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Conference: Value Added Tax and Direct Taxation – Similarities and Differences

Elke Aumayr, Veronika Daurer, Thomas Ecker, Eva Geißler, Małgorzata Sęk & Marta Uss*

This article provides an overview of the debate at the conference 'VAT and Direct Taxation – Similarities and Differences' held at the Vienna University of Economics and Business (WU) in Vienna on 26–28 March 2009. The novelty of the debate lies in its aim being identification of concepts that could potentially be shared between VAT and income taxes. As a starting point, it deals with purposes and principles of consumption and income taxation. Numerous aspects of the notion of taxpayer are analysed, followed by a discussion on the treatment of groups of companies and intra-company dealings. The debate also covers the concept of abuse and anti-abuse measures. It deals with the issue of double (non-) taxation and connects it to the question of allocation of taxing rights. The debate culminates in remarks on a value added tax/goods and service tax (VAT/GST) treaty as a potential solution for allocation problems in consumption taxation.

1. INTRODUCTION

From 26 to 28 March 2009, a conference on 'Value Added Tax (VAT) and Direct Taxation – Similarities and Differences' was held at the Vienna University of Economics and Business (WU). The conference was organized by the Institute for Austrian and International Tax Law together with the International Network for Tax Research and the Institute for VAT Research. More than 130 participants from all continents and different backgrounds discussed on the similarities and differences of the two areas of tax law with a view to bring the experts from the two different fields of law together, to learn from each other, and to build bridges between the two types of taxes.

Overall, fifty-four papers were prepared on the different subtopics of each session and distributed prior to the conference. For each paper, a discussant was asked to present and critically review the position taken in the paper. These input statements, together with the written contributions, served as a basis for discussion during the conference sessions. This report provides an overview of the various issues discussed during the conference and in the written contributions. It follows the structure of the conference. A book containing all contributions prepared for the conference will be published in the coming months.

2. SESSION I. PRINCIPLES

The first session, chaired by *Michael Lang* and *Dimitra Koulouri*, covered the basic principles of importance for

the design of a tax system including direct taxes and VAT. *Peter Melz*, the discussant, divided this session into two subsections that he introduced by providing an overview on the submitted papers. In the first subsection, he introduced the different purposes of VAT/GST and direct taxes and discussed their distinction.

The purpose of both taxes is to levy taxes on the different stages of economic activities. The VAT can be regarded as a tax on consumption, ultimately borne by consumers, and the income tax can be seen as a tax on income. These two broad-based taxes are necessary to finance governmental spending. In other words, VAT has a complementary function to the income tax. The general principle for determining the tax base for income taxes is the ability to pay principle. It was brought up that the ability to pay is also manifested in the use of the income for consumption. This principle can be seen as a starting point for fairness to consumers in VAT and influence the design of the VAT. Other discussants disagreed and held that consumption taxes should not be analysed in the light of the ability to pay principle. Horizontal equity (all goods and services are to be treated equally) is attained by VAT, whereas VAT does not seem to be suited to promote vertical equity.

A progressive income tax provides vertical equity, by exempting low income from income tax. In contrast, under a VAT, the mere consumption is taxed, which leads, on the one hand, to double taxation of higher incomes (income tax and VAT) and, on the other hand, to a taxation of the poor. In order to prevent taxation of the poor, zero rates in VAT have been introduced by some countries. However, surveys

Note

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have shown that middle- and high-income groups benefit more in an absolute amount of zero rates than the poor. It was argued that the poor could be helped better with transfer payments by governments or by providing better social security financed through VAT but not by zero rating several types of goods or services. Another solution to provide vertical equity for VAT is by levying a personal expenditure tax. However, experiences of India and Sri Lanka have shown that such a tax was difficult to administer and was therefore abandoned a few years after its introduction.

The second subsection of this session dealt with issues such as the principle of neutrality and a comparison of the two concepts of origin/destination in VAT and source/residence in direct tax.

