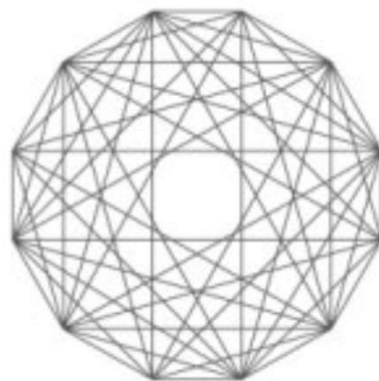


UIA Associations Round Table Europe

24th November 2023
Brussels, Belgium



UIA
ASSOCIATIONS
ROUND TABLE



International **Non-Profit** Organisations & VAT

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VAT

Value Added Tax – How does it work?

How a Value-Added Tax Works

In a country with a value-added tax, businesses collect the tax on their sales and pay it on their purchases from other businesses. Here's how a 10% VAT would apply to the production and sale of a shirt.



STEP 1

Farmer grows cotton and sells to textile maker for **\$1.00**



STEP 2

Textile maker makes fabric and sells to clothes maker for **\$5.00**



STEP 3

Clothes maker sews shirt and sells to retailer for **\$12.00**



STEP 4

Clothing retailer sells shirt to consumer for **\$20.00**

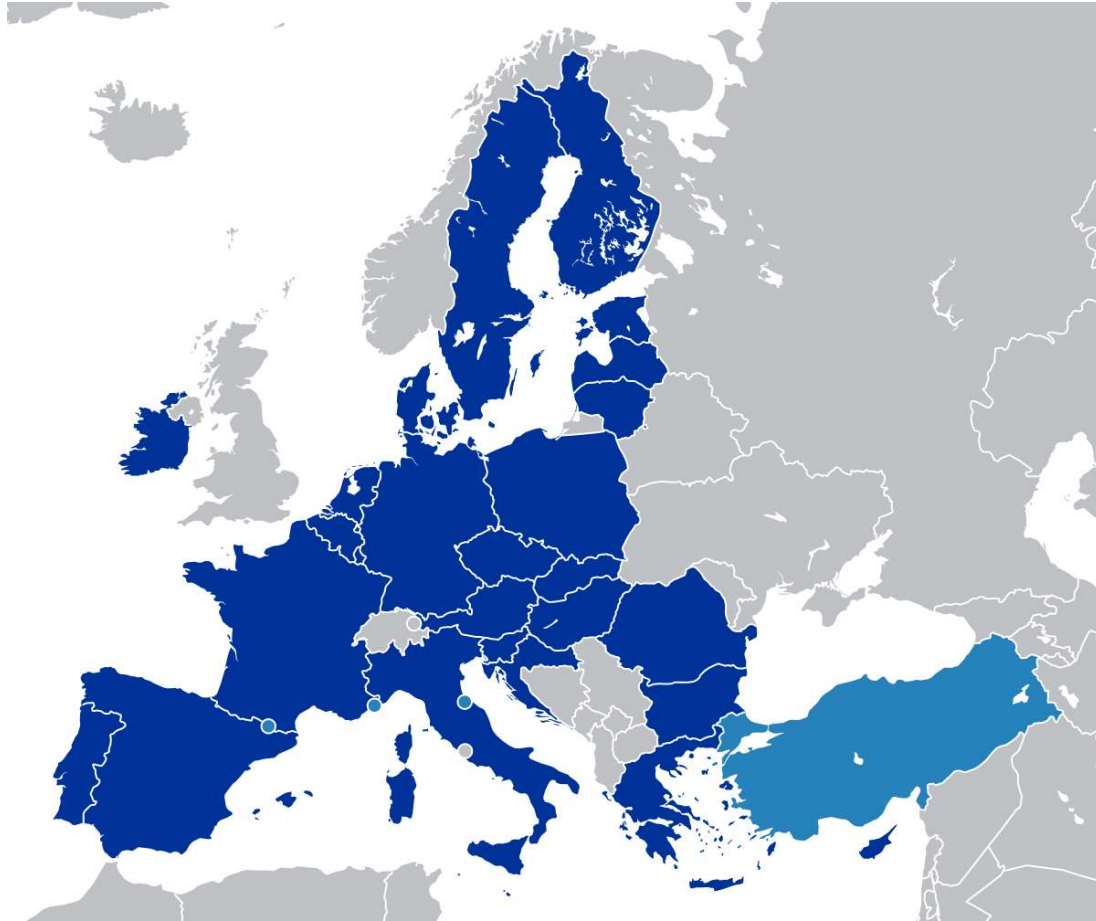
Sale price with VAT	\$1.10		\$5.50		\$13.20		\$22.00
VAT collected by seller	\$0.10	-----	\$0.50	-----	\$1.20	-----	\$2.00
Credit for VAT paid in previous stage	N.A.	-----	-\$0.10	-----	-\$0.50	-----	-\$1.20
Net VAT collected	\$0.10	+	\$0.40	+	\$0.70	+	\$0.80
Total VAT collected							\$2.00

