European VAT & Associations & Bird & Bird

UIA Roundtable

12 November 2013
Financial risks for the association and its members

Administrative sanctions

Criminal sanctions
Example of **financial risks** (in Belgium)

Liability to pay the **unduly deducted / unpaid VAT** and **interests for late payment**
Examples of administrative sanctions (in Belgium)

Absence of payment of VAT or abusive deduction of VAT: administrative fine = 2 times the VAT due
Examples of criminal sanctions (in Belgium)

**VAT fraud**: criminal fine 250-125.000 EUR and/or **8 days to 2 years imprisonment**

**VAT forgery**: criminal fine 250-125.000 EUR and/or **1 month to 5 years imprisonment**
How to avoid these risks?

Properly fulfil your association's VAT obligations, i.e.,
- invoice
- pay and
- get VAT refunds

as required by law
KEY

Analysis of:

• ACTIVITY OF ASSOCIATION (=> VAT STATUS OF ASSOC.)
• VAT STATUS OF MEMBERS
• MEANS OF FINANCE

To determine:

• VAT ON OUTGOING INVOICES
• VAT RECOVERY ON INCOMING INVOICES
Know your association's activity
Taxable VAT taxpayers
Exempt VAT taxpayers
Non-taxable persons
Do you supply goods and/or services to your members/contributors and/or to third parties?

Yes

On a regular basis (i.e., not occasionally)?

Yes

For consideration (i.e., not for free)?

Yes

Irrespective of the purpose or result of that activity?

Yes

Is there a direct link between the membership fees/contribution and the goods/services supplied to your members/contributors?

Yes

Are the goods/services supplied individually to your members?

Yes

What kind of goods/services do you supply to your members?

In the scope of VAT

Taxable activities

Regular taxpayer

Taxable & exempt activities

Mixed taxpayer

Exempt activities

Exempt taxpayer

Out of the scope of VAT

Partial taxpayer

In & out the scope of VAT

Non VAT taxpayer
Do you **supply goods and/or services to your members/contributors and/or to third parties**?

Yes

On a regular basis (i.e., not occasionally)?

Yes

For consideration (i.e., not for free)?

Yes

Irrespective of the purpose or results of that activity

Non VAT taxpayer
Is there a **direct link** between the membership fees/contribution and the goods/services supplied to your members/contributors?

- **No**

  Are the goods/services supplied **individually** to your members?

  - **No**
    - **Yes**
      - **What kind** of goods/services do you supply to your members?

        - **Non VAT taxpayer**

          - **Yes**
What kind of goods/services do you supply to your members?

- In the scope of VAT
  - Taxable activities: Regular taxpayer
  - Taxable & exempt activities: Mixed taxpayer
  - Exempt activities: Exempt taxpayer
- In & out the scope of VAT: Partial taxpayer
- Out of the scope of VAT: Non VAT taxpayer
Activities **out of the scope** of VAT?

Goods & services supplied **for free**:  
- No individualized beneficiaries (undefined/general public) **or**  
- No direct link between money received (input) and supply (output) **or**  
- Goods/services for free (no money or other form of consideration received in exchange for the goods/services supplied).
What kind of goods/services do you supply to your members?

- **In the scope of VAT**
  - Taxable activities
    - Regular taxpayer
  - Taxable & exempt activities
    - Mixed taxpayer
  - Exempt activities
    - Exempt taxpayer
- **In & out the scope of VAT**
  - Partial taxpayer
- **Out of the scope of VAT**
  - Non VAT taxpayer
**Taxable activities?**

Supplies of goods/services which are:
- **in** the scope of VAT **and**
- **not exempt**
What kind of goods/services do you supply to your members?

- **In the scope of VAT**
  - Taxable activities: Regular taxpayer
  - Taxable & exempt activities: Mixed taxpayer
  - Exempt activities: Exempt taxpayer

- **In & out the scope of VAT**
  - Exempt taxpayer
  - Partial taxpayer

- **Out of the scope of VAT**
  - Non VAT taxpayer
VAT exempt activities?

- Lobbying activities, trade associations and unions;
- Healthcare;
- Cultural activities;
- Education;
- Sports;
- Social security, welfare assistance, child protection;
- Organisation of conferences, concerts, shows;
- Goods/services supplied in order to get financial support.
Focus on **lobbying** activities:

"the supply of services to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations 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"
"supply of services"
"to their members"
"in their common interest"
"in return for a subscription"
"in accordance with their rules"
"by non-profit-making organisations"
"aims of a [...] trade-union (philanthropic or civic nature)"
"aims of a [...] trade-union"?

