Date

1 October 2008

Le Président

Fédération
des Experts
Comptables
Européens
AISBL

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Dear Mr Hayes,

Re: Review of existing legislation on VAT invoicing
Contribution in response to the consultation paper of the European Commission

FEE (Fédération des Experts Comptables Européens – Federation of European Accountants) represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 EU Member States.

In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent, and sustainable European economy.

FEE has considered the consultation paper of the European Commission regarding the review of existing legislation on VAT invoicing and welcomes the European Commission's initiative to simplify, modernise and harmonise the conditions laid down for invoicing in respect of VAT.

A. General comments

FEE opinion on each recommendation listed or questions raised in the consultation paper is stated below. As requested, the answers indicate agreement or disagreement with the recommendation and provide further explanations where required.

We believe that the measures proposed by the Commission would benefit business and have the potential to bring a contribution to the realisation of the European jobs and growth strategy. However, we note that much depends on the commitment of the administrations of each Member State to further harmonisation and simplification. FEE will continue to support such Commission's efforts to concretising the internal market for all size of businesses.

B. Contribution to the selection of draft recommendations from the Invoicing Study

1. Provisions in case countries with which no legal instrument relating to mutual assistance exists are involved should be abolished as these are not really needed by the large majority of the national authorities for control purposes.

FEE agrees.

2. The requirement to issue an invoice for supplies as referred to in article 33 of Directive 2006/112/EC should be abolished, as, on the one hand, there is no need for an invoice to control the correct and timely payment of VAT due and, on the other hand, VAT is not deductible.

FEE partially agrees and would like to outline the following points.

For the time being, the validity of the second argument (VAT on a cross-border supply is not deductible) is not yet clear in all Member States. In Germany, for example, the authorities take the view that a supply as described in Art. 33 of Directive 2006/112/EC may qualify for zero-rating (i.e. exemption with right to input VAT deduction), but does not so by nature. Further formal requirements have to be met to render such a supply zero-rated, e.g. the recording of VAT identification number and other details. If these requirements are not met, even a cross-border supply remains subject to tax.

Although the European Court of Justice has recently to some extent clarified Member States' right to impose such additional requirements (judgments Teleos, Twoh, Collee and Netto Supermarkt), neither the Court - by way of judgment - nor the Council - by way of directive or regulation - have stated beyond doubt that a cross-border supply is always zero-rated. Unless there is such clear statement, it can and will happen, that tax authorities deny zero-rating of cross-border supplies, for example because the supplier cannot provide evidence that the goods have left the country. This could arise in countries e.g. France that have legislated for the case of Axel Kittel – see articles 262ter, 272 and 283 of the French Tax Code.

In such a case, the tax payable on the supplier's side requires a corresponding right on the customer's side to deduct the tax paid on such supply. For this purpose, he needs an invoice. The principle of neutrality requires that no Member State can collect and keep taxes on transactions between two fully taxable businesses.

Secondly, Art. 69 par. 2 of Directive 2006/112/EC would become obsolete.

Thirdly, it needs to be considered if and to what extent the invoice might be required as a document upon which the taxation of the intra-community acquisition is based. In any event an accounting document would be required to record and justify the transaction.

3. The option allowing Member States to require issuing an invoice to private individuals should be abolished for the same reasons.

FEE disagrees for the following reasons.

On the one hand, issuing an invoice does not guarantee the payment of VAT itself and could insofar be abolished.

On the other hand, the invoice serves as a means of control with respect to the correct and timely payment of VAT due even if the customer is a private individual.

4. A harmonised time limit for issuing invoices should be implemented, more specifically, we recommend imposing the requirement to issue invoices no later than the 15th day of the month following the month in which the taxable event took place.

FEE would like to outline the following points.

In principle, the VAT liability should arise regardless of the issuance of an invoice so that there is no need for a statutory time limit for issuing an invoice. Such obligation would not ensure the correct and timely payment of VAT due but increase the administrative burden for the suppliers. The recipients will put pressure on the suppliers to issue invoices on a timely basis to deduct the input VAT incurred, anyway. This in addition may not be compatible with those Member States exercising the options under article 66 of the Directive.

Furthermore, the suggested period is too short if applied to all taxpayers and all transactions.

Example: Business Customer B of Member State M1 travels to Member State M2, where he makes some phone calls with his mobile phone using the net of telecoms operator T2 in M2. T2 charges roaming fees to Telecoms operator T1, who is the contractual telecoms service provider of B. In the invoice from T1 to B, T1 has to charge the entire consideration for the services rendered during the month in which the taxable event occurred. That means, the roaming fees have to be included in the invoice for the month during which B travelled. If T1 has got 15 days after the end of this month, so has T2. Therefore, T1 does not know the elements of his invoice 15 days after the month of supply.

Therefore, in case a harmonised time limit for issuing invoices would be considered, the pros and cons should be carefully examined and the duration of the period should be adapted to practical requirements.

5. The option currently provided for in article 223 of Directive 2006/112/EC allowing Member States to impose specific conditions in case of a summary invoice should be abolished, and the general rules with respect to “single invoices” should be applicable.

FEE agrees.

7. The requirement to have a prior agreement in case of self-billing should be abolished as it is not a key element for control purposes.

FEE agrees.

8. The acceptance procedure in case of self-billing should only be implicit or silent as national authorities have other means to control the correct payment and deduction of VAT.

FEE agrees.

Furthermore, it would be helpful to have clear and unmistakable rules on the validity and prevalence of “normal” invoices and self-invoices on the same supply.