Territorial Coverage

Two systems are operating:

- Sales Tax (historical territory of Common Wealth) downsizing (Australia, Canada, New-Zeland and USA)
- VAT expanding very fast (EU, India, South America, China, South-Africa, Russia, Middle-East (GCC) etc.) but rules are not totally consistent throughout the world

USA was (still?) considering the introduction of VAT instead of Sales Tax



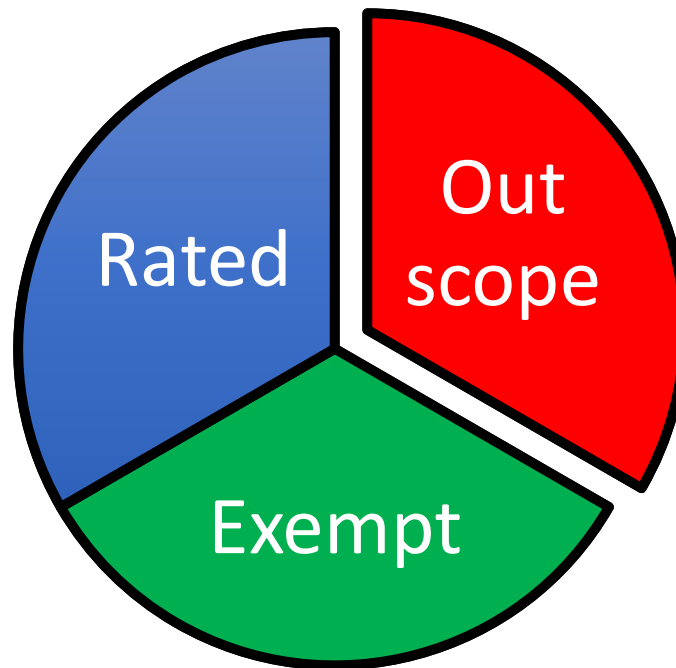
EU VAT System

The EU VAT system is based on the EC Directive 2006/112 which includes a set of common rules that are consistent throughout the current 27 EU countries. The UK (i.e. England, Wales, Scotland and Northern Ireland with special Protocol) left the EU on 1st January 2021.

The Directive allows EU Member States several options but fundamental rules such as taxable transactions or place of taxation should be applicable consistently in the EU.

INTRODUCTION

Economic Activity = VAT Scope



In General

NPO is regarded as a VAT-able person if it is engaged in any economic activity:

- All supplies of tangible goods and/or services against compensation amount to an economic activity;
- The economic activity may be VAT-rated or VAT exempt (cf. *infra*);
- The economic activity may be subject to VAT in its country of incorporation or abroad (cf. *infra*);
- The economic activity may allow or not to recover input VAT;
- The economic activity can lead to VAT registration and VAT reporting.

In General

The VAT regime of NPO, like any business, depends on how **their revenues qualify from a VAT perspective.**

The main categories of NPO revenues are as follows:

- Membership fees;
- Sponsorship, exhibition and other events related fees;
- Fees & other compensations;
- Subsidies & Grants from Public Authorities;
- Gift and donations.

The concept of « non-for-profit » is not relevant to determine whether NPO is a VAT-able person, by contrast to income tax systems

The concept of « non-for-profit » may be required in order to take benefit from several VAT exemptions (education, cultural activities etc.)

PART I: VAT STATUS OF NPOs

VAT Status of NPOs

General Rule – Activities Subject to VAT

(International) NPOs do not enjoy a specific status as far as VAT is concerned (as opposed to the income tax system). In principle, their activities are subject to VAT (general principle of taxation). Therefore, they must register for VAT purposes and are subsequently entitled to deduct the VAT borne on the costs to taxed activities.

