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Appendix 1

Policy Option Analysis

The following paragraphs encapsulate the views of the ECC members in connection with the options for change that appear on the matrix. They represent the outcomes from considerable discussions and debate from a significant proportion of the whole industry. Full discussion of the issues is contained in the body of this submission and we summarize the common challenges here for ease of reading.

I. Common Policy Option Observations

- a. Multiple Registration and Reporting-* Proposal would require several registrations by operator and compliance with the rules of several Member States and compliance with local tax practice of several jurisdictions.
- b. Proportionality-* Proposal imposes a disproportionate administrative burden on operators and/or national administration
- c. Territoriality/Treaty Issues-* Any changes to the present rule must avoid potential conflict with the taxing jurisdiction of Third Countries for supplies made on non-EU flagged ships during transit of the high seas between EU ports.
- d. Inconsistent Application of Customs/Excise/VAT rules-* Customs duties, Excise taxes and VAT are so interrelated that coordination in the application and administration is necessary – both for the cruise industry and the Member States themselves.
- e. Competition-* Negative impact on competition between enterprises of different Member States or between an EU and non-EU operator.

II. General Remarks

The footnotes of the transport section of the matrix state for all options and all transport sections except the domestic: “Each transport leg considered separately”

As “transport leg” can only mean the transport from one port to the next port those legs can be – even as part of an itinerary calling at ports in different countries:-

legs in one country – domestic –,

legs between two EU VAT area ports – Intra EU

legs between an EU VAT area port and a non-EU VAT Area port

legs between non-EU VAT ports

On that basis Option no.4 – point of departure of transport operation –fits into the leg by leg system only if the point of departure is defined as not being the departure of each leg, but defined by other criteria. We assume this is the case since it has already been clarified informally by the Commission that an international cruise (ie a cruise calling at ports in different countries, including non EU countries) should be regarded as a single journey, at least when embarkation/disembarkation of passengers occur in one port only.¹

III. Analysis of Policy Options

A. Change VAT PoS rule to place of actual consumption & abolish existing option to exempt...

According to the matrix, this rule imposes the need to divide the cruise into separate sections (ie leg-to-leg approach). If our understanding is correct, the existing definition for intra-EU and international voyages will not apply and the supply of goods on board and supply of restaurant and catering services will no longer have a separate different place of supply rule. Therefore, there is no difference between the different itineraries, ie no reason to examine separately domestic/EU/non EU.

We assume that this view was not intended and analyze consistent with a true “place of consumption” rule.

Proportionality and multiple registration: with the only exception of domestic itineraries it would be necessary to have multiple registration and hence the proportionality issue.

With the exception of domestic itineraries to have the place of actual consumption in different countries as far as goods are concerned and given the abolition of current exemption for supply of goods for

¹ Similarly we note that the concept of a voyage being a similar journey has been recognized by the ECJ and the OECD in model conventions.

consumption on board Custom duties and excise tax application are inconsistent

Territoriality issue

Potential conflict with the taxing jurisdiction of third countries for supplies made on non-EU flagged ships during transit of the high seas between EU ports.

Possible corrective measure

To exclude transactions on the high seas as out of the territory for taxation purposes.

1. Domestic Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/Treaty Issues

d. Competition

2. Intra-EU Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

***d. Inconsistent Application of
Customs/Excise/VAT Rules***

e. Competition

3. EU-Non EU Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

***d. Inconsistent Application of
Customs/Excise/VAT Rules***

e. Competition

B. Change VAT PoS rule to place of actual consumption & keep existing option to exempt...

This presents the same issues as under point A.

The exemption for goods sold for consumption on board solves the issue related to customs and excise consistency for those transactions. However, the issue remains for goods sold for landing.

1. Domestic Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

d. Inconsistent Application of Customs/Excise/VAT Rules

e. Competition

2. Intra-EU Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

d. Inconsistent Application of Customs/Excise/VAT Rules

e. Competition

3. EU-Non EU Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

***d. Inconsistent Application of
Customs/Excise/VAT Rules***

e. Competition

**C. Change VAT PoS rule to place of establishment of the supplier
& abolish existing option to exempt....**

The place of establishment of the supplier is the existing rule for services rendered B2C (with the relevant exception for supply of goods for consumption– both for take away and for consumption on board - and restaurant and catering services art. 57): the analysis done that excluded some supplies of goods and services from the general rule should be re-examined.

