



Joint Industry Invoicing Seminar Stockholm, 11 November 2004.

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The need for harmonisation at the European level

What are the issues and who could
find solutions?

Position pre-1 January 2004

- Invoicing rules contained in the (original) 1977 6th Directive (77/388/EC).
- Invoice data content, for VAT - only the VAT Amount and Rate of VAT was specified - everything else was at the discretion of each Member State.
- Electronic invoicing/storage not specified.
- Self-Billing not specified.

Result

- The (then) 15 Member States developed 15 different sets of VAT invoice requirements!
- Different attitudes towards electronic invoicing - some Member States allowed it (e.g. UK - since 1982), some Member States did not (e.g. Greece).
- Self-billing allowed by only a few Member States (e.g. UK, Germany).

Position post-1 January 2004

- The 1977 6th Directive has been amended by the EC Directive on Invoicing (2001/115/EC) - operative 1/1/2004.
- Invoice content for VAT - now converged into a single pan-European set.
- Electronic invoicing/storage now allowed by all Member States.
- Self-billing allowed by all Member States.

The Issues

- Why are there still issues? –
The EC Directive on Invoicing has been interpreted/ implemented in different ways, by each Member State.
- Why? –
The Directive is a “compromise” document and offers a range of options, to give the greatest flexibility in meeting business/taxation needs but, in so doing, this flexibility has been/is still open to differences in interpretation.

Who do the issues affect?

Principally:-

- Businesses engaged in Intra-Community/ cross-border trading.
- Application Service Providers (ASPs), and Shared Service Centres (SSCs), providing services across national borders.

What about domestic business?

Domestic business -

- No immediate effect, in terms of the Directive - i.e. trading partners have to comply with the same national rules, BUT
- Stricter requirements, imposed by individual tax administrations, may slow down or prevent the greater use of electronic trading and reduce the efficiency of domestic businesses, in comparison with counterparts in other Member States.

What are the main Issues?

- Special References for Exempt, Reverse Charge etc. supplies – 3 options - no “standardisation”.
- No recognition of the different processing needs for paper and electronic documents.
- Authenticity/integrity of data – 3 options – no “standardisation”.
- Storage of electronic invoices/storage requirements.
- Self-billing rules – no “standardisation” - i.e. supplier’s national rules apply.

Special References

- 3 options – i.e. reference to the 6th Directive, to National law, or to “any other indication”.
- Some Member States specify detailed reference to national law only (e.g. Belgium).
- Some Member States require free text, others are prepared to accept coded representation.
- Result – lack of clarity, for cross-border trade, particularly from invoice recipient’s viewpoint.

Paper/Electronic processing

- The EC Directive on Invoicing covers both paper and electronic invoicing.
- Some Member States require information in free text form.
- Free text data (e.g. Exempt references) may be appropriate for paper (“human-readable”), BUT
- In an electronic environment, coded data representation is preferable, to aid fully-automatic processing (including special tax procedures!).
- The Directive does not take this into account, nor is this generally recognised by tax administrations.

Data Authenticity/Integrity

- 3 options – i.e. “advanced electronic signature”, EDI, or “by any other means”.
- E.g. UK does not require e-signatures, BUT
- Some Member States do, and have specified additional requirements – e.g. qualified digital certificates and/or paper summaries (with EDI).
- Effects on cross-border trading partners, whose own tax administrations do not require them, and on invoices sent via 3rd party intermediaries?

Electronic Storage

- Storage outside the EU - Member States may impose special conditions - what are they?
E.g. - UK allows storage outside the EU, provided invoices can be produced on demand and that the data holder observes EU Data Protection needs.
What about other tax administrations?
- Need for storage of signatures/certificates, where used – potential burden on business; also, impact on 3rd party intermediaries?
- Need for storage in original form – impact on data conversions, by 3rd party intermediaries?

Self-Billing

- Self-billing agreements are required, but Member States set their own conditions for agreements and invoice acceptance – additional requirements may be imposed for self-billing with non-EU partners - what are they?
- Invoice acceptance – is this on an individual document basis, or is “blanket” acceptance (for the duration of the agreement) allowed?
- Effects on cross-border self-billing, where the issuer of the invoice has to comply with the rules of his trading partner’s country.

Who could find solutions?

- The issues are tax-related, therefore solutions must be discussed/agreed by tax administrations.
- Constraints - national tax control strategies and the willingness/ability to re-consider such strategies.
- Until the balance between taxation and business needs is more widely understood/addressed, the prospect of agreement by all EU 25 Member States is remote.
- Interim solution - bi/multilateral talks/agreements between “like-minded” administrations – hopefully, others may follow.