9. In order to inform the national authorities and the supplier that a self-bill invoice has been issued, the word “self-bill” should be clearly stated and two boxes could be added on the VAT return “ I received self-bills from my customers” or “ I issued self-bills to my suppliers” to be ticked by the taxpayer as appropriate.

FEE disagrees with an addition of boxes on the VAT return for the following reasons.

We doubt that the requirement of completing two more boxes on the VAT return could simplify or modernise the conditions laid down for invoicing in respect of VAT as it seems to increase the administrative burden for the taxable persons.

Furthermore, the purpose and usefulness of such general information for tax authorities is unclear, in particular as tax authorities do generally not need to be informed whether self-billing is used.

10. A clear definition of "sequential numbering" should be provided in order to avoid different interpretations. All other requirements mentioned in article 226 of Directive 2006/112/EC should not be changed.

FEE agrees but would like to outline the following condition.

The definition of sequential numbering should be simple. It must be easy to implement in all different ERP systems.

11. Abolish the option to require for paper invoices to be stored in the Member State as the principle providing access "without undue delay" is already included and resolves the national authorities' concern.

FEE agrees.

12. The option provided to Member States not to allow converting paper invoices into electronically archived invoices should be abolished.

FEE agrees.

13. A harmonised storage period for invoices, i.e. 7 years as from 1 January following the year in which the taxable event took place, should be imposed (except for capital goods subject to a longer revision period).

FEE agrees.

Furthermore, it should be considered that the taxpayer should not bear the burden of proof with respect to existence and content of invoices after the harmonised storage period has expired.

14. In case it is not possible to eliminate all national options for invoicing:

a) the rules of the country where the supplier is established should prevail; with the exception of self-billing where the rules of the country of establishment of the customer (issuing the self-bills) should prevail;

FEE partially agrees and would like to outline the following points.

The customer (taxable person) needs a valid VAT invoice for input VAT deduction. If the rules of the country of the supplier always prevail, the customer has to know these rules as he

otherwise risks input VAT deduction. Therefore, it could be considered to let the rules of the country where the place of supply is (and where the input VAT can be deducted) prevail.

In case that the rules of the country where the supplier is established prevail, the "self-bill rules" should equally apply in cases of reverse charge, where the obligation to report and account for tax is shifted to the customer. In other words article 226.11 of the Directive should not be applied where the supplier is not established in the EU. Obliging a non-EU business to respect all of the EU invoicing rules where the recipient established in the EU has to account for the tax is an unnecessary burden.

b) if a supplier or for self-billing the customer is not established in one of the EU Member States he has to comply with the rules of the Member States that has granted him a VAT identification number under which he makes his supply of goods or services or issues the self-bills.

FEE partially agrees and would like to outline the following points.

Legislation should clarify whether a non-resident customer may be obliged to register for the sole purpose of declaring receipts of supplies which fall under the reverse charge mechanism, or whether the application of the reverse charge mechanism requires that the customer is already registered in the Member State where he shall be required to report and account for tax. That clarification may have an impact on the recommendation above.

15. In case it is not possible to eliminate all national options for archiving:

a) the rules of the country where the supplier or the customer is established should prevail for their respective archiving obligations;

See above 14.

b) if a supplier or a customer is not established in one of the Member States he has to comply with the rules of the Member States that has granted him a VAT identification number under which he makes his supply of goods or services.

FEE partially agrees and would like to outline the following points.

Customers established outside the EC should not be obliged to to apply the EU archiving rules if the goods supplied have left the EU or if the place of supply of the concerned services is outside the EU.

C. **Additional** questions raised in the consultation paper

1) Should e-invoicing be based on the following criteria?

a) Equality of treatment between paper and e-invoices,

It should be carefully examined which rules should apply to ensure an "equal treatment" bearing in mind the aim to simplify, modernise and harmonise the conditions laid down for invoicing in respect of VAT. Legislation should facilitate and not discriminate electronic invoices. "Equal treatment" should mean that compliant electronic invoices have the same validity as paper invoices and that paper invoices are not subject to requirements that are specific to electronic invoices. There should be a common understanding that the envisaged

equal treatment does not mean that paper invoices shall have to be signed, stamped, verified in the future, but that it shall be the other way round - what is sufficient for paper invoices shall be sufficient for electronic invoices as well.

b) Guaranteeing the authenticity of origin and the integrity of content of an e-invoice should remain as a general principle to be observed,

We doubt that such guarantee can be provided for any paper invoice, as paper invoices can easily be falsified with modern high-tech copiers. Therefore, it should be carefully examined whether the requirements for e-invoicing in this regard should be higher than for paper invoices (see above a).

c) An agreement, either implicit or explicit, between the supplier and customer.

E-invoicing should indeed be based on an agreement between supplier and customer, in particular taking into account the needs of SMEs. Otherwise, supplier or customer could be obliged by a VAT rule to adhere to a procedure they do not want to or which they consider impractical (e.g. invoicing in restaurants, small shops or hotels).

2) What other recommendations do you think should also be considered in the context of a legislative proposal on VAT invoicing and why?

The rules on the form of archiving that is acceptable to Member States should be reconsidered and harmonised, taking into account the principle of proportionality. For example, the requirement that a paper invoice with coloured letterhead and water sign is stored in a way that its electronic reproduction shows the colours and the water sign might be dispensable. A black and white scan, from which all text and numbers of the original paper invoice can be restored, should be sufficient. This satisfies the need to identify the content of the original paper document, and will save on expensive storage capacity.

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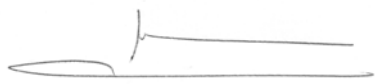
We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,



Jacques Potdevin
President