“defending and representing the collective interests of [the members of the association] vis-à-vis third parties (decision-makers, public authorities,...), in so far as one avails of a representative voice and strength in negotiation with third parties” = lobbying activities

(ECJ, Institute of the Motor Industry case, 12 November 1998, no. C-149/97)
Focus on lobbying associations **established in Brussels**

**Primary purpose** is defence of members’ interests and representation towards third parties

Other (otherwise taxable) services, such as studies, enquiries, publications, seminars, preparatory meetings in view of lobbying, can be regarded as **preparatory to the actual lobbying** and follow the same treatment

Exempt taxpayer

Defence of members’ interests and representation towards third parties is **complementary** to other services

The services mainly aim to further the economic or commercial interest of the members by rendering consulting services, providing information and making statistics, organising seminars or networking events, providing administrative or HR support, etc.

Lobbying is incidental to those services.

Regular taxpayer

Defence and representation are a **separate purpose** which cannot be considered primary or complementary to the other activities

- Several goals are being pursued without the possibility to identify the lobbying activity as principal purpose
  
  **OR**
  
  - The taxable services are being invoiced separately

Mixed taxpayer
Focus on education and sports:

"the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects"

"the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education"
Focus on culture:

"the supply of certain cultural services [...] by bodies governed by public law or by other cultural bodies recognised by the Member State concerned"
What kind of goods/services do you supply to your members?

- In the scope of VAT
  - Taxable activities
    - Regular taxpayer
  - Taxable & exempt activities
    - Mixed taxpayer
  - Exempt activities
    - Exempt taxpayer
- In & out the scope of VAT
  - Partial taxpayer
- Out of the scope of VAT
  - Non VAT taxpayer
Mixed taxpayers

- Taxable activities and
- exempt activities
What kind of goods/services do you supply to your members?

- **In the scope of VAT**
  - Taxable activities
    - Regular taxpayer
  - Taxable & exempt activities
    - Mixed taxpayer
  - Exempt activities
    - Exempt taxpayer

- **In & out the scope of VAT**
  - Partial taxpayer

- **Out of the scope of VAT**
  - Non VAT taxpayer
Activities in & out of the scope of VAT

- **Taxable** and/or **exempt** activities and
- Activities **out of the scope of VAT**
Partial taxpayer

Regular taxpayer

Non VAT taxpayer

Exempt taxpayer

Mixed taxpayer

Partial taxpayer
Most divergent regime:

Activities as listed in the articles of association and within the association's object are **not** deemed services

⇒ **NON-TAXABLE PERSON**
Some divergence:

"Non-business activities" (political, religious, cultural) within the context of the articles of association are not deemed services for VAT purposes

⇒ NON-TAXABLE PERSON
Legally in line, but factually...:

"Welfare" activities (recognized as such for income tax exemption purposes, like healthcare or education) do not render services
⇒ NON-TAXABLE PERSON

"Professional" activities (e.g. from trade associations) considered as services
⇒ VAT TAXPAYER

Exemption rules implemented, but factually seldom applied if also taxable activities are being rendered
⇒ (mostly) always regular VAT TAXPAYER
Not in line with EU principles:

turn-over < CHF 150,000

⇒ NON-TAXABLE PERSON

"passive members" – limited services not considered as services (membership fee is donation)

⇒ PARTIAL VAT TAXPAYER
Know your members/customers...
VAT STATUS
How to obtain the relevant information regarding your members?
Send a questionnaire to your members:

- VAT status
- VAT number
- VAT treatment of membership fee in their jurisdiction

Impact on reporting obligations (exempt in member jurisdiction or not?)
Distinction between non-taxable persons or exempt taxable persons is not obvious in many jurisdictions.
Send a questionnaire to your members:

- VAT status
- VAT number
- VAT treatment of membership fee in their jurisdiction

Send a clarifying note on distinction between exempt taxpayer and non-taxable person to avoid misunderstanding and accurate completion of the questionnaire
What if they don't know their VAT status or if they don’t answer to the questionnaire?

- Compile the information you have regarding your members in order to determine their respective VAT status

- Make the required assumptions
Which assumption can or should be made?

- If information (other than VAT number) sufficiently demonstrates that member is a taxable person acting as such for the transaction at issue

- Acting in good faith and having taken all reasonably required measures

⇒ VAT TAXPAYER
Which assumption can or should be made?