Who could find solutions? (cont'd)

- EU tax administrations need to be more proactive in pan-European business/ standards groups – HM Customs & Excise appears to be the only one currently involved at this level.
- European business can play its own part by inviting the greater participation of national tax administrations in pan-European initiatives, in order that ongoing issues can be properly addressed and solutions found.

What else is being done?

- CEN/ISSS Workshop on Invoicing.
- Mandated by the European Commission to report/recommend on greater EU invoice “interoperability”, including the above issues.
- Again, HM Customs & Excise is currently the only EU tax administration involved.
- Main limitation is projected timescales – 2006 at earliest before final report published/circulated - it then has to be accepted by tax administrations.
- European business requires consistency/clarity of rules NOW!

Closing Remarks

- The main objective of the EC Directive on Invoicing is “..to establish a number of common arrangements governing the use of electronic invoicing and the electronic storage of invoices, as well as for self-billing..”, to ensure that the (EU) internal market functions properly. However,
- Unless and until the issues presented today are addressed and resolved collectively, this objective will NEVER be fully realised.

Thank you for listening!

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HANDOUT

Joint Industry Invoicing Seminar, Stockholm, 11 November 2004

“The need for harmonisation at the European level”

Notes on the presentation given by Dave Watt, HM Customs & Excise:-

Slides 1-2 -

No comments.

Slide 3 – Pre 1/1/2004 –

At the time that the original 1977 6th Directive was drafted, electronic trading was virtually non-existent, which explains the absence of any particular provisions for electronic invoicing.

Similarly with self-billing, whether on paper or electronically, this practice was not generally recognised across the EU, hence the absence of any specific provisions in the 1977 Directive.

Some Member States were, however, familiar with it - e.g. HM Customs & Excise has allowed self-billing since the introduction of Value Added Tax (VAT), in the UK, in 1972.

Slide 4 – Result –

Clearly, the development of 15 different sets of requirements for VAT invoice content presented particular problems for Intra-Community trading; in the area of electronic invoice standards, this presented additional problems in the development of VAT-compliant messages.

In the absence of any specific provisions in the 1977 6th Directive, the attitude of EU tax administrations towards electronic invoicing varied considerably.

At one end of the scale was the UK, which has allowed electronic invoicing since 1982, both for UK-domestic and cross-border “inwards/outwards” (provided the tax administration in the other country/ies agreed) – at the other end of the scale are EU Member States that have not allowed it at all, until the introduction of the EC Directive on Invoicing.

In between these two extremes, there have been Member States that have allowed electronic invoicing domestically, but not cross-border, or cross-border “outwards” but not “inwards.

In the matter of self-billing, only a few Member States allowed this prior to 1 January 2004, principally through the needs of the European Automotive Industry and, in the UK, the needs of the Retail Sector and its upstream supply chains.

Slide 5 – Post 1/1/2004 –

The EC Directive on Invoicing (2001/115/EC), which amends the 1977 6th Directive, stems from the PriceWaterhouseCoopers (PWC) study/report into electronic invoicing in Europe – PWC was mandated by the Commission to undertake the study.

Based on the PWC recommendations and, under the aegis of the EU Working Party on Tax Questions, the Member States and the Commission drafted/agreed the amending Directive.

Key outcomes from the Directive have been the convergence of national requirements for VAT invoice content into a single, pan-European set and the acceptance of the principles of both electronic invoicing and self-billing, by all EU Member States.

Slide 6 – The Issues –

The Directive is a compromise document, in attempting to meet the broader needs of all EU Member States – the unanimous agreement, by the original 15 Member States, of each individual Member State's own specific needs was, perhaps, a remote possibility from the outset of negotiations.

Coupled with this is the fact that the Directive offers a range of options in certain areas – the intention/theory of this is to allow maximum flexibility to both business and tax administrations alike, to meet their particular needs in a manner that is most convenient/suitable to them.

Whilst, on the one hand, this is a praiseworthy intention, this flexibility/freedom of choice also allows flexibility/freedom of interpretation, with the result that the provisions of the Directive *have been interpreted in different ways*, by individual Member States, in their national enabling legislation.

Slide 7 – Who do the issues affect? –

Under the current situation, those business that are involved with cross-border trading, or providing, for example, invoicing/accounting services to clients across the EU area, are still faced with the identification of the (many) “rules” of individual Member States, in order that the necessary VAT-compliance can be built-into their systems.

The problem is often a case of finding out what those rules actually are when, in reality, the optimum solution lies more perhaps in the need for an agreed Intra-Community/cross-border VAT control framework, that will facilitate both European business *and* tax administration alike.

Slide 8 – Domestic business –

The full impacts of the Directive are not as apparent for domestic (electronic) invoicing, since both trading partners will be operating under the same national rules – thus, most of the current cross-border issues will be largely circumvented.

