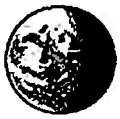
Stakeholder 07 (air travel market)



"Fabio Gamba"
<Fabio.Gamba@aea.be>
24/06/2011 11:03

To "Ine Lejeune" <ine.lejeune@pwc.be>, "Victoria Moores" <Victoria.Moores@aea.be>
cc "David Henderson" <david.henderson@aea.be>, "Bert Mesdom" <bert.mesdom@pwc.be>, "Sophie Claessens" <sophie.claessens@pwc.be>, "Pascal Ceuterick"
bcc
Subject RE: Expert Study EU Commission: supplies on board means of transport - Matrix regarding policy options and Glossary of terms - 0120454/3/018567GVD.HCL

This e-mail has been archived to client DG TAXUD - DIRECTORATE-GENERAL FOR*_0000120454 in service line ITX.

Good morning,

Let me first thank you for having included the AEA in your distribution list and for giving us the opportunity to comment your work.

As you probably know already, the AEA and IATA had submitted a joint response (in attachment) to the Head of Unit Mr Raponi back in September last year, detailing our views on the specific issue of Article 37 of the VAT Directive with respect to services and goods for consumption on board. Following the Green Paper consultation on the revision of the VAT Directive, we also submitted our views in May (in attachment).

Both documents highlight the necessity for the legislator NOT to change the present status quo, i.e. to keep the present regime of VAT exemption. By extension and basically for the very same reasons elaborated upon in our replies, this would I believe qualify for Policy Option 5 as identified in your excellent matrix.

Please do not hesitate to contact us should you have additional questions or remarks.

Best regards,

Fabio Gamba

From: Heike Claeys [mailto:heike.claeys@pwc.be] **On Behalf Of** Ine Lejeune
Sent: 20 May 2011 17:28
To: Victoria Moores
Cc: David Henderson; Ine Lejeune; Bert Mesdom; Sophie Claessens; Pascal Ceuterick; Katrijn De Naeyer; Gill Van Damme; Dominique Decorte
Subject: Expert Study EU Commission: supplies on board means of transport - Matrix regarding policy options and Glossary of terms - 0120454/3/018567GVD.HCL

Dear Victoria,

We refer to our previous contacts and correspondence regarding the expert study on issues arising from taxing the supplies of goods and services, including restaurant and catering services, for consumption by passengers on board ships, aircraft, trains or other means of transport (e.g. buses & coaches) from a VAT perspective.

As promised, please find enclosed the **matrix regarding the policy options** (you receive the matrix both in Excel and in pdf).

We also provide you with a separate document containing the **glossary of terms** used in the matrix.

Identification of policy options

In the matrix, we have identified 5 different policies around changing the place of taxation into (see also item 1 in the glossary of terms):

1. The place of actual consumption in the EU (avoiding taxation of consumption outside the EU)
2. The place of establishment of the supplier of goods and services, including restaurant and catering services
3. The place of establishment of the transport company, i.e. the supplier of the transport services
4. The point of departure of the transport operation (for all transport sections)
5. Keep existing VAT regime

Reader manual of the matrix

The policy options have one common objective: defining a uniform place of supply from a VAT perspective, regardless of (i) the transport mode and (ii) the travel destination (EU or non-EU) whilst removing practical issues or distortions of competition faced by the stakeholders.

In order to compare the impact of the different policy options compared to the current VAT place of supply rules, we have developed 4 sheets, i.e. for each type of transport leg ("Domestic", "Intra-EU", EU - non-EU" and "non-EU - EU").

Each policy option can be evaluated on its strengths and/or weaknesses by means of 5 Key Performance Indicators ("KPI's"). These KPI's are benchmarked against the current VAT place of supply rules.

Besides, a number of suggested additional measures can be indicated to overcome the issues remaining after harmonization of the VAT place of supply rules. These suggestions relate primarily to simplifying the VAT compliance requirements, reducing the cost of VAT compliance, correction mechanisms to avoid VAT shopping or the risk of delocation or, if required, the extension of the current VAT exemption regime also to other means of transport (e.g. buses & coaches).

You will notice that, under each policy option, there is a variant where the option for Member States to zero-rate the supplies for consumption on board ships, aircraft or trains is abolished as it concerns a temporary option under the current VAT rules.

As mentioned above, you will find a description of the terms used in the matrix in enclosure EN2.

The matrix contains a large number of lines. In this respect, please note that you only have to focus on the lines in the matrix which are relevant for you.

