

NON-PROFIT ASSOCIATIONS – APPLICABLE VAT ON MEMBERSHIP FEES AND ANNUAL MEETINGS OR CONFERENCES

As a consequence of the implementation of the VAT Package since 1 January 2010, certain localisation rules have changed, impacting on (i) the applicable VAT on the membership fees of non-profit associations, as well as (ii) on the organisation of an annual meeting or conference of the members.

We have established a FAQ of the most recurrent questions regarding the invoicing of membership fees and conferences and seminars. The information below is based on the assumption that the non-profit organisation is itself a VAT taxable person (whether exempted or with a right to deduct input VAT).

1. How does a Belgian non-profit association (ASBL/VZW - AISBL/IVZW, hereinafter the “Belgian Non-Profit Association”) invoice a membership fee to a member from another Member State that has a VAT number?

Because the member has a VAT number, it is a taxable person. Therefore, the operation is considered a so-called “Business-to-Business” transaction. Hence the B2B localisation rule applies, which refers to the VAT rules of the member.

E.g. If the member is established in France, and has a French VAT number, French VAT applies to the invoicing of the membership fee.

If the Belgian Non-Profit Association does not have a French VAT number, the reverse charge rule applies. This encompasses that no French VAT should appear on the invoice, but only mentions that, in accordance with article 196 VAT Directive, the (French) VAT is to be paid by the beneficiary of the services.

For auditing purposes, the Belgian Non-Profit Association must file an intracommunity sales listing indicating that services were provided to the (French) member.

2. How does a Belgian Non-Profit Association invoice a membership fee to a member from another Member State that does not have a VAT number?

If the member is not identified for VAT in its own State, one should still verify if the member is a non-taxable person, or if it is an exempted taxable person to whom the local VAT authorities refuse to grant a VAT number. The latter is likely to happen in Greece, Germany and Italy.

It is important to determine the VAT status of the beneficiary of the services because it will determine which VAT localisation rules apply.

If the beneficiary is a non-taxable person, then the VAT of the supplier (the Belgian Non-Profit Association) applies, thus Belgian VAT.

If the beneficiary is a taxable person, which entails that the member is a legal entity which provides services (ancillary supplies) in return for (i) a membership fee, or (ii) a separate fee (regardless of whether it is exempted, not exempted or mixed), then its Member State should normally provide a VAT number and the transaction must be indicated in the suppliers VAT declaration (box 47). If the VAT authorities nevertheless refuse to do so, the Belgian Non-Profit Association has no choice but to apply Belgian VAT in order to avoid sanctions.

3. How does a Belgian Non-Profit Association invoice a membership fee to a member not established in the EU?

If the member is a non taxable person, then Belgian VAT applies.

E.g.: the member is established in the USA and exclusively funded by subsidies.

If the member is a taxable person, the supply of services in exchange for the membership fee is located abroad. Hence no Belgian VAT applies.

4. How does a Belgian Non-Profit Association invoice the participation to its annual meeting?

Because the participation to an annual meeting or conference falls within the 5 exceptions to the B2B general rule (VAT rules of the supplier), it is strongly recommended to invoice it separately from the membership fee.

The services pertaining to the participation to an annual meeting or conference can be considered as services of organizers relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions.

Until 31 December 2010, the participation to conferences falls under the VAT rules of the State where the event/conference takes place. As of 1 January 2011, this exception only applies to the entrance or "admission". Therefore, aside from the entrance exception, the general B2B rule will apply to such events.

However, there is no statutory definition of the notion "related to the admission to". This lack of definition is currently under discussion at EU level (VAT Committee), but it could be assumed that it pertains to the physical and local payment of an entrance ticket to the event. This could mean that if the participation is paid upfront, the general B2B rule will apply, hence the place where the beneficiary of the service (the participant to the meeting) is established.

However, one must note that the Belgian VAT authorities define it as the permission to enter in a place where the event will take place, by means of an entrance ticket, irrespective of whether or not the participation to the event was paid upfront. This entails that a breakdown should be made, between the part of the fee that strictly relates to the admission to the event (entrance fee is subject to VAT rules of the State where the event/conference takes place), and the rest of the fee that does not relate to the admission to the event (general B2B rule).

The legal answers to the 4 FAQ's can be summarized as follows:

THE MEMBER IS A NON-TAXABLE PERSON		THE MEMBER IS A TAXABLE PERSON	
Within EU	Outside EU	Within EU	Outside EU
<u>General rule:</u> Belgian VAT (unless exemption applies)	<u>General rule:</u> Belgian VAT (unless exemption applies)	<u>General rule:</u> No Belgian VAT <i>NOTE: the invoice must refer to reverse charge rule (article 196 VAT Directive) and but filing intracommunity sales list</i>	<u>General rule:</u> No Belgian VAT <i>NOTE: the invoice must <u>not</u> refer to a reverse charge rule and no filing of intracommunity sales listing</i>
<u>Exception:</u> conferences and exhibitions: VAT of place of event <i>NOTE: In case the exceptions would apply and the localisation rule does not refer to Belgium, the Belgian Non-Profit Association must register in that other jurisdiction for VAT purposes !</i>	<u>Exceptions:</u> conferences and exhibitions: VAT of place of event	<u>Exception:</u> conferences and exhibitions: VAT of place of event (as of 1 January 2011 – only with respect to entrance fee)	<u>Exception:</u> conferences and exhibitions: VAT of place of event (as of 1 January 2011 – only with respect to entrance fee)

JUNE 2010 – p. 2

Alain COSTANTINI, avocats

Bird & Bird - Avenue d'Auderghem, 22-28 - 1040 Bruxelles

tel : +32 2 282 60 00- fax: +32 2 282 60 11

email: Alain.Costantini@twobirds.com - web : www.twobirds.com