However, the application of more stringent national requirements, by certain Member States, may inhibit the greater use of electronic trading by their domestic businesses and, as a consequence, reduce their operating efficiency in comparison with counterparts in other Member States.

Slide 9 – see notes on Slides 10 to 14

Slide 10 – Special References –

Where the supplies covered by invoices are:-

- Exempt from VAT
- Subject to the Reverse Charge procedure (where the recipient creates/accounts for the VAT)
- Subject to a Margin Scheme (e.g. Tour Operators Margin Scheme)
- The Intra-Community supply of a New Means of Transport

There is a requirement, under the Directive, to give an indication of the legislation under which the Exemption etc. is allowed.

This indication may be a reference to:-

- The 6th VAT Directive, or
- To the corresponding national legislation, or
- To any other indication of Exemption etc.

Due to differences in the interpretation of the Directive, it is noted that the above options have been applied differently, with certain Member States specifying the requirement for detailed references to national legislation only.

The effect of this, in the Intra-Community/cross-border environment, is that unless the receiver (in another Member State) is fully aware of these individual national provisions, they become virtually meaningless to him.

Furthermore, where such references may be intended to act as a “trigger”, to invoke a particular VAT procedure by the receiver (e.g. Reverse Charges), there is a risk that such procedures may be by-passed/overlooked due to lack of clarity.

Slide 11 – Paper/Electronic Processing –

The EC Directive on Invoicing provides for both paper invoicing and electronic invoicing but does not recognise, or make any distinction between the different processing concepts that may be applied in each case.

For example, where special references are required (see Slide 10 above) on a paper invoice, free text may be preferable since, at the receiver's "end", the document will require human intervention to process – clearly, free text will aid understanding, as it will be in "human-readable" form.

However, in an electronic environment, coded representation may be more appropriate, to allow fully-automatic processing (without human intervention) by the receiver – viz. computers are notoriously inefficient in processing free text information. The potential risk here is that any control function that a reference is intended to serve, if given in free text form, could be by-passed.

This does not appear to be recognised in the Directive and by certain Member States who currently require information in free text form.

Slide 12 – Data Authenticity/Integrity –

The EC Directive on Invoicing allows 3 options covering the data authenticity/integrity of electronic invoices:-

- "Advanced Electronic Signature" – Member States may require additional digital certificates
- EDI, where there is an agreement which covers authenticity/integrity issues – Member States may also require periodic summaries, on paper
- "By any other means", subject to the acceptance of individual Member State(s) involved.

Options 1 and 2 must be allowed by all Member States – option 3 is available at the discretion of individual Member States, which means that this is only likely to be used, for the time being, for domestic electronic invoicing within national borders.

Again, due to differences in interpretation/implementation in individual Member States, some require signatures/certificates and/or paper summaries of EDI invoices, whereas other do not.

The potential effects on Intra-Community/cross-border electronic trading are considerable and include:-

- Trading partners having to handle signatures/certificates/paper summaries, when these are not made compulsory by their own administrations – potential "burdens on business"

- The attitude of “more-prescriptive” tax administrations to invoices being received, without signatures/certificates etc., from trading partners in “less-prescriptive” Member States
- The potential effect on 3rd party intermediaries – i.e. the need for “re-signing” of invoices by such intermediaries?
- Impacts on the use of self-billing, where it is the rules of the supplier’s (the receiver of the self-bills) tax administration that apply – e.g. self-billing from a Member State that does not require signatures/certificates to a trading partner in a Member State that does!

Slide 13 – Storage –

There is no pan-European agreement on the storage period for which invoices have to be retained, for tax administration purposes – clearly then, for ASPs/SSCs providing their services to business across the EU, there is the need for them to understand what individual Member State storage period requirements are, in order that the respective tax administration needs may be met.

Leaving aside this basic issue, the Directive does make provision for the storage of invoices anywhere within the EU area, provided that on line access to the information is available – where this is not available, Member States may require storage within their own territory.

The Directive also provides for the storage of invoices outside the EU, but this may be subject to specific conditions imposed by individual Member States – the main problem is that there is little information available, across the EU, as to what these conditions are.

Where the use of electronic signatures/certificates is required, there may also be the need to store the signatures (or means of re-creating them), together with the invoices. Potentially, this could be a significant burden on business, particularly for 3rd party intermediaries who could be faced with the storage of “before and after (i.e re-signed) images” of the invoices and the storage (and security) of signature keys.

Finally, the Directive allows Member States to require storage of invoices in original form. This could have considerable impact, for example, upon 3rd party providers who provide intermediary conversion of data formats – e.g. receive an XML invoice from the supplier, but translate/forward an UN/EDIFACT invoice to the final customer.

