supplier, the rules applicable should be those of the Member State where they are established for VAT. For the customer, the rules applicable should be those of the Member State where the customer belongs. This should not pose any difficulties for the tax authorities in terms of control since the Member State should still have access to the invoices where the tax is due.

Certain other options can also be removed, for example: the requirement that non-taxable persons store invoices; that paper invoices be stored in the Member State where the taxable person is established; and that the place of storage be notified.

5. MEASURES TO HELP TACKLE VAT FRAUD

5.1. Chargeability of tax on intra-Community supplies

The Commission has already proposed shortening the time period for which the recapitulative statement is submitted from three months to one month⁷. This is already a step towards Member States exchanging information more promptly, which should help tackle carousel fraud.

However, the rules on the chargeability of tax on intra-Community supplies allow the taxable person to delay the chargeability of tax until the 15th day of the month following the chargeable event. For instance, an invoice issued before the 15th of the month following the chargeable event establishes when the tax becomes chargeable. So an intra-Community supply taking place in January with an invoice issued in February but before 15 February allows the recapitulative statement to be declared in February and not January.

Moreover, the Member States do not apply the rules uniformly. This issue has already been discussed in the VAT Committee without any conclusions being reached. The principal problem arises when an invoice is issued prior to the supply of

⁷ COM(2008) 147.

goods, with certain Member States treating this as the point at which the tax becomes chargeable while others do not.

It would be preferable to set a single date on which the tax becomes chargeable, that of the date of the chargeable event, which is determined by the time of the supply. By requiring the invoice to be issued by the 15th day of the month following the chargeable event, the invoice will still remain the principal document proving the intra-Community supply. Furthermore, the date of chargeability of the tax for intra-Community acquisitions should be amended so as to correspond with the intra-Community supply.

5.2. Right of deduction

In most cases a taxable person exercising a right of deduction must hold a VAT invoice that was issued in accordance with the rules contained in the VAT Directive. There are exceptions to this rule, however, notably for reverse charge transactions. Indeed in the *Bockemühl*⁸ case the court stated that holding a valid VAT invoice was not a formality that a Member State could impose on businesses exercising a right of deduction on a reverse charge supply.

Despite these exceptions the taxable person making the supply is required to issue an invoice in accordance with the VAT Directive. This gives rise to a disparity between the requirement to issue an invoice as evidence of the supply and the requirement to hold an invoice to exercise a right of deduction.

There should be equal treatment of the supplier and the customer in terms of these requirements. At the same time that the supplier is required to issue an invoice to prove the supply, the customer should be required to hold that invoice to exercise the right of deduction. As is the case now Member States may allow a right of deduction supported by other evidence if a valid invoice is not issued.

6. OTHER SIMPLIFICATION MEASURES — CASH ACCOUNTING

Certain Member States have authorisation for a derogation⁹ regarding the time at which the right of deduction can be exercised by taxable persons declaring the VAT under an optional cash accounting scheme. This derogation delays the right of deduction for taxable persons in the cash accounting scheme until payment is made to their suppliers.

It is proposed to extend this cash accounting simplification measure to all Member States.

However, where the supplier only accounts for VAT on receipt of payment, a concession should be made for the recipient of those supplies to claim an immediate right of deduction. This proposal creates a legal basis for Member States to further support businesses operating a cash accounting system.

⁸ OJ C106, 30.4.2004, p. 7.

⁹ Council Decision 2006/659/EC (OJ L 272, 3.10.2006, p. 15).

7. CONCLUSION

For e-invoicing, the basic approach of using technology to ensure that an invoice is correct is removed. Instead, paper and e-invoices are to be treated equally, with reliance on the invoice details being assured in the same way as it is for paper invoices today.

The proposal significantly reduces the number of options available to Member States. This will create a more harmonised set of EU invoicing rules allowing businesses to fulfil their obligations regarding invoicing more easily. Those businesses involved in cross-border transactions, in particular, and those identified for VAT in many Member States should see a reduction in the burdens placed on them.

For small and medium-sized businesses, the extension of the use of simplified invoices should be of direct benefit, especially in relation to low value invoices. Moreover, a more harmonised set of EU rules will make compliance easier and the benefits of cross-border trade more attainable.

Finally, measures have been put in place to enable Member States to exchange information on intra-Community supplies of goods faster. This complements the Commission proposal to reduce the period of recapitulative statements, and is a key element in tackling intra-Community VAT fraud.