February 20, 2015

piet.battiau@oecd.org
Mr. Piet Battiau
Head of Consumption Taxes Unit
Centre for Tax Policy and Administration

Dear Mr. Battiau,

On behalf of IFA Grupo Mexicano, A.C. (Mexican Branch of the International Fiscal Association) kindly find below some comments on the “Public Discussion Draft on the Provisions on Supporting the Guidelines in Practice” regarding the “Guidelines on Place of Taxation for Business-to-Consumer supplies of Services and Intangibles” (the VAT Guidelines) issued by the OECD.

Background

On December 18, 2015, the Committee on Fiscal Affairs (CFA) of the OECD released for public comments, two new draft elements of the VAT Guidelines. This discussion draft relates to:

(i) the place of taxation of business-to-consumer supplies of services and intangibles (B2C Guidelines);

(ii) the main features of a simplified registration and compliance regime for non-resident suppliers; and

(iii) the guidance to jurisdictions in developing practical legislation to facilitate a smooth interaction between national VAT systems.

General Comments

First

The Guidelines are apparently intended to be implemented among jurisdictions that have a somewhat already homogenous understanding and application of the VAT “destination principle”, such as the European Union (“EU”). In that regard, it caught our attention that implementing the VAT Guidelines would be extremely challenging in jurisdictions such as Central and South America. In these jurisdictions, the destination principle is not equally applied and generally contrasts with the VAT regimes of European countries.

Hence, we consider that the CFA, in addition to the analysis of the EU VAT system, should look more deeply into the VAT systems of these developing nations.

Related to the above, we consider that it should be included as a best practice for the implementation of the VAT Guidelines, recommendations to keep tax administrations from “cherry picking” attractive proxies to promote taxation in their jurisdiction. This comment is based on the fact that no binding document would regulate the implementation of the VAT Guidelines, as discussed below.

Second

Regarding the simplified registration for non-resident B2C suppliers, it is very important that the VAT Guidelines clarify that the registration per se will not give rise to a permanent establishment for income tax purposes.

We consider that this specific topic should be analyzed in great detail together with Action 7 of the BEPS Action Plan.

Third

Also, we consider that the main shortcoming of the VAT Guidelines is to propose that the destination principle should be implemented through the cooperation of tax administrations without a binding document approved by the local legislative branches of governments (i.e. a tax treaty). This approach may lead to uncertainty for taxpayers. Also, in countries where substance over form provisions have few to none significance, namely Mexico and other South American and Asian jurisdictions, implementing the VAT Guidelines merely through administrative cooperation may lead to the local calls for the unconstitutionality of the VAT Guidelines.

Fourth

Jurisdictions with a similar VAT treatment for these digital transactions, should consider also the non-tax implications of such approach, such as impact on copy-right infringement situations and deepen the digital breach between developing and developed nations. In these jurisdictions, usually developing nations, the access to digital content and resources is in general expensive. Thus, implementing the VAT Guidelines would impact directly the cost of the services and intangibles and consequently the development of certain economies.

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The participation of IFA Grupo Mexicano, A.C. is made on its own behalf exclusively as an IFA Branch, and in no case in the name or on behalf of Central IFA or IFA as a whole.

We hope you find these comments interesting and useful. We remain yours for any questions or comments you may have.

Sincerely,

IFA Grupo Mexicano, A.C.