In general, the two concepts of worldwide taxation and territorial taxation seem to be applied for both income taxes and VAT. For income taxes, the worldwide income is subject to tax in the country of residence, which claims the right to tax, but exempts the income from tax, in order to avoid double taxation. If a country has opted for the territorial system for the income tax, for example, it does not claim jurisdiction over income that arises from outside of its territory. It was argued that, for example, the South African VAT system could be interpreted as a worldwide VAT system. In a first step of analysis whether a supply is taxable in South Africa, all supplies made by a South African enterprise are subject to VAT. In a second step, the question which tax rate has to be applied is asked. Under this system, all exports of goods and services provided outside South Africa are taxed with a zero rate. At a first glance, this concept seems to be a worldwide concept; nevertheless, the objective of this concept is territoriality, which is attained by applying a zero tax rate. The South African VAT system does not claim worldwide taxation, instead it uses place of supplier, performance, or residence as a proxy for asserting the taxing jurisdiction. Furthermore, it was argued that worldwide taxation is unsuitable for VAT purposes, as it is impossible to tax resident consumers, if, for example, they consume abroad. Therefore, proxies such as the place of supply of the service made available to the consumer or the residence of the supplier are used to define the place of taxation. Only two to three basic rules for the place of supply should be enough for VAT purpose; in addition, international coordination of VAT rules is absolutely necessary in order to avoid double (non-) taxation.

Another difference between VAT/GST and direct taxes discovered was that under the income tax the allocation of taxing rights between countries is already common. The taxing rights are allocated by concluding double tax conventions. Under the VAT, however, such international coordination of taxing rights is still missing.

3. SESSION II. DOUBLE (NON-) TAXATION

The topic of the second session was double taxation and double non-taxation. *Hugh J. Ault* and *Rainer Nowak*

chaired this session. First, the discussant *Stéphane Buydens* gave an overview of the reasons for and consequences of double taxation and double non-taxation. Due to globalization and the existing network of tax rules, the main issue in the VAT area is how to implement the destination principle in a coherent manner.

There are different reasons for double taxation. In the area of direct taxes, a lack of coordination or different criteria applied by the states may lead to double taxation, whereas in the area of VAT, for example, different proxies may have the same effect. The consequence is more or less the same, namely that efficiency is hindered. Double non-taxation in relation to direct taxes is most of the time unintended by the tax law and in conflict with the purpose and objectives of the tax treaties. As regards VAT, double non-taxation may arise out of an agreement made by the parties, for example, in international passenger transport or in a country's decision not to exercise the right to tax. The origins of double taxation and double non-taxation may be similar in the area of direct taxes and VAT, but the terms used in both areas may cover different concepts or realities. So the question was raised if there was a need for connections between the concepts of VAT and direct taxes as regards the avoidance of double taxation and double non-taxation. There was agreement on the fact that double taxation and double non-taxation have to be eliminated in the field of VAT as well due to the fact that it goes against the principle of neutrality. Both direct taxes and VAT can influence themselves concerning the elimination of double taxation. Nevertheless, it was emphasized that in respect to VAT, double taxation is not so much of a problem in relation to B2B supplies. This is caused by the fact that business customers will usually get an input tax credit, whereas private consumers will not be able to get one.

In relation to the difference of juridical and economic double taxation, it was stated that in the field of VAT most of the time the issue is about economic double taxation, because it is an indirect tax on consumption. However juridical double taxation can also be found in the VAT area, due to, for example, reverse charge mechanisms. Besides, in the field of indirect taxes, the concept of tax cascading has to be taken into account as well. There is intentional tax cascading on the one hand, which arises out of intentional tax exemptions, like for financial services. Moreover there is non-intentional tax cascading as a consequence of a VAT applying in two countries to the same transaction.

As a last statement, the similarities between double taxation in the field of direct taxes and VAT were briefly summarized. It was pointed out that in the direct tax area, in order to avoid double taxation, the source country abstains from taxation of part of the source income and the residence country relieves the rest of the income from double taxation. Therefore, the residence country has to accept the source country's taxing right. In addition, this was compared to the same issue of two

potentially conflicting sources of supply resulting in VAT double taxation.