Nevertheless, there are two derogations to that general rule:

1. Activities Exempted from VAT

Some activities (specifically listed in the legislation) are exempted from VAT. The (international) NPOs performing exclusively those activities do not have to register for VAT and cannot subsequently recover VAT incurred on the costs related to the exempt activities.

Examples: NPO lobbying/advocating a business sector, NPO in vocational trainings.

VAT Status of NPOs

2. Activities Outside Scope of VAT

There also exist activities considered of general interest (for the public at large) which are outside the scope of VAT. The (international) NPOs performing such activities are not, under certain conditions, viewed as a VAT-able person and may therefore not recover input VAT incurred on the costs related to those “out of scope” activities.

Example: NPO fully financed by subsidies or donations.

VAT Status of NPOs

Ordinary taxpayer	Exempt taxpayer	Mixed taxpayer	Partial taxpayer	Non-taxable person
Only activities subject to VAT	Only activities exempted from VAT	Activities subject to VAT + activities exempted from VAT	Activities within the scope of VAT + activities outside the scope of VAT	Only activities outside the scope of VAT

Multiple Activities

NPOs usually perform activities of a mixed nature: activities which are subject to VAT, exempt from VAT and out of scope. In such a case, the issue consists in determining the extent of their right to recover VAT: general deductible proportion based on the turnover, proportion based on the direct attribution of costs, attributive system, etc.

VAT Status of NPOs

For a NPO, determining correctly its VAT status is crucial for three main reasons:

1. It enables to clearly appreciate the extent of its **input VAT recovery right**, i.e. the percentage of input VAT that NPO can deduct;
2. It allows to apply correctly VAT according to place of taxation rules and hence, assess the **VAT liability of NPO** regarding purchases and outgoing transactions;
3. It also helps to determine if NPO must **register for VAT purposes** and is held to **VAT reporting obligations** (VAT return, European Sales Listing, Yearly Statement);
4. It allows to determine if NPO must issue **invoices**.

Exemption

Are NPOs activities VAT **exempt** on the basis of article 132 of VAT Directive ?

Two Basic Rules:

1. General rule is **taxation** → exemptions laid down in article 132 of VAT Directive are derogations to the general rule and subject to strict interpretation.
2. Ancillary services follow the same VAT treatment than the main supply of services.
 - ✓ *A service is considered as ancillary when it does not constitute for the client a goal in itself but only the means to enjoy the main service in the best possible conditions.*
3. The main question raising concerns is « lobbying » services provided by NPOs to their members.

Where is “established” an NPO?

Place of business is where the functions of the business’s central administration are carried out, i.e.

1. Where essential decisions concerning the general management of the business are taken (primary criteria);
2. The registered office address (secondary criteria);
3. The place where management meets (secondary criteria);
4. Postal address is never taken into consideration.

Where is “established” an NPO?

Fixed establishment pre-supposes:

1. human and technical resources forming a suitable structure;
1. sufficient degree of permanence:
 - to receive and use the services supplied to it for its own needs (passive FE)
 - to provide the services which it supplies (active FE)

PART II: MEMBERSHIP FEES

Membership Fees

1st Question: VAT Status of a NPO (What does a Membership fee cover)?

Should a NPO be considered as a VAT-able person or not?

2nd question: VAT Status of an European Member?

An European Member is treated as a taxable person (B2B) in four cases:

- ✓ The EU Member is an ordinary taxpayer;
- ✓ The EU Member is an exempt taxpayer;
- ✓ The EU Member is a mixed taxpayer;
- ✓ The EU Member is a partial taxpayer.

An European Member is treated as a non-taxable person (B2C) in only one case:

- ✓ The EU Member is a **non-taxable** person with no VAT number.

⇒ *Each Member has to know its own VAT status.*

⇒ *There is an IMPORTANT difference between an exempt taxpayer and a non-taxable person.*

Membership Fees

1st Question: VAT Status of a NPO (What does Membership fee cover)?