Slide 14 – Self-Billing –

Self-billing agreements (between trading partners) are required by all Member States – the problem for Intra-Community/cross-border self-billing is that each Member State is free to set its own conditions for these agreements and for the acceptance of invoices.

These conditions are not generally known throughout the EU.

For self-billing with trading partners outside of the EU, additional requirements may be imposed, but “what are they?”

Turning to the acceptance of the self-billed invoice documents/messages themselves, some Member States allow “blanket acceptance”, for the duration of the agreement, others require positive acceptance of each individual invoice.

What impacts do the above have on Intra-Community/cross-border self-billing, where the originator of the self-bill (e.g. the customer) has, under the provisions of the Directive, to observe the requirements of the tax administration of his trading partner?

Slide 15 – Who could find solutions? –

The issues are *tax-related*, therefore solutions will need to be discussed and agreed by EU tax administrations.

However, how far EU tax administrations will be able or prepared to go is dictated, to a large extent, by their existing tax control strategies and the extent to which these may be reviewed/re-considered, to meet the particular needs of Intra-Community/cross-border trading.

For example, the UK undertakes regular inspections of VAT-registered businesses and, as part of these inspection programmes, is prepared to utilise the wider controls that business itself may employ, as an acceptable means of gaining tax assurance – e.g. the 3-way matching of Invoices against Orders and Goods Received Notes (and Payment) provides a high degree of assurance/control over the authenticity and integrity of the Invoice.

Similarly, the (commercial) levels of control that are applied over unauthorised access to electronic invoicing platforms/applications and the security/protocols that may be used for their “end to end” interchange (e.g. http-s, running under SSL) may offer an acceptable level of assurance, without the special need for electronic signatures/certificates etc.

Clearly, however, those EU tax administrations that do not have this same level of day-to-day contact with their taxpayer populations do have different perceptions as to their own requirements for tax assurance and therein lies the main problem.

Optimum solutions do need to strike a sensible *balance* between the needs of businesses, to lessen their administrative burdens and encourage the greater take-up of electronic trading, and the ongoing needs of tax administrations to maintain effective control over the taxes (e.g. VAT) that they administer - the “80/20 rule”.

In my view, over-prescriptive regulation should not be imposed upon the vast majority of legitimate EU businesses, simply as an attempt to control the minority of businesses who may be tempted to commit tax fraud(*) .

(* - in the potential fraud scenario, there is likely to be no invoice at all [“off-record transactions, between businesses acting in collusion], that no level of control, however prescriptive, will regulate).

Until this is more widely recognised, the prospects for further agreement by the (now) 25 EU Member States is remote.

As an interim solution, those Member States that share similar views on electronic invoicing should now consider potential opportunities for bi/multilateral discussions/agreements that will facilitate the interests of both their businesses and tax administrations in their own countries.

Slide 16 – Solutions (continued) –

In general, EU tax administrations do need to gain a greater understanding of business needs and this could be achieved through their more proactive participation in pan-European business/standards groups.

Currently, HM Customs & Excise (HMC&E) appears to be the only one involved at this level:-

Examples:- ODETTE Invoice Task Force
 EAN/UCC European Invoice Task Force
 EBES/EEG1 (Trade) Invoice Project Team
 AIAG/ODETTE/JAMA/JAPIA Global Invoice Project

In addition, HMC&E is working closely with a wide range of UK business/ standards organisations that have links into wider European/Global groups (Edifice/CompTIA [Electronics], e-centre UK [mainly Retail/Distribution]).

European business could contribute to this objective by inviting the greater participation of their own national tax administrations in pan-European initiatives, in order that the issues currently affecting Intra-Community/cross-border trading can be properly addressed.

Slide 17 – What else is being done? –

During 2002/2003, the European Commission mandated CEN/ISSS to undertake a study into the potential impacts of the EC Directive on Invoicing upon European business and to report/recommend on opportunities for further “interoperability” – this work was undertaken by the CEN/ISSS e-Invoice Focus Group.

Based upon the report of this Group (finalised September/October 2003), the Commission has given a further mandate to CEN/ISSS to produce a work programme and to undertake a more detailed investigation of the recommendations – the kick-off meeting of the new group, the CEN/ISSS Workshop on Invoicing, was held in April 2004 and the work programme has now been finalised – this programme covers most of the issues identified above.

Again, HMC&E is the only EU tax administration involved, both within the original e-Invoice Focus Group and the current Workshop on Invoicing.

Whilst the aims of this Group are a clear step in the right direction, the main concerns are ones of timescales – with the report/detailed recommendations only expected in 2006 at the earliest, to be followed by a period of consultation/consideration/acceptance by individual Member States, what is European business expected to do in the meantime? – consistency/clarity of rules, particularly for Intra/Community trading, is required NOW!

Slides 18-19 –

No comment.

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