4. SESSION III. ANTI-ABUSE

The third session concerned anti-abuse measures taken against tax avoidance and tax evasion in the field of VAT/GST and direct taxation. The chairs of this session were *Eleanor Albager* and *Gabriele Annolino*. The discussant *Joachim Englisch* divided the anti-abuse norms into codified general anti-abuse rules (GAARs), unwritten general anti-abuse principles (GAAPs), and specific/targeted anti-avoidance rules. It was noted that while there is a high degree of convergence of all examined national/supranational GAARs/GAAPs regarding the objective element of tax abuse/avoidance, the subjective element required to assess abuse is controversial, and a variety of different approaches is taken to evaluate it. The vagueness of anti-abuse rules reduces the level of legal certainty but is necessary for their efficiency. The discussant pointed out that the multilevel system of EC and national tax laws adds to the complexity of applying both EC and national GAAR/GAAP. If anti-abuse rules in the European directives cannot be applied, general anti-abuse clauses cannot be directly relied on to the detriment of the taxpayer, as they are even less certain to him.

The conclusion was that objective and subjective elements for determining the existence of abuse are hardly different in VAT/GST and of direct taxation. According to the European Court of Justice (ECJ) case law, in direct taxes, anti-abuse clauses can only react against ‘wholly artificial arrangements’, while in VAT such clauses are aimed also against ‘mainly artificial arrangements’. However, despite temporal discrepancies, a uniform concept is expected to be worked out.

Opening the discussion, it was observed that the community loyalty principle cannot constitute a basis for anti-abuse actions, because it should be read with other provisions and does not substitute the law as such, which was supported in later discussion.

It was also suggested to make another differentiation of the types of abuse of tax law between the traditional creation of artificial arrangement to enjoy tax benefits and the creation of artificial arrangement to avoid tax claims collection.

The discussion focused then on the dividing line between different standards of anti-abuse provisions. It was held that this border seems to be drawn by the ECJ depending on the level of harmonization. Stricter standards apply in case of indirect taxation. It was mentioned that due to the differences between direct and indirect taxes, tax authorities remain convinced that it is much more important to have legal certainty in the area of VAT than direct taxation. Contrary, other participants stated that the difference between standards of treatment for direct and indirect taxes by the ECJ is delusory, which can

be proven by the transfer pricing cases, where anti-abuse reaction of the Member State was aimed at only partly artificial arrangements, despite the fact that the case concerned direct taxation.

Much attention was given also to the determination of subjective criteria. It was pointed out that in contrast to abuse of rights, in case of abuse of law a subjective element should not be concentrated on, unless it is reflected in objective facts. With reaction to Australia, it was noted that a taxpayer is required to have intention and a court has to determine whether this intention exists by a set of objective criteria. The question was raised whether such codification makes the subjective criteria disappear or whether it is just a simplification for the court to determine them. Some participants expressed the conviction that looking only at object and purpose of provision would eliminate the tension between legal certainty and handling of anti-abuse situations; however, they observed that this would not be called anti-abuse principle any more. An observation was made that the abuse of tax law may be undetectable by sole legal interpretation. The view was shared that to rely on subjective elements is profitable for big companies, which find it easier to invent other economic reasons for performed operations.

In the course of discussion, it was submitted that there are boundaries of abuse in every jurisdiction and a common standard should be agreed upon in a tax treaty. A common understanding of abuse is needed and some participants of the conference held the view that we are heading towards this state of affairs.

It was further observed that specific provisions in the national law would be, in principle, needed to give effect to anti-abuse provisions of directives. However, if the European Union (EU) primary law states that one must not rely on European freedoms for the purpose of carrying out abusive practice, the domestic provisions are not necessary to prevent the abuse because this function is already performed by the mentioned EU primary law. In the opinion of the discussant, this theory to some point contests the rule of legal certainty, which makes this issue slightly controversial.