Main exception under the current B2C rule:

- a. supply of goods on board (both for take away and for consumption on board)
- b. restaurant and catering services on board

Goods: The supply of goods is a delivery and not a service under VAT law, for which the place of delivery is the territorial place of supply. A deviation from that principle is the delivery on an Intra EU itinerary in art. 37. The place of establishment as place of supply would require the abolition of that rule in Art. 37 and would need to be replaced by the place of establishment of the supplier. The Custom control/harmonization issue as mentioned in the General remarks is an important one

Supply on high seas and in non-EU VAT territories must be regulated as non taxable. That leaves the establishment rule as not applicable on deliveries of goods and supply of services on high seas and in third countries, which reduces the establishment rule to supply in the in the territories of the EU VAT area (see the general remarks):

Distortion of competition

The place of establishment rule can cause distortion of competition if no corrective measure is adopted since the mere establishment, and hence registration, of the supplier outside a member state will determine the fact that no VAT will be charged for the same transactions as performed by EU established supplier, who will have to charge VAT

Possible corrective measure

- Enterprises established in the EU VAT area are deemed to be established outside the EU VAT area for supply of good and services on the high seas and in a non EU VAT area; or the supply of goods and services in these locations is universally exempt from VAT; and

- Enterprises established outside the EU VAT area have to register with a deemed establishment inside the EU VAT area pursuant to special regulation.

Those corrective measures or similar ones would in practice lead to a system quite similar to Option 1 (place of actual consumption with the same complexities and difficulties outlined above).

The establishment rule must include the fixed establishment from where the on board supply is operated onshore. Otherwise artificial structures could place the establishment in the Member State with the most advantageous VAT rules or the branch structure of international shipping enterprises would not fit to the establishment rule.

Disproportionate VAT revenues and competition issue: Tourist-dependent Member States such as Greece, Spain, and Italy provide infrastructures for tourists, but will not get significant VAT revenues, because the place of establishment of the supplying enterprises would not be in those Member States.

D. Change VAT PoS rule to place of establishment of the supplier & keep existing option to exempt....

Same issues as under C. The option to exempt supply of goods for consumption on board solves the issue related to customs and excise consistency for those transactions. The consistency issue remains for goods sold for landing.

E. Change VAT PoS rule to place of establishment of the transport company & abolish existing option to exempt...

Same issues as under C. and D. To relate the place of supplies of the supplying enterprise to the place, where the transport company is established is not consistent with the system of the EU VAT. To mix basic parameters of two different and independent enterprises for the determination of the place of supply cannot be justified under the principles of EU VAT.

F. Change VAT PoS rule to place of establishment of the transport supplier & keep existing option to exempt...

Same as under E, above. The option to exempt supply of goods for consumption on board solves the issue related to customs and excise consistency for those transactions. The consistency issue remains for goods sold for landing.

G. Change VAT PoS rule to point of departure of transport operation & abolish existing option to exempt...

Current commercial realities make it difficult to identify the port of departure for all itineraries. Even where identified, using the port of departure as the reference point for taxation creates distortion that requires remediation through corrective measures

prescribed by Article 59a. However these corrective measures do not apply to the supply of goods.

The impact of this option differs depending on the itinerary which, alone, makes it unacceptable.

With respect to the sale of goods, customs duties and excise tax applications are inconsistent for all goods – those for consumption and those for landing.

For restaurant and catering services, this undermines the principle of taxing at the place of consumption and creates conflicts regarding the territoriality principle.

1. Domestic Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

*d. Inconsistent Application of
Customs/Excise/VAT Rules*

e. Competition

2. Intra-EU Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

*d. Inconsistent Application of
Customs/Excise/VAT Rules*

e. Competition

3. EU-Non EU Itineraries

a. Multiple Registrations and Reporting

b. Proportionality

c. Territoriality/ Treaty Issues

***d. Inconsistent Application of
Customs/Excise/VAT Rules***

e. Competition

**H. Change VAT PoS rule to point of departure of transport
operation & keep existing option to exempt...**

Same as G, above. The option to exempt supply of goods for consumption on board solves the issue related to customs and excise consistency for those transactions. The consistency issue remains for goods sold for landing.

I. Keep existing VAT regime & option to exempt

Current law provides different place of supply rules.

Departure rule only for supply of goods on board and restaurant and catering services on intra EU itineraries:

- i. Different interpretation of Intra EU departure rule with stopover in a third country port. Germany and Netherlands take out of the VAT the section of the third country port and tax supply of goods on high seas worldwide on round the world cruise for example. The other countries without Spain treat the whole itinerary with stopover in a third country as not taxable. Spain applies different rules mainly concerning the place of consumption in Spanish territory.
- ii. Multiple VAT registrations necessary for departures in different countries.
- iii. No clarification for non taxability on high seas sectors.