

The right to tax intangible assets in regards to VAT and BEPS Action 1

To whom it belongs the right to tax intangible assets → where consumption takes place

Background

Strong growth of international trade in services.

VAT as the primary form of consumption tax in combination with the rapid globalisation of economic activity has raised as a significant issue un cross-border trade.

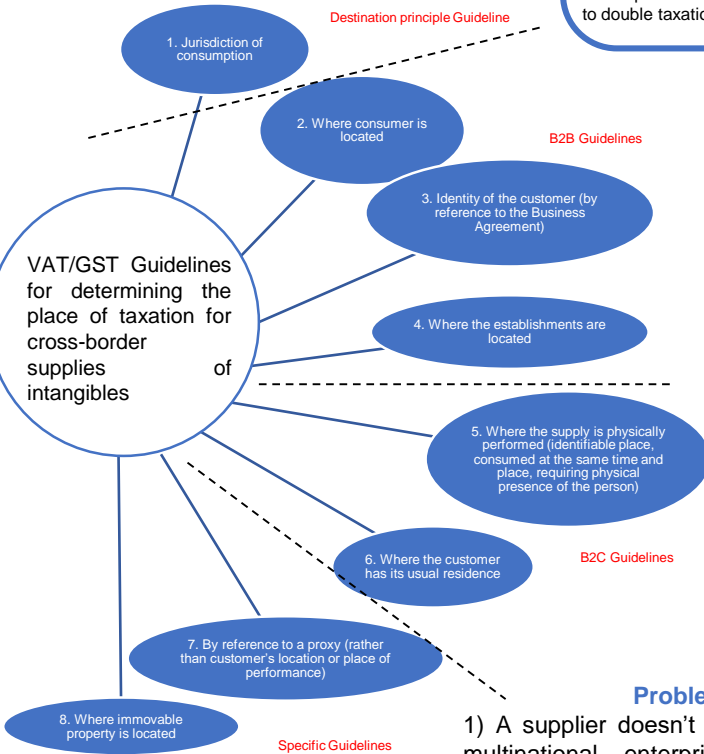
In international trade of services and intangibles, VAT systems must identify the jurisdiction of consumption.

BEPS Action 1

Digital economy and its business models have exacerbated BEPS risks.

The concern with intangibles relies on the ability to relocate them in low tax jurisdictions, creating incentives to hide their functionality and value. The consequence is the minimisation of tax collection.

Allocating taxing rights regarding intangible assets has become problematic as borderlines are blurred. The consequence of not being clear those taxing rights can lead to double taxation or unintended non-taxation.



Destination principle

Is designed to ensure that tax on cross-border supplies is ultimately levied only in the jurisdiction where the final consumption occurs, maintaining neutrality within international trade.*

Is the underlying principle to allocate taxing rights

Problematic situations

1) A supplier doesn't know which establishments of a multinational enterprise will use the intangibles, therefore, how to ensure a correct amount of VAT.

2) Non-resident suppliers in a B2C supply

Reverse charge method B2B supplies

Mechanism that switches the liability to pay the tax from the supplier to the customer

Registration system B2C supplies

Approach that requires the non-resident supplier to register and account for the VAT in the jurisdiction of taxation.

Results obtained

- The destination principle is a good start to relocate taxing rights regarding intangibles
- There is still concern about its effectiveness as proxy to determine the destination of consumption
- The reverse charge mechanism and the registration system still face some challenges.
- The Guidelines help but not solve where does consumption take place, therefore, is still unclear who has the taxing rights regarding intangible assets.