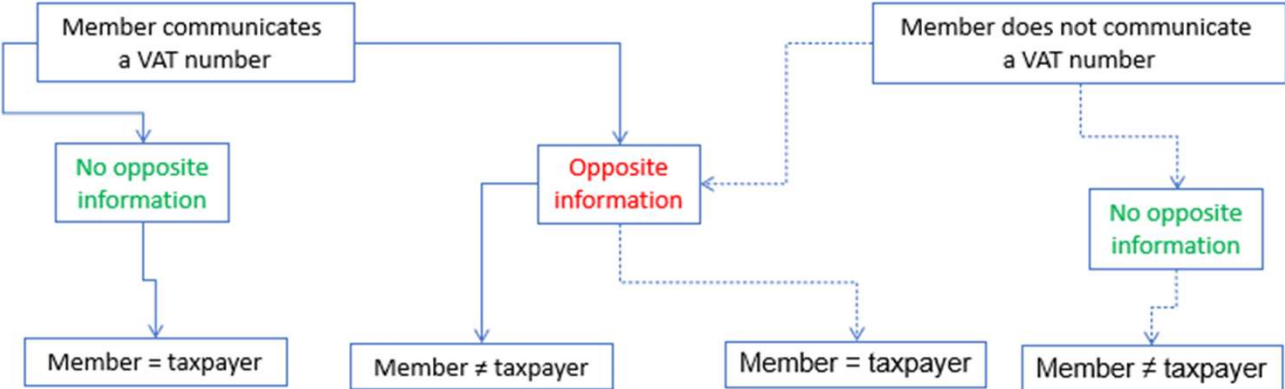
Should a NPO be considered as a VAT-able person or not?

A taxable supply entails an individual and consumable benefit as a result of a contractual relationship between NPO and members/non members

What if NPO acts for the following purposes?

- General interests of members (VNLTO);
- Collective interests of members (IMI);

EU Member Status



NPO's Business towards Members subject to VAT

a) The member is in Belgium or is a non-taxable person

- ✓ Invoice with **Belgian VAT**;

b) The member is a EU taxpayer

- ✓ Invoice without **Belgian VAT**;
- ✓ **European sales listing** under code « S »;
- ✓ The member **must** activate its VAT number (if **has not been done** yet)

NPO's Business towards Members subject to VAT

d) The member is a non-EU non-taxable person

- ✓ Invoice with **Belgian VAT** (except services exhaustively listed in article 59 directive 2006/112/EC);
- ✓ **No listing** under code « S ».

e) The member is a non-EU taxpayer

- ✓ Invoice without **Belgian VAT**;
- ✓ **No listing** under code « S »;

NPO's Business towards Members VAT Exempt

a) The member is in Belgium or is a non-taxable person

- ✓ Invoice without **VAT** (invoice issuance not mandatory);
- ✓ **No listing** under code « S ».

b) The member is a EU taxpayer

- ✓ Invoice without **VAT** (invoice issuance not mandatory);
- ✓ **No listing** under code « S »;
- ✓ The member **does not have to** activate its VAT number.

NPO's Business towards Members VAT Exempt

d) The member is a non-EU non-taxable person

- ✓ Invoice without **Belgian VAT**
- ✓ **No listing** under code « S ».

e) The member is a non-EU taxpayer

- ✓ Invoice without **Belgian VAT**;
- ✓ **No listing** under code « S »;

VAT exempt activities of NPO

Directive 2006/112/CE, art. 132, par. 1^{er}, l)

*«The supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organizations with aims of a political, **trade-union**, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition».*

Other exemptions: educational, cultural, sport cost sharing activities.

ECJ

Case IMI, 12/11/1998

“The expression “trade-union” in that provision means specifically an organization whose main object is to defend the collective interests of its members whether they are workers, employers, independent professionals or traders carrying on a particular economic activity and to represent them vis-à-vis the appropriate third parties, including the public authorities”.

Exemption

Meeting four conditions is required to enjoy exemption:

- A non-profit-making organization;
- A subscription fixed in accordance with their rules (statutes);
- Common interest of members;
- Aims of a political, **trade-union**, religious, patriotic, philosophical, philanthropic or civic nature.

Measurement

Difference is made according to the **main** goal:

- Either the aim of a trade-union nature is the main goal of the NPO: all supply of services covered by membership fees are exempted from VAT;
- Either the main goal is not of a trade-union nature: all supply of services covered by membership fees are subject to VAT (except other exemptions);

Remember: only activities performed for NPO's members, NOT for third parties

A Trade-Union Nature = ?

- Do not notably constitute an activity of trade-union nature:
 - Activities to promote trade or business;
 - Networking among members and/or similar organizations;
 - Provision of data or information;
 - Explanation given to members on how to comply with standards;
 - Research and development;
 - Individual or collective consultation;
 - Organizing conferences, congresses, etc.;
 - Participation in conferences, congresses, etc... other than having a goal of trade-union nature;
 - Any services rendered to third parties (non-members) against payment;
 - Etc.

A Trade-Union Nature = ?

