Federation of European Accountants
Fédération des Experts comptables Européens

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Dear Mr Owens,

Re: OECD International VAT/GST Draft Guidelines on Neutrality

FEE (Federation of European Accountants)[1] is pleased to provide you below with its comments on chapter 1, sections 1 – 3 of the OECD international VAT/GST guidelines - draft guidelines on neutrality.

FEE welcomes the intended extension of the VAT/GST guidelines to the field of tax neutrality. The draft guidelines do not contain any statement FEE would object to, nor do they leave out aspects which our organisation considers important.

However, we have doubts whether Guideline 3 in its draft wording is appropriate in this context. It is, of course, true that taxes should never be the main driver of business decisions, and, therefore, it is also true that VAT rules should be framed in such a way that they are not the primary influence on business decisions.

The Guidelines aim at providing guidance for governments on applying VAT more generally to cross-border trade[2]. Business decisions are, however, by nature made by businesses and not by governments.

Although the Guidelines are just a framework of non-binding instruments, governments might feel obliged to comply with them.

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[1] FEE is the representative organisation for the accountancy profession in Europe. FEE's membership consists of 45 professional institutes of accountants from 33 countries. FEE Member Bodies are present in all 27 Member States of the European Union and three member countries of EFTA. FEE Member Bodies represent more than 500,000 accountants in Europe.
[2] See Chapter 3 first paragraph of the OECD document “WHAT ARE THE OECD VAT/GST GUIDELINES?” as of December 2010 - 46801530.doc.

Guideline 3 requires governments to frame the VAT rules in such a way that they are not the primary influence on business decisions. Further to the expectation that governments will do their utmost to follow the guideline, governments may amend their framework of VAT rules either if they become aware that the existing rules have actually exerted the primary influence or that intended rules will do so in the future.

Without specific studies and/or surveys, governments are not able to detect a statistically relevant cause and effect relation between a VAT rule and business decisions. Even if they would be able to detect such relations, this would in most instances happen after implementation of the rule in question. Although it may happen sometimes that a business explains its motivation for a specific decision being based upon a tax rule, governments will not know whether this is true or not and to what extent the tax rule was the primary influence.

VAT rules should be clear and unequivocal. We believe, however, that Guideline 3 in its draft version does not quite fulfil this need. We understand that governments should not be encouraged to introduce intentionally VAT rules which are likely to become primary factors of business decisions. This goal could, in our opinion, be better expressed by the wording, for example like “VAT rules should be framed in such a way that they do not inappropriately interfere with business decisions”.

For further information on this letter, please contact the responsible project manager, Mr Giovanni Calabria from the FEE Secretariat by e-mail: giovanni.calabria@fee.be or at +32 2 285 40 82.

Yours sincerely,

Philip Johnson
President

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Association Internationale reconnue par Arrêté Royal en date du 30 décembre 1986