- EU resident member: no communication of VAT number

⇒ NON TAXABLE PERSON

(unless information to the contrary)
Which assumption can or should be made?

- Non-EU resident members: certificate issued by member’s competent tax authorities that member is engaged in economic activities

⇒ VAT TAXPAYER

(unless information to the contrary)
Check your information!

http://ec.europa.eu/taxation_customs/vies/?locale=en
VIES VAT number validation

You can verify the validity of a VAT number issued by any Member State by selecting that Member State from the drop-down menu provided, and entering the number to be validated.

Member State
VAT Number

Requester Member State:
VAT number

Verify
RESIDENCE
How to invoice?
HOW TO INVOICE?

Depends on the VAT status and residence of your members
How to invoice your members which are VAT taxpayers?

<table>
<thead>
<tr>
<th>VAT taxpayers (exempt or not) – B2B</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Within EU</strong></td>
<td><strong>Outside EU</strong></td>
</tr>
<tr>
<td>No local VAT</td>
<td>No local VAT</td>
</tr>
<tr>
<td>(foreign exemption rule may apply – e.g. lobbying ex.)</td>
<td>(non-EU VAT rules may apply)</td>
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<tr>
<td><strong>Note:</strong></td>
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<tr>
<td>Invoice must refer to reverse charge rule (except if foreign exemption applies)</td>
<td>Invoice must not refer to reverse charge rule</td>
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<tr>
<td><strong>Exception:</strong></td>
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<td>- Conferences &amp; exhibitions: place of event (only with respect to entrance fees)</td>
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Invoice without VAT – « reverse charge »

Membership fees (consideration for individual research)
Entrance fees for conference in the Netherlands

Invoice with Dutch VAT

Registration in NL!
Membership fees (consideration for individual research)

Invoice without VAT
How to invoice your members which are not VAT taxpayers?

<table>
<thead>
<tr>
<th>Non taxable persons (B2C)</th>
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<tbody>
<tr>
<td><strong>Within EU</strong></td>
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<td>Local VAT (unless local exemption rule would apply, e.g. lobbying)</td>
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<td><strong>Exception:</strong></td>
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<tr>
<td><strong>Note:</strong></td>
</tr>
<tr>
<td>Foreign VAT registration may be required if exception rule refers to EC jurisdiction</td>
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Association

Membership fees (consideration for individual research)

Member

Invoice with **Belgian VAT**
Invoice with **Belgian VAT**
(potentially exempt if exclusively for « advisory services »)
Association

Conference

Member

Entrance fees for conference in the Netherlands

Invoice with Dutch VAT

Registration in NL!
Recovering input VAT
How much of the input VAT you pay to your suppliers can you recover?

Depends on your VAT status!
Taxable VAT taxpayers

Recover 100%
Input VAT

100% output VAT
Exempt VAT taxpayers

Recover 0% input VAT

0% output VAT
No recovery of input VAT

Non-taxable persons

No VAT

Membership
Taxable VAT taxpayers

Non-taxable persons

Exempt VAT taxpayers
Mixed VAT taxpayer

Recover (75)% input VAT

OR

Recover 100% input VAT used for **taxable activities** and 0% input VAT used **exempt activities**

Invoice (75)% with VAT - (25)% exempt
Partial VAT taxpayer

Invoice (75)% with VAT - (25)% non-taxable

Recover (75)% input VAT

OR

Recover 100% input VAT used for **taxable activities** and 0% input VAT used for **non-taxable activities**

No specific rules
Grants, subsidies and public funding
Grants, subsidies and public funding

Three types of subsidies

- Subsidies linked to prices
- Subsidies for the general functioning of the association
- “Fake” subsidies
Subsidies linked to prices

- Proportional relation between subsidy and price reduction
- Subsidy is part of purchase price
  \[ \Rightarrow \text{VAT on PRICE} + \text{SUBSIDY} \]
Subsidies for the general functioning of the association

- Subsidy not subject to VAT
- No impact on the right to deduct input VAT
“Fake” Subsidies

- Naming of price as “subsidy” has no influence on the fact that it constitutes remuneration for a service/good
  ⇒ VAT on SUBSIDY
Conclusion
So now you should know whether ...

1. To invoice or not to invoice?

2. If to invoice:
   - How to properly invoice?
   - if and how much input VAT to recover?

3. How do I treat subsidies?
Thank you & Bird & Bird

Brent Springael +32(0)2 282 6042
brent.springael@twobirds.com

Sylvain Lemaire +32(0)2 282 6000
sylvain.lemaire@twobirds.com