➤ Is notably constitutive of a trade-union activity:

- Writing "position paper";
- Participation in meetings, in any form, with the authorities;
- Conducting research or other services used to support directly and essentially lobbying activities;
- Participation in conferences, congresses, etc.. with a trade-union nature;
- Hiring a consultant for lobbying missions;
- Etc.

➤ Can be considered as a union activity (grey area):

- Self-regulation;
- Promotion mechanism certifications;
- Studies and other services with a dual purpose (which is the predominant objective?);
- Participation as an expert to meetings with authorities.

Documentation

➤ How to measure the main objective?

- Statutes;
- Activity Report;
- Proofs of activities: report, "position papers", flyers, meeting minutes, publications;
- Role of the staff: job descriptions;
- Nature and cost structure, "project based accounting";
- Transparency Register: budget.

An analysis on a case-by-case basis is required, given all previous arrangements are obsolete.

Non-Profit Organisation

➤ When an International Association is a non-for-profit organization?

➤ To be assessed globally on the basis of all activities

➤ “Non-profit” presupposes the following conditions:

- the organisation must not have the aim of achieving profits for its members;
- Possible surplus are assigned to the activities themselves.

The fact that an organisation achieves profits, seeks to make them or makes them systematically is not to affect the categorisation as a NPO for VAT purposes as long as they are not distributed to members

Non-Profit Organisation

- EU Member States may require additional conditions to make exemption applicable such as:
 - must not systematically aim to make a profit;
 - must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;
 - must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;
 - the exemption must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

Strategy

- Review of VAT status on several years
- Review of VAT status based on forecasts
- Opportunity of a new individual ruling (VAT control office) ?
- Opportunity of restructuring activities ?
 - Profit oriented (corporate taxes !!!);
 - Employees vs. Consultants;
 - Project-based accounting.

PART III: CONGRESS ORGANISATION

Place of Taxation

Place of Taxation = place (Country) where VAT is due

Final regime for B2B relationships from January 1st 2011:

- ✓ Admission right → **Where the event takes place** (derogatory rule);
- ✓ Other services → Where the recipient is established (general rule).

VAT is due in the EU country where the event takes places :

- ✓ It's an event (duration should be limited);
- ✓ With a cultural, artistic, sportive, scientific, educational, entertainment aspect or similar such as fairs and exhibitions;
- ✓ Granting the right to access to that event (including an ancillary activity).

For B2C & B2B relationships !!

Place of Taxation

Final regime for B2C relationships from January 1st 2011:

- ✓ Admission right & other Congress related services → Where the event takes place (derogatory rule);
- ✓ ECJ pending case 647/17

Place of Taxation (C-6467/17)

- The fact that the courses were subject to advance registration and payment is irrelevant for the purposes of the application of Article 53 (...). There is nothing in the wording of that article to suggest that such criteria could be taken into consideration in determining the place where those services are seemed to be supplied.
- ‘services in respect of admission to events’ include a service, in the form of a five-day course on accountancy and management which is supplied solely to taxable persons and requires advance registration and payment.

Webinar

May involve various technical features:

- Pod-cast (lifestreamed or not);
- Streaming without possible interactions;
- Streaming with possible interactions;
- Hybrid: streaming & physical attendance;
- Physical attendance with possible pod-cast;

Webinar

Possible qualifications for VAT:

- Digital services;
- Educational services/activities;
- Default qualification;

Webinar

Digital services:

- Article 7 & Annex I of Regulation 2011/282/EU
- Annex II of Directive 2006/112/EU

“services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology”.

Webinar

- Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;
- Workbooks completed by pupils online and marked automatically, without human intervention.
- The supply of digitized products generally, including software and changes to or upgrades of software;

Webinar

Not digital services:

- Broadcasting services;
- Telecom services;
- Teaching services, where the course content is delivered by a teacher over the Internet or an electronic network (namely via a remote link);
- Tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online;

Webinar

Place of taxation of digital services:

- B2B: where participants is established
- B2C: where participants reside (foreign VAT to be charged and OSS scheme)

Webinar

Educational services/activities:

- B2B: there is no gathering at a well-defined place
- Place of taxation ?
 - General rule: where participants are established
 - Where the provider organizes the event and gives the possibility to attend it remotely. That might be the place where provider is established but not necessarily

Webinar

Educational services/activities:

- B2C: there is no gathering at a well-defined place
- Place of taxation ?
 - General rule: where provider is established
 - Where materially performed
 - Where the provider organizes the event and gives the possibility to attend it remotely. That might be the place where provider is established but not necessarily
 - Where recipient is located and enjoys the event (VAT Committee)

Hybrid Seminar

One package including physical and remote assistance or pod-cast

- One single supply and one single VAT treatment?

