



Brussels, November 2008
TAXUD/D1/GW/mve D(2008) 25115

REPORT ON THE OUTCOME OF THE CONSULTATION ON "VAT - THE REVIEW OF EXISTING LEGISLATION ON INVOICING"

1. INTRODUCTION

The public consultation was launched with the aim of seeking the views of business on potential measures that could be taken up in the context of a legislative proposal on VAT invoicing. The potential measures were based on recommendations that came from a study on invoicing undertaken for the Commission. The full details of the Invoicing Study will be available on the website of the Commission.

The public consultation was to help the Commission to assess whether the recommendations are supported by business. It also allowed business to comment on other aspects of invoicing not contained in the list of recommendations.

The forthcoming legislative proposal, will, as far as possible, take into account the views expressed by business.

2. ANALYSIS OF REPLIES

The public consultation was launched on 24 July 2008 with a deadline for comments of 19 September 2008. In total 64 replies were received.

The replies came from a variety of businesses and business associations located in 10 different Member States, with most of the replies coming from Germany, Belgium, the UK, Austria and France. Replies were also received from outside the EU.

The replies covered a wide range of business sectors. This included retail, manufacturing, agriculture, financial services, service providers, energy, transport, telecoms, construction and public authorities.

Not all of the replies to the consultation gave an opinion on each recommendation. Some replies concentrated only on e-invoicing whilst others focused on issues of particular importance to their situation, such as B2C supplies or self-billing. In fact, on average each recommendation received comments from about 65% of the respondents.

A detailed analysis of the replies to the recommendations can be found in the annex.

2.1 General recommendations on invoices

Taken as a whole the replies were supportive of the recommendations contained in the public consultation. However, it is worth looking in more detail at the individual recommendations since not all recommendations were fully supported by the replies received.

a) Recommendations receiving less support

Time limit for issuing an invoice (15th day of the month following the supply)

This was the only recommendation which did not receive majority support; 53% of replies against and 47% in favour.

However, in analysing the reasons for this, there seems to be a clear distinction being drawn between harmonising the time period and setting the date when the invoice needs to be issued. In general there was support for a harmonised period by which an invoice needs to be issued.

However, the recommendation that the invoice is to be issued by the 15th day of the month following the supply was less well supported. This was for a variety of reasons, but mostly businesses were concerned that they would;

a) have practical difficulties adhering to this time period in relation to particular supplies (such as supplies in the building trade), or due to absences such as vacation or sick leave; and

b) that they would be overly penalised by the tax authorities for not issuing an invoice within this period.

There were a variety of suggestions as to an acceptable time period, ranging from the end of the month following the month of the supply, to six months following the supply. These reflect the large variations that currently exist between the Member States.

In setting a common time period for the issuance of an invoice it must be remembered that the invoice is also required for a right of deduction. The invoice, therefore, needs to be issued in sufficient time to allow the customer adequate time to claim a right of deduction in the period in which the supply took place.

Self-billing

Whilst the replies were in favour of a simplification of the rules on self-billing there was a marked difference between the three recommendations relating to self-billing. There was very large support (93%) for allowing an implicit acceptance procedure for self billed invoicing, and support (71%) for the removal of the requirement to have a prior agreement for self-billing.

However, as regards recommendation number 9, which is to mention the words "self-bill" on the invoice and indicate on the VAT declaration whether self-billed invoices are being sent or received, the vast majority did not agree with a requirement to put extra boxes on the VAT declarations. Whilst they considered that explicitly mentioning "self bill" on an invoice could be beneficial for legal certainty, an addition to the VAT returns would not only bring additional burdens, but would be of questionable value for tax authorities.

b) Recommendations receiving strong support

Storage of invoices

Replies were supportive of the three recommendations: allowing the storage of paper invoices outside the Member State; electronic storage of paper invoices; and a harmonised storage period of 7 years.

In fact, the recommendation to allow for the electronic storage of paper invoices was the only recommendation which was fully supported by respondents. It was also the recommendation with the highest percentage of replies. Clearly this possibility is seen by business as a priority which would help reduce costs and improve efficiency.

Being allowed to store paper invoices outside of the Member State is of almost equal importance with 98% of replies in favour.

However, a common storage period received less universal support. Whilst most respondents recognised a need to harmonise storage periods, the length of time of storage caused some difficulties. In some Member States a storage period of 7 years will be an increase and so would in fact increase the administrative burden (conversely, businesses in other Member States would see a clear reduction as 7 years is less than their current storage requirements). In addition some respondents remarked that a common storage period for VAT would only produce benefits if it coincides with storage periods in other legislation.

Invoices for B2C supplies

Not all businesses are involved in B2C supplies, and this explains the lower number of responses concerning this recommendation. However, the responses were mostly supportive of abolishing the need for B2C invoices, both domestically and for distance sales. However for commercial reasons many businesses will in any case issue invoices to private individuals, even if these are simplified invoices.