Your analysis

We would be pleased if you could evaluate each policy option and indicate your preferred solution(s).

The current study will neither assess nor qualify the economic or financial impact of each option.

It is important to remember that the objective of each option is to reduce the current practical issues and to provide clarity and (legal) certainty.

We really need your feedback on the options and we appreciate you spending time in contributing to this study.

***

We trust this information meets your requirements.

We are looking forward to receiving your input by **8 June 2011**.

If you have any questions or remarks, please do not hesitate to contact the undersigned, Sophie Claessens (+32 3 259 31 69), Pascal Ceuterick (+32 9 268 81 69) or Gill Van Damme (+32 9 268 81 26) of our office.

Kind regards,

Bert Mesdom
Ine Lejeune

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The legal information on this company can be found here

Sep10 IATA AEA reply Raponi.pdf AEA comments to VAT Green Paper May 2011.pdf

IATA

Association of European Airlines

Mr. Donato Raponi
Head of Unit
European Commission
Directorate-General
Taxation and Customs Union
1049 Brussels
Belgium

15 September 2010

Re: Review of the Rules on the Supplies of Services and Goods for consumption on board ships, aircraft or trains in accordance with Article 37 of the VAT Directive

Dear Mr. Raponi,

Thank you for your letter dated 1 July 2010. IATA and AEA are pleased to hereby submit comments on behalf of its member airlines with respect to the rules on the supplies of services and goods for consumption on board aircraft.

Goods and services for consumption provided free of charge - and therefore deemed to be part of the ticket price - to passengers on board an international (including intra-community) flight are currently exempted from VAT. This important rule must remain unchanged. Only goods and services provided against payment on board a flight should be subject to VAT.

Today, by virtue of articles 37 and 57 of the VAT Directive (consolidated version), the place of supply (and of taxation) of goods and catering services sold on board for consumption on board aircraft during passenger transportation within the Community is deemed to be at the point of departure of the passenger transportation operation.

The following example illustrates the existing unnecessary complications encountered by airlines: an airline operates a return flight from Brussels to Madrid. Today, the airline calculates and reports on each sector so for the BRU-MAD flight, Belgian VAT is due and for the MAD-BRU return flight, Spanish VAT is due. This situation is acceptable when goods are boarded separately in BRU and MAD, however, this requires registration in those countries. In the case where the goods for both the outbound and inbound flight were boarded in BRU, two different VAT apply thus obliging airlines to file Spanish tax return for goods supplied in Belgium.

From the point of view of catering companies the situation has become equally very complicated since 1st of January 2010 when the EU VAT directive was amended. Prior to this date, catering companies accounted for VAT in their country of establishment only. From 1 January they have to account for VAT, track and maintain details, register for and undertake VAT compliance in each Member State they provide catering services and in two countries in case of supply for a return trip. This has significant compliance cost implications.

To simplify the administrative process, some of our member airlines have suggested that the place of supply should be changed to the place where the supplier is registered and where the goods are boarded. Other members feel that this would not solve the difficulties experienced but, on the contrary, may even create a true distortion of competition between EU based airlines and airlines established outside the EU (or registered in a country applying zero rate). Most importantly, we believe that the deficiency of the current law does not result from the place of taxation but rather from the administrative constraints and the place of filing.

In our opinion, one way to facilitate the VAT filing procedure may lie in a technical solution as adopted by the EU for B2C e-commerce and telecom, i.e. the seller should file the VAT declaration (with the detailed applicable VATs) in one country (PE or principal). A clearing mechanism run by the Member States will then reallocate the appropriate VAT to each country of taxation. In order to facilitate this clearing mechanism, all sales on board should be subject to a uniform VAT imposition without distortion of competition and less error factor, and the reallocation mechanism would eliminate the local administrative complexity for the supplier.

Furthermore, it has been reported by some of our Member airlines that an additional concern arises with respect to Subsection 7, Art. 57 (Supply of restaurant and catering services for consumption on board ships, aircraft or trains). In some Member States, there are different VAT rates for a. "the supply of restaurant and catering services on board", and b. "the delivery of food". Furthermore, the interpretation of what is included in 'the supply of restaurant and catering services' and what is included in 'the delivery of food' sometimes differs between Member States, resulting in even further complexity. Airline systems generally make no distinction between the two. Again, the need for consistency across all Member States is essential.

Thank you for taking the above remarks into consideration when working on the revision of the VAT Directive.