Possibility of option between physical and remote attendance

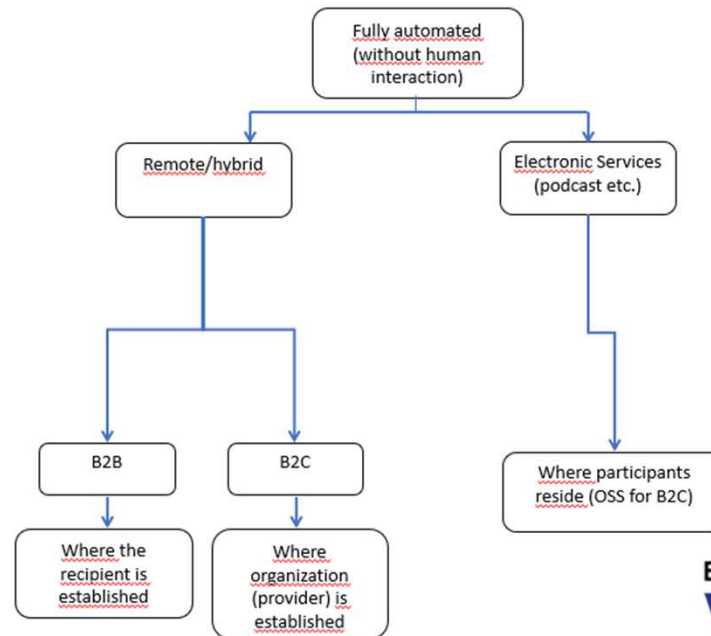
- Different supplies and VAT treatments ?

Hybrid Seminar

Will depend on contractual terms

- Remote attendance ancillary to participants view ?
- Pricing: 1 single fare or 2 different fares

Webinar



Webinar

New Council Directive (EU) 2022/542 effective on 01/01/2025: in B2B and B2C VAT will be due in the country where participants reside.

Lifestreamed webinar (not digital services).

Webinar in 2025

Invoicing:

- B2B: Reverse charge applicable if provider is not established in the client's (EU) country
- B2C: invoice should include VAT amount of the country where participants reside
 - Local VAT registration OR
 - OSS Scheme

Impact of Brexit

- UK (VAT) Law is generally still aligned with EU Directive but it could deviate from it in coming months or years leading to potentially double taxation or....no taxation.

Exhibition Fees

Exhibition Stands Rental

- ✓ In principle, it is taxed based upon the general B2B rule if a package including stand location together with other related services to enable the exhibitor to display items (design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance, advertising etc.);
- ✓ It is a service linked to immovable property taxed where the building is located if service is limited to a surface area [EU Regulation 2011/282, Art. 31a (3)(e)];
- ✓ The 'provision of a stand location' consists in putting temporarily a delimited surface and/or movable structure (for example a booth, a stall or a counter) at the disposal of an exhibitor for the purposes of participating in an exhibition or a fair.

Clarification

- Explanatory Notes (not binding) of the European Commission :
- 3 cumulative criteria must be of existence:
 - the provision of a stand location;
 - the provision of one or more related services;
 - these related services must enable the exhibitor to display items and promote its services or product

List of « examples » of such related services.

Scenarios

- **Only** stand location: VAT of country where building is situated;
- Stand location and related services enabling display: default rule (B2B) or place of event (B2C);
- Stand location and services not enabling display:
 - VAT of country where building is situated if stand location is the primary service
 - Multiple Supply

Sponsorship Fees

Sponsoring

- ✓ Is taxed based upon general B2B rule as advertising services;
- ✓ What if entries are included?
 - Flat fee including sponsoring and access fees: single supply = one treatment;
 - Multiple fees: multiple supply and different treatments for sponsorship and access fees.