Summary invoices

This received large support with only 4 replies against treating summary invoices in the same way as single invoices.

Sequential numbering and contents of an invoice

In general business would welcome clearer rules on sequential numbering, but without restricting the current flexibility allowed by some Member States. For instance, some Member States allow for sequential numbering based on customer details, whereas others require, for instance, that the sequential numbering starts again from 1 at the beginning of each year.

Regarding the contents of an invoice, some respondents suggest that there should be changes to the items mentioned on an invoice so that the content of all invoices are the same, whether for domestic or cross border supplies.

Member State where the rules are applicable

Comments received suggest that the preferred option is for a harmonised approach for invoicing. Indeed certain replies state that Member States options should be removed to

create a harmonised set of rules for the EU. However, as a second best solution the replies support clear rules on where the invoicing rules should be applicable, and those rules should be those where the business is established.

Conditions on invoicing in respect of 3rd countries

The recommendation to not impose extra conditions on taxable persons who have invoices issued or stored outside the EU received almost unanimous support. There was only 1 reply that was not supportive.

2.2 Recommendations for e-invoicing

In respect of e-invoicing there was general support for the three recommendations.

However, there was particularly strong support for the equal treatment between paper and e-invoicing with 90% of replies being favourable. Additionally, specific comments typically emphasised the importance of this in the promotion of e-invoicing.

To a lesser extent there was support for ensuring that the authenticity of the origin and the integrity of the content are guaranteed (68%) and for an explicit agreement between the supplier and the customer (74%). Businesses were however conscious of the extra burdens these specific recommendations could impose.

General comments on e-invoicing

Many of the comments on e-invoicing went beyond a simple agreement or disagreement on the relevant recommendations. Often the replies emphasised the need for e-invoicing to build on businesses' existing controls which ensure the validity of paper invoices. Generally extra conditions are seen as unwelcome and unnecessary.

The replies often stressed that the current difficulties of e-invoicing in the EU were due to the different rules in place in the Member States. It was also mentioned that this represented a missed opportunity to help businesses become more efficient.

2.3 General comments on invoicing

In addition to expressing an opinion on the recommendations certain replies also provided additional comments. Some of the broad common themes are worth commenting on here.

A general theme was that VAT invoicing rules should be simple and applied uniformly across the EU. Businesses find that the options afforded to Member States create the greatest headache in terms of compliance.

Another message was that other commercial and accounting rules should not to be in conflict or go beyond those required for VAT purposes. It was stressed that if VAT invoicing rules were harmonised yet other national rules remained, compliance costs would still be high.

Finally, the VAT invoicing rules should build on commercial practices whereby an invoice is issued to document a supply and to request payment. For VAT purposes businesses want legal certainty that the VAT paid can be deducted and that the supply, if exempt, will not lose this exemption. Legal certainty can be improved by simpler and more harmonised rules.

3. CONCLUSION

Whilst, as could be expected, the recommendations found general support in the replies received, it was nevertheless very informative to analyse in more detail specific recommendations and the comments provided. In general it could be concluded that there is agreement that the current VAT invoicing rules do not fully achieve the aim of providing simple and harmonised rules, and businesses would welcome a change.

The opportunity to amend the VAT invoicing rules should build on certain key principles. Here a recurrent request in the replies is for the removal of the options available to Member States. Also, the additional conditions for practices such as self-billing, summary invoices and electronic storage are seen as excessive and result in either high compliance costs or businesses refraining from the practice.

Businesses welcome the recommendation to treat paper invoices and e-invoices equally, as they see a shift to e-invoicing as an opportunity to become more efficient and reduce costs. However, the current rules are seen as prohibitive.

Annex 1

Results of the replies relating to the recommendations on invoicing

Ref N°	Recommendation	Agree	Disagree	No opinion
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.	27	1	36
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.	25	3	36
3	The option allowing Member States to require issuing an invoice to private individuals should be abolished for the same reasons.	29	8	27
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.	21	24	19
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.	38	4	22
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.	34	14	16
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.	41	3	20
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..	26	21	17
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.	38	10	16
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.	45	1	18
12	The option provided to Member States not to allow converting paper invoices into electronically archived invoices should be abolished.	49	0	15

Annex 1 (continued)

Ref N°	Recommendation	Agree	Disagree	No opinion
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).	46	8	10
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; 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.	38	9	17
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; 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.	37	7	20

Annex 2

Results of the replies relating to e-invoicing

Should e-invoicing be based on the following criteria?		Agree	Disagree	No Opinion
a)	Equality of treatment between paper and e-invoices,	44	4	16
b)	Guaranteeing the authenticity of origin and the integrity of content of an e-invoice should remain as a general principle to be observed,	32	15	17
c)	An agreement, either implicit or explicit, between the supplier and customer.	32	11	21