5. SESSION IV. TAXPAYER

The fourth session dealt with differences existing between direct and indirect taxes as regards the taxpayer. The session was chaired by *Claus Staringer* and *Marie Pallot*. The discussant, *Claudio Fischer*, presented the various papers grouped into three subtopics, which were ‘taxable persons and economic activities’, ‘nexus for taxpayer’, and ‘taxable persons and financial activities’.

The main question of this session was who the taxpayer was for the purpose of direct and indirect taxes. The definitions of the term ‘taxpayer’ in the different taxation areas seem to have nothing in common. While in direct taxes, the definition of a taxpayer is rather broad in order

to cover, in principle, all legal and natural persons and exceptions are often based on features of the person, in VAT, the definition of a taxpayer may be even broader and exceptions and restrictions are often based on the type of transaction. Maybe the most important difference is the target of the tax: In direct taxes, it is the taxpayer himself, while in VAT it is the final consumer, and the taxpayer is only a collecting agent.

In one of the papers, which covered the topic of taxable persons and economic activities, the conclusion was drawn that income tax and VAT are truly different taxes in respect of structure as well as concept. In this regard, *Fischer* pointed out again that the targets of the taxes were different and elaborated that with income taxes a state wanted to tax as many persons as possible in order to raise money, whereas with VAT a state tried to keep the group of taxpayers small in order to reduce compliance costs and minimize abuse possibilities. Another paper regarding this topic focused on the terms 'taxable person' and 'economic activities'. An interesting question that *Fischer* raised in his analysis of the paper was whether there was a difference between the notion of taxable activity and economic activity, since some jurisdictions only use one term and others mainly speak of the other term. In the discussion, it was brought up that it was irrelevant which term was used in the various jurisdictions since it might mean the same, and that only the function of the term was of importance.

The next subsession dealt with the nexus for taxpayers in an international context. Whereas in direct taxes, the question seems to be where a taxable person is 'active enough' in order to result in a right to tax of the respective jurisdiction, the question in VAT is linked to the question where a supply is deemed to be consumed. One of the possible nexuses is the permanent establishment (PE) or fixed establishment, which was dealt with in three papers. They all came to the conclusion that the VAT concept is more restrictive than the direct taxes concept. *Fischer* then raised the question on why there had to be two different concepts and referred to Swiss tax law where only one term is used for income tax and for VAT purposes. The discussion mainly focused on this topic and on the definition and role of the permanent or fixed establishment in direct and indirect taxations. Most authors shared the opinion that there was no uniform concept of PE because it fulfilled different roles with respect to the different taxes. In direct taxation, the PE is used to allocate taxing rights, whereas in indirect taxation the function is not as clear. Furthermore, it was pointed out by some authors that a harmonization was not even necessary because of the different role of the concepts and because it would not lead to any compliance gains.

Finally, the last issue dealt with in session IV was financial services. The question raised in this context was if financial services were within the scope of VAT at all, because if not there would not be a need for an exemption provision, or if they were taxable activities but exempt from VAT. An even more fundamental question posed during the discussion was if financial services were to be treated differently from other services, and if so, what the justification for this was. A concern was also expressed about the fact that financial services were seen as preparation for consumption only and therefore were not taxed in the same way as other services.

6. SESSION V. GROUP OF COMPANIES AND INTRA-COMPANY DEALINGS

The fifth session covered the treatment of group of companies and intra-company dealings in VAT/GST and direct taxes. This session was chaired by *Roger Persson Österman* and *Richard Brown*. By using graphic examples, the discussant, *Herman Van Kesteren*, presented the issues concerning, on the one side, transactions or dealings between a group of companies and, on the other side, transactions or dealings within one company where one or more permanent or fixed establishments are involved. Focus was put on whether an economic approach or a legal approach is and should be followed when determining if a transaction between the head office and a branch should be taxable. Under the economic approach, the branch would be treated as separate entity for tax allocation purposes, while under the legal approach there would only be one legal entity and thus intra-company transactions would be disregarded.