Implementation of Events

Two different scenarios are possible:

⇒ The NPO organizes by itself the event and receives invoices from various suppliers;

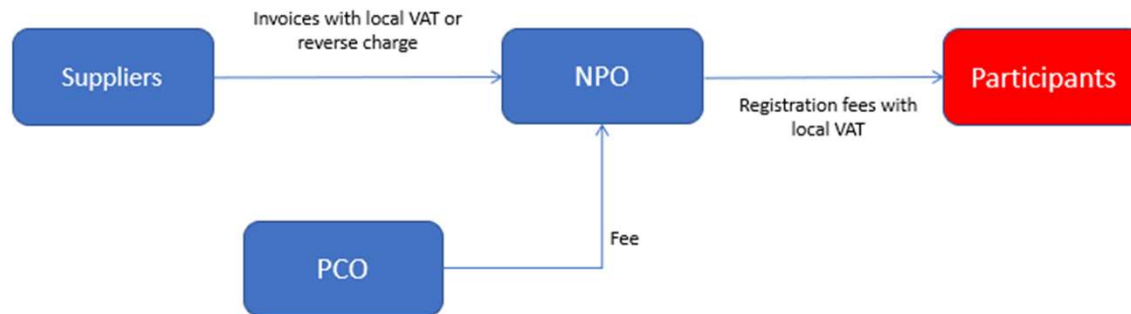
⇒ The NPO organizes through a P.C.O. (Professionnal Congress Organizer) but does not receive invoices from various suppliers (the P.C.O. is a global supplier).

Conferences & Seminars

NPO Contract with a PCO.

PCO is « transparent » subcontractor

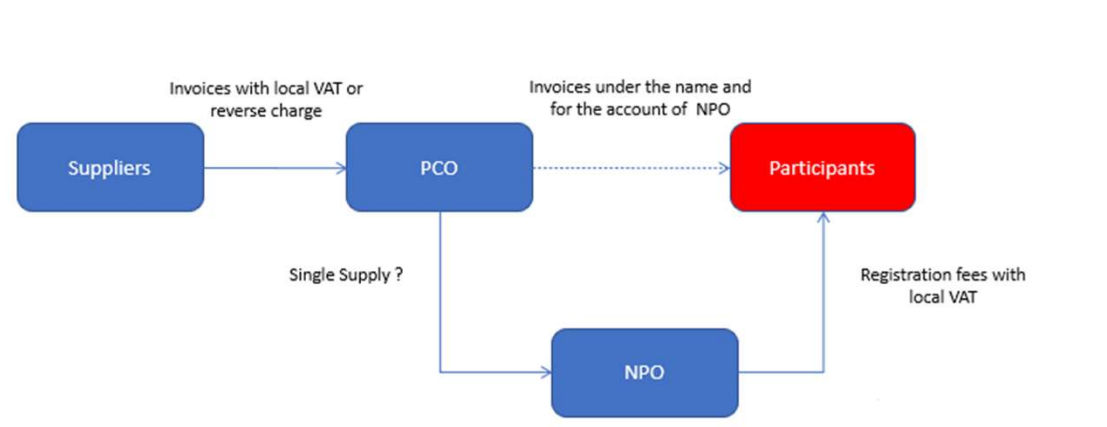
PCO contacts various suppliers on behalf and for the account of a NPO. The NPO receives directly its invoices under its own name and with possible local VAT.



Conferences & Seminars

A PCO is a global supplier

A PCO contracts with various suppliers in its own name but for the account of a NPO. Suppliers invoices are sent to the PCO which will in turn send one global invoice to the NPO including all expenses and its own coordination services.



PART IV: SUBSIDIES & GRANTS

Subsidies

Three categories:

- Subsidy « hides » payment for transaction in which the grantor is the beneficiary;
 - ❑ E.g.: a survey ordered by the European commission.

- Subsidy is directly linked to the price of a transaction operation in which the beneficiary is an identifiable third party;
 - ❑ E.g.: a contribution linked to the purchase of seats **for** a cultural event.

- Operating subsidy aimed at covering expenses
 - ❑ E.g.: Subsidy granted to cover operational costs.

