

BEREC Office ref. № MC (13) 21

QUESTIONS AND ANSWERS

In relation to Call for Tenders № 2013-BEREC-OT-01

PROVISION OF PROFESSIONAL EVENT ORGANISATION SERVICES IN EUROPE AND/OR IN THE REPUBLIC OF LATVIA FOR BEREC AND BEREC OFFICE EVENTS

Contract Notice № 2013/S 045-071537 of 05/03/2013

Session 4

Question on value added tax (VAT):

Tender specifications, page 12, financial section: It is mentioned that VAT exemptions is granted to the BEREC office and for countries where legislation provides an exemption in terms of reimbursement then the amount of VAT is shown separately. We are actually registered and based in a Member State different from the one where the BEREC Office has its seat and our national tax legislation prevents us from applying and getting VAT reimbursements. We understand the total budget amount for both Lot 1 and Lot 2 is EUR 420 000 VAT excluded. We also understand our obligation to show VAT separately for services we are to provide. This VAT amount forms part of the overall budget above? Please could you clarify this point as for all the services we will present we have to pay VAT to all our suppliers?

Answer:

The BEREC Office is exempt from duties and taxes and, in particular, value added tax (VAT), under Articles 3 and 4 of the Protocol on the privileges and immunities¹ (PPI), which is applicable to the BEREC Office in all the Member States in compliance with Article 23 of the Regulation (EC) No

¹ At present, this protocol is referred to in Article 343 of the Treaty on the Functioning of the European Union and is attached to the Treaty on European Union as Protocol No 7 (OJ C 83, 30.3.2010), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008M/PRO/07:EN:HTML>

1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

Other legal acts which further specify the exemption of the BEREC Office from VAT (and other indirect taxes) where the BEREC Office makes substantial purchases within the EU for official use are:

- The Seat Agreement² between the BEREC Office and the Government of the Republic of Latvia concluded on 24 February 2011, in force as of 5 August 2011 and in particular Article 8 (2) and (3), applicable to local purchases³;
- Directive 2006/112/EC⁴ ("the VAT Directive") and in particular Article 151(1)(aa), which lays down the exemptions for the EU institutions as refers to the PPI, applicable to intra-Community purchases⁵.

Therefore, the distinction between a local purchase and an intra-Community purchase is crucial for determining which VAT rule to apply in each case. Furthermore, whether there is a case of refund or of direct exemption of VAT depends on the place where the service is taxable and of the kind of service provided.

According to the basic rule, the place of supply of services to a non-taxable person (such as the EU institutions and the BEREC Office) shall be the place **where the supplier has established his business**. However certain services are **taxable at the place of the event**, such as catering services, renting of locations, as well cultural, artistic, sporting, scientific, educational, entertainment or similar events (such as fairs and exhibitions), including the activities of the organisers.

For local purchases the Republic of Latvia applies exemption from VAT, excise duty and other indirect taxes by means of a tax refund.

For intra-community purchases most of the EU Members States apply direct exemption with the exception of Portugal, which applies reimbursement and France, which applies a general system of reimbursement but also direct exemption from VAT for the services referred to in Article 59 of VAT Directive 2006/112/EC.

For countries which apply direct exemption the BEREC Office will provide the contractor with a VAT and/or Excise Duty Exemption Certificate (known also as form 15.10). For those countries where national legislation provides an exemption by a reimbursement, the amount of VAT is to be shown separately on the invoice.

² Seat Agreement between the BEREC Office and the Government of the Republic of Latvia, available at: http://bereg.europa.eu/eng/document_register/subject_matter/bereg_office/others/1032-seat-agreement-between-the-bereg-office-and-the-government-of-the-republic-of-latvia

³ Local purchases of services are those for which the place in which the transaction is taxed is the same Member State in which the institution, as the customer placing the order, has its headquarters.

⁴ Since 01.11.2007 VAT has been regulated by Directive 2006/112/EC (the VAT Directive) of 28.11.2006 (OJ L 347, 11.12.2006) which codified and replaced Directive 77/388/EEC (the Sixth VAT Directive). Directive 2006/112/EC has since been amended substantially on a number of occasions. A consolidated version of the Directive is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20130101:EN:PDF>

⁵ Intra-Community purchases of services are purchases where the transaction is taxed in a different Member State from that in which the institution placing the order has its headquarters.

In any case in order to apply the relevant rules for VAT the BEREC Office must be the 'customer' of the services provided and therefore the invoice must be drawn up **in the name of the BEREC Office** and the expenditure incurred borne directly by the BEREC Office.

Therefore it has to be emphasised that the exemption from VAT under the PPI is applicable only in the relationship between the BEREC Office and the Member State in which VAT is payable. The VAT exemption applies to the purchases made only by the BEREC Office and is not transferable to its contractors and their purchases, even if they are related to the contract with the BEREC Office.

The BEREC Office takes this opportunity to emphasise that any prospective contractor has to pay sufficient attention to the obligations envisaged in Article II.15.4 "Invoices and VAT" of the model framework service contract (hereinafter "FWC"), which stipulates the following:

"Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the order form or specific contract.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption."

As specified by the BEREC Office in the tender specification, section 4.3. "Financial Section", in case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his national authorities to clarify the way in which the BEREC Office is exempt from VAT. Short overview of the different national VAT regimes and the information about the national authorities in charge of the implementation of the VAT rules at national level, including VAT exception is available on the web site of the European Commission⁶, as follows:

 [Austria](#)  (81 Kb)

 [Germany](#)  (79 Kb)

 [Netherlands](#)  (106 Kb)

 [Belgium](#)  (122 Kb)

 [Greece](#)  (84 Kb)

 [Poland](#)  (126 Kb)

 [Bulgaria](#)  (84 Kb)

 [Hungary](#)  (89 Kb)

 [Portugal](#)  (83 Kb)

 [Cyprus](#)  (83 Kb)

 [Ireland](#)  (81 Kb)

 [Romania](#)  (114 Kb)

⁶ http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_community/index_en.htm

 [Czech Republic](#)  (59 Kb)

 [Italy](#)  (89 Kb)

 [Slovakia](#)  (98 Kb)

 [Denmark](#)  (87 Kb)

 [Latvia](#)  (82 Kb)

 [Slovenia](#)  (77 Kb)

 [Estonia](#)  (62 Kb)

 [Lithuania](#)  (90 Kb)

 [Spain](#)  (183 Kb)

 [Finland](#)  (69 Kb)

 [Luxembourg](#)  (85 Kb)

 [Sweden](#)  (80 Kb)

 [France](#)  (103 Kb)

 [Malta](#)  (87 Kb)

 [United Kingdom](#)  (122 Kb)

Furthermore, as far as the **maximum cumulative value of all purchase orders and specific contracts** to be concluded for all lots during the total maximum duration of the FWC of **EUR 420 000** [four hundred and twenty thousand] is concerned, **this amount is without VAT**.

The tenderers have to quote the net price for the lot they are bidding for. In cases when they are legally obliged to quote prices with VAT, they have to quote the process as follows: net price, % of VAT, VAT amount.

In any case **the financial offers of all tenderers will be evaluated on the basis of their net offers – exclusive VAT.**

Riga, 27 March 2013