Yours sincerely,

Monique De Smet
Director EU affairs
IATA

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Deputy Secretary General
AEA

Association of European Airlines

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31 May 2011

AEA Response to the European Commission's Green Paper on the Future of VAT

The Association of European Airlines (AEA) brings together 36 established European network carriers. These collectively carry 377m passengers and 6m tonnes of cargo each year, operating 2,800 aircraft and serving 630 destinations in 163 countries with 12,000 flights a day. They provide around 392,000 jobs directly, and generate a total turnover of € 82bn.

The AEA welcomes the European Commission's Green Paper on the future of VAT and the launch of a public consultation on comprehensive reforms to the EU VAT system. However, as we will demonstrate in this response, the Association believes that the current exemption granted to international (and intra-EU) air transport, including for the purchase, leasing, provisioning or fuelling of aircraft, should be maintained. Changing the status quo would not help the Commission to fulfill its declared objectives of a) reinforcing the Single Market, b) contributing to other policies, c) strengthening the capacity of VAT as a revenue raiser, and d) reducing the cost of compliance and collection of VAT. On the contrary, it would trigger complex mechanisms that would ultimately damage fair competition and call into question Europe's international obligations.

Cancelling the VAT exemption for air transport will not help the EU to fulfill its stated objectives

This is particularly true with respect to the expected contribution to other policies, more especially the contribution of the imposition of VAT to combating CO_2 emissions, which the Commission has put forward as one of the reasons behind the proposal. Imposing higher charges, fees, or levies on a price-sensitive industry such as aviation would indeed have a negative impact on demand. However, three aspects must be considered before concluding that applying VAT to air transport would contribute to reducing gaseous emissions:

- Aviation is already highly taxed, so much so that air carriers' net contribution to the economy through taxes, charges, fees and levies is greater than its overall cost. For instance, it has been stated on various occasions that taxes in the UK (the Air Passenger Duty, or APD) and in Germany, which generated £ 2.2bn and € 1bn respectively in 2010 and which are destined to increase over time, raised more money than these countries' carbon offset requirements. In addition, from 2012 aviation will be covered by the EU ETS, which is comparable to a tax. It is currently estimated that the EU ETS will cost € 4.2bn per annum initially, reaching a total of € 38bn for the whole trading period (2012-2020). Around three quarters of this will be borne by the European carriers. This of course comes on top of the estimated €4.5bn per annum that the national taxes in place in six EU Member States already bring to national treasuries. In these circumstances an additional tax, which at current national VAT levels would cost the industry around €8.5bn per annum (cf. *in annex*), must be weighed very carefully.

- The environmental impact of such a measure is uncertain and it would also have an adverse effect on the economic contribution of Member States. Price sensitivity in aviation is a well-documented fact, the consensus being that it falls somewhere between -1.0 and -1.5, which means that a 1% rise in the ticket price would generate at least an equivalent decrease in demand, and probably more. This would negatively affect total VAT receipts and, more importantly, it would further deprive aviation of funds that could have been invested into new, more environmentally-friendly technologies to effectively combat gaseous emissions. It would be a redundant means to achieve the same goal that the EU ETS is supposed to achieve and, like the ETS, it would fail to provide an incentive to finance projects which would have a demonstrable, positive effect on the environment.
- Aviation is a recognised economic enabler, directly contributing more than €100bn to Europe's GDP every year and sustaining 1.5m jobs. For example, tourism is largely dependent on aviation, and the same is also true for many other businesses which simply couldn't develop without aviation. So the question is whether the legislator wants to impose a VAT tax on air transport, which is a profitable business in its own right, or whether he considers air transport to be an enabler of economic performance (which in turn generates more revenue from corporate taxes, and generally allows a broader tax base, including VAT) which should be promoted. Needless to say, the AEA has a strong preference for the second scenario.

Cancelling the VAT exemption for air transport will not contribute to creating a level playing field with other modes of transport

The argument of lack of taxation has been used often and indeed, at first sight, it might seem that both aviation and the maritime sector benefit from unfair taxation regimes vis-à-vis other modes of transport, which are themselves enablers of the economy. But this argument fails to take into account the fact that aviation is the only mode of transport that pays in full for both the building and the use of its infrastructure. Since air transport was liberalized in 1977, aviation hasn't cost society a single penny. On the contrary, as mentioned above, aviation is a net contributor to the economy. With the introduction of the EU ETS, the square is 'more than circled' so to speak, as the only remaining externality, i.e. gaseous emissions, is now offset by a Europe-wide cap-and-trade system.