In one of the papers and during the discussion, the point was raised that the questions on the treatment of branch-to-branch transactions is less a question of who is taxable but rather a question of where the transaction should be taxable. Thus, the permanent or fixed establishment serves the purpose of allocation. For direct taxes, it helps to allocate profits, while for VAT/GST it helps to allocate transactions. It was noted that this reasoning does not favour any school of thought but that the approach should in any way be consistent to avoid double (non-) taxation and avoidance opportunities.

In his presentation, *van Kersteren* elaborated that the economic approach is common for direct tax purposes as can be seen in the provisions of the Organization for Economic Cooperation and Development (OECD) Model and the OECD Transfer Pricing Guidelines. With regard to consumption taxes, however, different jurisdictions use different approaches. As concerns the situation within the EU, the *FCE Bank* case¹ was the centre of

Note

¹ ECJ 23 Mar. 2006, C-210/04, *FCE Bank* [2006] ECR I-2803.

discussion. Concerning the relevance of the issue, it was brought up that goods are in any way taxable as import, even if provided within a group or between the branches. For services on the other hand, the receiving business can normally get an input tax credit, and therefore, it does not really matter whether the supply is taxable or not. Thus, consensus prevailed that the issue was only of particular importance with respect to services to an entity with exempt activities. The main issue in this respect is avoidance.

The discussion then focused on whether income tax tools, especially the transfer pricing guidelines, might be of use for consumption tax purposes. Reference was made to the resembling concepts of endowment capital (as, for example, referred to by the ECJ in the *FCE Bank* case) and free capital under the Authorized OECD Approach (AOA). The question was raised whether a functional analysis was useful for VAT purposes and if the OECD Transfer Pricing Guidelines could be useful in this respect. While some authors advocated that one should try to adopt as many practices and tools (e.g., elements of the Transfer Pricing Guidelines) used for direct taxes also for VAT, others expressed their concern about this. It was noted that with income taxes in inter-branch transactions, it is profits that are allocated, while in VAT usually only costs (without a profit element) have to be allocated. Furthermore, while for direct taxation the relation between head office and branch is important from the outbound (e.g., at the level of the head office if it makes supplies to a branch) and inbound sides, the real issue for VAT lies on the input side (how to treat these supplies at the level of the branch in order to sustain neutrality; at the outbound side, relief from input tax incurred for the export transaction should be granted if the transaction is seen as taxable).

Finally, it was argued that in cases where the branch uses a supply provided by a party other than the head office, the issue of the treatment of intra-company dealings can be reduced if effective use and enjoyment rules were applied and the supplies were directly attributable to the branch. So the supply would not be attributed to the head office and there would be no need for a recharge to the branch.

Consensus was attained that experts from the areas of direct and indirect taxations should work together more. The two taxes were compared to the two faces of Janus, the God of bridges and gates.

7. SESSION VI. ALLOCATION OF TAXING RIGHTS BETWEEN STATES

The subject of the sixth session was the allocation of taxing rights between states and whether or not allocation rules in direct and indirect taxes can and should be streamlined or at least be taken into consideration for the respective other field of taxation. The session covered allocation rules

in general as well as specific ones such as for means of transport, concerning taxing rights in relation to immovable property, and those referring to the place where a supply is effectively carried out. The chairs of this session were *David Holmes* and *Kerstin Alvesson*. Based on some of the papers, the discussant, *Gunnar Rabe*, started with an analysis whether VAT allocation rules could be used for direct tax purposes. He came to the conclusion that this was not the case. He argued, however, that there is room for amelioration of VAT place of supply rules and that an international coordination towards better rules could come from outside the EU, for instance through the OECD. Generally, it was concluded that both traditional VAT systems (such as within the EU) and modern VAT/GST systems (such as in New Zealand or Australia) lead to a compliance burden for business. In the EU context, specific reference was made to the VAT Information Exchange System (VIES), while with respect to the Australian system attention was drawn to the compliance burden for non-residents, which might be obliged to register in Australia.