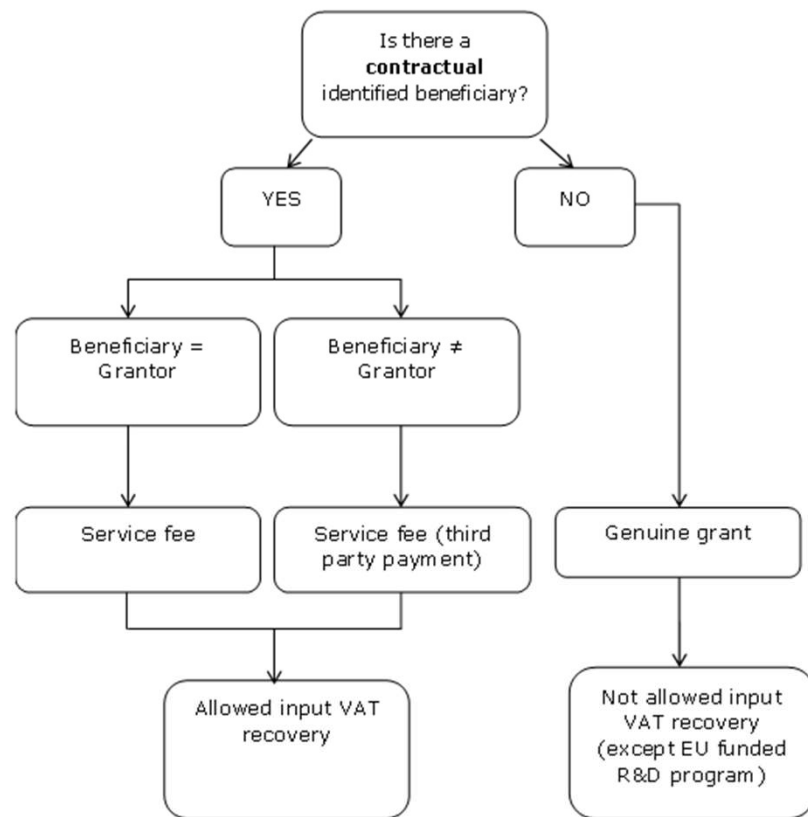
Subsidies

Impact on VAT status:

- Subsidy « hides » payment for transaction in which the grantor is the beneficiary: this a service falling into the VAT scope (input VAT recoverable);
- Subsidy is directly linked to the price of a transaction operation in which the beneficiary is an identifiable third party: this is part of the compensation service falling into the VAT scope ((input VAT recoverable);
- Operating subsidy aimed at covering expenses: this a pure financial flow without any underlying services (input VAT non recoverable).

EU Grants - Classification

- Operational grants : genuine subsidy;
- Call for tender: compensation of supply carried out by NPO but zero-rated;
- Call for actions: grey zone as it may be regarded as genuine subsidy or fee services depending on the scope of work/activities of NPO;
- Role of Coordinator and Partners (Consortium agreements): impact on VAT.



PART V: VAT LIABILITY ON PURCHASES

Intra-EU Purchases of Tangible Goods

NPO is held to self-assess VAT regarding purchases of goods shipped from abroad in the following situations:

- NPO qualifies as VAT-able person whose activities are not fully VAT exempt (normal or mixed VAT-able person);
- NPO qualifies as VAT-able person whose activities are fully VAT exempt (exempt VAT-able person): provided the annual threshold of € 11.200 is exceeded
- NPO qualifies as non VAT-able person: provided the annual threshold of € 11.200 is exceeded.

Purchases of Services – B2B Default Rule

NPO is held to self-assess VAT regarding purchases of services from provider established abroad (EU and beyond) in the following situations:

- NPO qualifies as VAT-able person whose activities are not fully VAT exempt (normal or mixed VAT-able person);
- NPO qualifies as VAT-able person whose activities are fully VAT exempt (exempt VAT-able person);
- NPO is a non VAT-able person **with** VAT registration number;
- NPO is a non VAT-able person **without** VAT registration number : NO
 - VAT due in the country where provider is established.

Exceptions

Services subject to derogating rules:

- Services in connection with real estate properties;
- Transport of passengers;
- Catering and restaurant;
- Admission right to events;
- Short-term lease of vehicles;

PART VI: RECOVERY OF INPUT VAT

Mixed Activities

- Where NPO carries out an activity which is partly subject to VAT, the recovery is proportional to the activities allowing VAT credit:
 - General proportion based on revenue
 - Numerator: total annual turnover subject to VAT
 - Denominator: total annual turnover
 - Direct attribution of costs: cost centers must be elaborated
 - Cost center: 100% input VAT recoverable
 - Cost center: 0% input VAT recoverable
 - Cost center overhead: allocation key to be determined

When & How?

- Input VAT is recoverable at the soonest points:
 - When payment is done (excluding intra-EU supplies of goods);
 - When goods are delivered or services are finished;
 - When invoice is issued (excluding intra-EU supplies of services).

- How?
 - In VAT returns;
 - Via specific claim procedure if incurred in a country where NPO is not established and not VAT-registered.

THANK YOU FOR YOUR ATTENTION!!


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