In comparison, the cost of European rail infrastructure has been estimated at €86 per 1,000 rkm (against €90 for aviation), but revenue from tax and user charges was only €33 per 1,000 rkm (compared with €101 for aviation). In addition, the railways receive substantial state subsidies; it is estimated that between €50bn and €80bn of taxpayers' money is invested annually in the maintenance and development of Europe's rail infrastructure.

A 2005 IATA study entitled "*Aviation Taxes and Charges*" found that road was by far the biggest net contributor to GDP of all transport modes, but the study failed to consider the impact of externalities, including environmental aspects. Road is also by far the biggest contributor to emissions, which it only partly offsets.

This demonstrates that distortions still persist. It also shows that the reality is more complex and that cancelling the VAT exemption would not help to restore the level playing field between different modes of transport, but would instead contribute to widening the existing gap.

Cancelling the VAT exemption for air transport will create an additional administrative burden

Two options are considered in the Green Paper for the imposition of intra-EU VAT on aviation, namely the current 'Place of Supply' rule, and the 'Country of Departure' rule. In line with ICAO Document 8632 which states that *"All Contracting States must apply an exemption from property taxes, capital levies and other similar taxes on aircraft and other moveable property associated with international air transport for the air transport enterprises of other Contracting States."*, the Paper concludes that "*only transport linked to the EU territory should be targeted*". However, AEA maintains that both options would either lead to unfair practices or result in an overly complex procedural mechanism.

On the premise that each Member State is free to set its own VAT rate, the Place of Supply formula would have the merit of avoiding any distortion of competition, as it would impose a tax per country in function of the distance flown over each country. This is in fact the formula that is applied to international rail journeys. However, given the complex mosaic and number of EU Member States, and considering that there are 6,742 city-pairs in Europe, of which less than one fifth are truly intra-national pairs, it makes the calculation of VAT a very difficult exercise. In this respect, the AEA agrees with the Staff Working Document which states that Article 48 rules make collection of the tax difficult and impractical. However, AEA fundamentally disagrees with the Document's conclusion that a remedy would be to shift to the Country of Departure formula.

This formula goes against the widely accepted principle amongst OECD countries that a tax should be proportionate to 'consumption'. In an extreme example such as a flight between Lisbon and Stockholm, in which 9/10 of the flight is operated outside of the Portuguese FIR, the VAT tax would still be accrued by Portugal. On the other hand the level of VAT would be much easier to calculate. It would however enshrine a new principle of taxation not currently adopted by the vast majority of OECD countries, and would probably necessitate the revision of many existing Conventions, a very long and unpredictable process.

Cancelling the VAT exemption for air transport will put Europe in a difficult position vis-à-vis third countries and conflict with its international obligations

Despite the fact that the Green Paper does not propose taxing flights to, from and over Europe, some aspects must be borne in mind:

- It is estimated that around 40 non-EU airlines currently benefit from 5th freedom intra-EU traffic rights; this number will inevitably rise in the future thanks to the increasing number of 'Open Skies' and 'Open Skies plus' bilateral agreements. In this respect, these carriers can operate within the EU. However most, if not all, of their tickets are sold outside the EU, in the designating country, and are thus likely to escape the EU VAT imposition. Such a situation would not only discriminate against EU aviation, but it would also considerably undermine the credibility of the whole regime.
- Similarly, many non-EU operators and/or agents sell or issue tickets which include portions of flights covering intra-EU journeys. For the reasons mentioned above, it is highly unlikely that these operators, which in many cases consist of a single person, would have the means to invest in system changes and staff training.
- It is also clear that cancelling the exemption for the purchase or leasing of aircraft and their provisioning and fuelling will give rise to conflict with the EU's wider international obligations and provide a competitive advantage to non-EU operators, who can source more of their high value needs in offshore locations than EU airlines.

Conclusion

For the reasons mentioned above, the AEA believes that preserving the status quo remains the best option. In particular because:

- Taxing air transport will not help the EU fulfill its objectives, in particular those related to the contribution to other EU policies (particularly with respect to climate change);
- Air transport is already heavily taxed, and adding an extra burden would have a detrimental effect on the global EU economy, as aviation is one of the most important enablers of the economy;
- It would not contribute to decreasing the distortions between transport modes; on the contrary, it would actually widen the already existing gap between them as aviation is a net contributor, unlike many other transport modes;
- Imposition of VAT would lead either to impractical (place of supply), or unfair (country of departure), taxation regimes;
- It would also put Europe's international obligations at risk and probably lead to distortions of competition with non-EU carriers.