With respect to the development of VAT/GST guidelines by the OECD, the (not completely undisputed) comment was made that it would be worth looking at what has already been done on the OECD level with respect to income taxes (e.g., concerning transfer pricing issues). During the discussion, however, the experience from the tax administration side was shared that aligning VAT and direct taxes has shown to be not very successful in the past and that this is mainly due to the different concepts of the two fields of taxation. So the point was made that the establishment concept from the direct taxation area is generally not very useful for VAT purposes. Contrary to this, a participant drew the attention to an Italian court case where for the determination of the residence of a taxpayer for income tax purposes, the domestic court made reference to ECJ case law on VAT. Another participant observed that even where concepts are similar the administrative application might still be different. Furthermore, during the discussion it was pointed out that using the destination principle (as common for consumption taxes) for income tax purposes might lead to export subsidy problems under World Trade Organization (WTO) law.

Another point that was raised where there is place for useful interactions between consumption taxes and direct taxes is the concept of dependent agent permanent establishments with all related problems. It was held that a test for the place where the activity is effectively carried out (as known by consumption taxes) might be useful and informative for direct tax purposes. Finally, an interesting issue raised during discussion was whether the allocation of taxing rights for VAT purposes (which usually follows the destination principle) should be taken into consideration when negotiating an income tax treaty. This session showed that the conference was only a first step testing the water whether and where there could be some

streamlining and interaction between consumption taxes and direct taxes.

8. SESSION VII. HOW TO ALLOCATE TAXING RIGHTS WITH RESPECT TO NON-EU MEMBER COUNTRIES: DIRECT TAXES V. VAT/GST

During the seventh session, allocation of taxing rights with respect to non-EU countries was discussed. The session was chaired by *Peter Melz* and *Stéphane Buydens*. Points for debate were selected by the discussant *Björn Westberg*. They included unilateral measures to avoid double (non-) taxation, Australia's federal tax revenue allocation scheme, soft law versus legally binding instruments as mechanisms of allocating taxing rights, the effects of existing tax treaties on VAT (Articles 24 to 27 of the OECD Model), and the impact of non-tax conventions (WTO's General Agreement on Trade in Services (GATS)) on allocating taxing rights.

Upon opening the discussion, an observation was made that in the VAT/GST area the distinction between B2C and B2B transactions is crucial. It was held that among the fundamental reasons for double (non-) taxation are: the use of different proxies to identify the jurisdiction of destination, as well as differing application of zero-rate schemes. Within VAT/GST non-taxation, attention was drawn to the issue of illegal downloads and use of peer-to-peer networks for file sharing. On the differences between VAT/GST and direct taxation unilateral measures against double (non-) taxation, a comment was made that non-discrimination is a broader concept in VAT/GST, as not only situations between suppliers must be compared but also that between transactions.

It was submitted that the Australia's scheme of sharing GST revenue between states allowed for a uniform GST to be applied across the country, muting states' objections to GST unification. Hence, businesses have to deal with only one GST system. The discussion on what the EU has to learn from federal systems was concluded with a remark from the audience that any comparisons between the EU and federative states should be made very carefully.

On the issue of soft law, two participants agreed that it is a matter of acceptance rather than power. However, during the debate, it was noted that 'stronger' countries in fact implement their position within soft law. The view that countries follow soft law despite not being obliged to do so was challenged by arguing that soft law involves obligations: not legal but political or social ones. However, the idea that soft law is a suitable tool for addressing international VAT/GST double (non-) taxation was generally supported in the discussion. Soft law was seen as one of the stages of a whole sequence of allocation measures, starting from unilateral instruments, followed by soft law (firstly guidelines and then model conventions) and culminating in binding instruments (e.g., double tax treaties) in the case of insufficiency of the preceding measures. It was held

that soft law and binding instruments are not mutually exclusive. Hence, they should be applied in combination. In fact on the grounds of soft law, some common solutions may be easier agreed upon, subsequently promoting agreement on a binding instrument. Finally, supplementing soft law systems with a mechanism for dispute resolution, perhaps an international tax court, was advocated by one of the discussants. This idea was, however, objected as being contradictory (non-binding soft law cannot constitute a basis for a judgment).