Association of European Airlines

- Adria Airways
- Aegean Airlines
- AeroSvit
- airBaltic
- airberlin
- Air France
- Air Malta
- Alitalia
- Austrian
- British Airways
- British Midland International
- brussels airlines
- Cargolux
- Croatia Airlines
- Cyprus Airways
- Czech Airlines
- DHL
- Finnair
- Iberia
- Icelandair
- Jat Airways
- KLM
- LOT
- Lufthansa
- Luxair
- Malev
- Montenegro Airlines
- Olympic Air
- SAS Scandinavian Airlines
- SWISS
- TAP Portugal
- TAROM
- TNT Airways
- Turkish Airlines
- Ukraine International Airlines
- Virgin Atlantic Airways

ANNEX

avia_paoc-Air passenger transport by reporting country

Last update	01-12-2010	Passengers on board (departures)
Extracted on	17/01/2011	International transport intra-EU
Source of data	Eurostat	Passengers
		Total

Avr. Ticket Price per Pax in (EUR)
140

GEO/TIME	2009Q4	2009Q3	2009Q2	2009Q1	Total 2009	Total Revenue in (EUR)	VAT Rates	VAT Amounts in (EUR)
Belgium	1 713,508	2,203,320	2 047,969	1 417,089	7,381,884	1 033,463,760	21,0%	217 027,390
Bulgaria	332 708	1 065,470	540 451	337 024	2,295,653	321,391,420	20.0%	64 278,284
Czech Republic	959,828	1,429,289	1,157,936	790 064	4,337,117	607,196,380	20.0%	121 439,276
Denmark	1 680 517	1 857 930	1 880,596	1,287 801	8,706,844	938,958,160	25.0%	234 739 540
Germany (excluding	9 026 220	12 348,579	11 089,789	7 742 549	40,207 137	5 628,999,180	19.0%	1.069,509 844
Estonia	113 258	153 896	140,273	119,248	526,775	73,748,500	20,0%	14 749 700
Ireland	2 421,775	3,300,201	3 108,831	2,528 772	11,358,079	1 589,711,060	21.0%	333 839,323
Greece	1 750,656	5.861.987	3 016.379	785.978	11,224,979	1 571 437,060	23.0%	361 444,324
Spain	9 707,081	15,570 521	12,498,623	8,241,805	46,018,110	6 442,535,400	18.0%	1 159 656,372
France	5,239 703	7 473 126	6,809,102	4,938,207	24,460,138	3,424,419,320	19.6%	671 166 167
Italy	8 093,583	6,861 905	7,478,364	5,036,756	27,470,608	3,845,855,120	20.0%	769 177,024
Cyprus	618,829	1,083 368	779,527	365 148	2,826,670	395,733,800	15.0%	59,360.070
Latvia	377,825	473,095	418,859	308,644	1,578,423	220,979,220	21 0%	46 405 636
Lithuania	185,057	230,705	190,456	164,400	771,518	108,012,520	21,0%	22,682,629
Luxembourg	139,853	183,840	167,891	112,828	604,812	84,645,680	15.0%	12,696,852
Hungary	742,277	996,965	826,343	602,296	3,167,881	443,503,340	25.0%	110 875,835
Malta	295 349	489 010	365,683	214,528	1,364,550	191,037,000	18,0%	34,386 660
Netherlands	3 092,948	4 134,321	3 848,379	2,846,768	13,522,410	1,893,138,240	19.0%	359 696,266
Austria	1 859 450	2 063 099	1 808,505	1 681 542	7,312 596	1,023,763,440	20.0%	204,752 688
Poland	1,387,517	1 952 772	1 659,000	1,317 025	6,316,314	884,283,960	22.0%	194,542 471
Portugal	1 793,818	2 764,577	2 302,582	1 467 935	8,328,912	1,166,047,680	21.0%	244 870,013
Romania	747 183	995 556	800 399	642,500	3,185,638	445,989,320	24 0%	107 037 437
Slovenia	79,899	152 727	108 414	67 513	408,553	57,197,420	20.0%	11 439 484
Slovakia	149,008	262 667	193 707	149 147	754,527	105,633,780	19 0%	20 070 418
Finland	1 043,871	1 168,499	1,150 287	934 690	4 297,347	601,628,580	23 0%	138,374 573
Sweden	1 780,095	2 068 025	2,056,758	1,521,073	7,425,951	1,039,633,140	25,0%	259,908 285
United Kingdom	11 822 787	18 123,669	15,285,128	10,508,372	55,749,956	7,804,993 840	20.0%	1,560,998 768
								8,406,145,348