It was stated that theoretical applicability of Articles 24 (non-discrimination), 26 (exchange of information), and 27 (assistance in the collection) of the OECD Model to VAT/GST indeed exists, but practical use thereof is rare and problematic. The scope of these administrative provisions includes 'taxes of every kind and description'. Article 25 (mutual agreement) also seems applicable, despite its scope not being explicitly defined as 'taxes of every kind'. VAT reliance on non-discrimination clause may, however, be difficult due to the OECD's restrictive definition of 'discrimination'. Experts participating in the discussion suggested the possibility of using non-discrimination rule to struggle VAT discriminatory arrangements against permanent establishments of foreign enterprises (e.g., domestic VAT grouping). It was held that the definition of permanent establishment contained in Article 5 of the OECD Model would apply in VAT/GST in the context of non-discrimination.

9. SESSION VIII. A VAT/GST TREATY?

The final, eighth session, held under the presidency of *Pasquale Pistone* and *Hilde Bervoets*, was dedicated to the issue of a possible VAT/GST treaty. The paper prepared by *Thomas Ecker* was discussed by *Richard Krever*.

It was observed that in consumption taxes there is only one legitimate basis for taxation, this is the location of consumption, while in direct taxation both source and residence provide sound grounds for taxation. The VAT/GST problem is that countries use different proxies to decide where consumption taxes place. Consequently, while income tax treaties decide how to divide taxing rights between two countries that both have the right to tax, the role of consumption tax treaties should be to agree on using the same proxies for consumption, resulting in exclusive allocation of taxing rights. This view was supported in the discussion. In addition, a mechanism for refunding tax to business registered in other jurisdictions was suggested to be regulated in a treaty.

Further grounds for designing a separate tax treaty for VAT/GST were given. It was pointed out that only a limited number of provisions of existing direct tax treaties (i.e., administrative provisions, such as non-discrimination clause) may be used in the area of VAT/GST. In addition, direct tax treaties' personal scope is limited to residents, while 'resident' is a concept that does not exist in VAT.

The latter opinion was, however, criticized during the debate, by reference to the examples of South Africa's and New Zealand's GST using the residency criteria. The suggestion expressed in this session's paper was repeated that VAT/GST treaty applicability should depend whether the place of taxation according to the rules of the treaty would be in one of the contracting states.

It was held that a VAT/GST treaty should also include characterization of transactions. Income tax treaties have not entirely solved double (non-) taxation because they leave room for diverging qualifications of a transaction by contracting states, resulting in different allocation rules applicable. Doubt was expressed whether definitions sufficient for avoiding conflicts are possible to provide. The key issue is to refrain from referring to domestic law in transaction definition matters. Emphasizing the importance of qualification conflicts, one of the discussants suggested that a measure to limit these problems would be to keep allocation rules as similar as possible. He recommended using one main rule with the least exceptions possible. Voices from the audience supported this view.

A number of experts agreed that at the time being, instead of urging towards VAT/GST treaties, we should focus on identifying common VAT/GST principles,

to possibly subsequently embody them in allocation guidelines. It was put forward that the guidelines should reflect these very principles, not being biased by the historic developments and shape of existing VATs/GSTs. Only after evaluating the status and effects of these guidelines can we turn to the question of treaties if the former are insufficient.

The issue on who should undertake the task of designing VAT/GST guidelines or a model treaty was debated: the OECD or some other organization. It was suggested that the EU could also design a model treaty to use it while contracting with third countries. The view was shared that in the light of the VAT Directive, negotiating a VAT/GST treaty with third countries seems to be a competence of the EU and not the Member States.

A question was raised on whether effort should be made to create an instrument providing a comprehensive set of VAT/GST rules (like the EU VAT Directive) or just including allocation rules and leaving to the country of allocation the decision whether to levy a VAT/GST and what type thereof. A need for sharing the same VAT/GST design was advocated by a member of the audience. It could be achieved by a supranational model VAT/GST convention (possibly a multilateral UN convention), indicating how VAT/GST should be shaped.