

Crowdfunding and VAT

Input newsletter

On 11th November 2015, the VAT Committee published guidelines regarding the VAT treatment applicable to crowdfunding transactions.

Nowadays, crowdfunding is becoming more and more popular and it is often seen as a space of freedom, safe from the usual legal and tax rules applicable to more traditional funding, thanks to its “participative” character. Despite this perception, however, these legal and tax rules do remain applicable and the publication of the VAT Committee guidelines regarding crowdfunding on 11th November 2015 is a useful reminder of this.

The VAT Committee is composed of representatives of the different national VAT authorities of the 28 EU Member States. It meets on a regular basis and issues guidelines that are **not binding** on the EU Commission, national tax authorities, or taxpayers. Some of these guidelines are agreed “unanimously”, some “almost unanimously” (meaning agreed by 24 to 27 Member States), and some by “a large majority” (meaning agreed by 19 to 23 Member States). The disagreeing Member States are not identified.

Being discussed by top representatives of the different national administrations, **these guidelines, even if not binding, are extremely useful high-level guide for businesses and practitioners.**

VAT treatment of contributions

All Member States agree that goods and services received by a person contributing to a reward-based crowdfunding scheme (“the contributor”) in return for their contribution (“the reward”) **should be subject to VAT** to the extent that:

- a. there is a direct link between the reward and the contribution; and
- b. the person providing the reward is a taxable person from a VAT perspective (e.g. the reward being granted by a business would normally be subject to VAT, but granted by a purely charitable operation would not).

Where the potential reward is identified prior to the contribution being made, the Member States unanimously agreed that the making of the contribution is the trigger for VAT to be due on the reward.

The Member States unanimously agreed that the value of the reward being lower than the contribution made does not prevent these transactions being in the scope of VAT and, therefore, subject to VAT.

The value of the reward for the purposes of calculating the VAT due was unanimously agreed to **not be the open market value**, but is describes as being a subjective value without more details provided in the guidelines. In order to calculate the VAT due, therefore, it will be necessary to analyse the relevant dispositions of the European and national legislations in each case. In principle, however, the taxable basis should be **the purchase or cost price** of the reward for the taxable person making the supply.

It was agreed almost unanimously, however, that rewards which have a subjective value which is negligible or totally unrelated to the value of the contribution, the reward could be seen as a donation, rather than a supply in the scope of VAT. In addition, no VAT will be due in case of goods given **as sample or gift of small value**. Unfortunately, unlike many other national VAT regimes, the Luxembourg VAT law does not set a precise amount that would be considered a “small value”, so this would need to be assessed on a case-by-case basis.

VAT treatment of financial reward

Where the contributor receives a financial reward, the VAT treatment should depend on whether this financial reward is made in the form of intellectual property rights or as securities.

The Member States unanimously agreed that both forms of financial reward fall within the scope of VAT, however, the **transfer of intellectual property rights should be subject to VAT, while the supply of shares or securities is considered to be VAT exempt**.

Interest on loans

Where the contributor makes their contribution via an **interest-bearing loan**, wherein the interest received by the contributor constitutes the reward, it was unanimously agreed that this is a VAT exempt activity.

Crowdfunding platforms

It was unanimously agreed by the Member States that a crowdfunding platform supplying services to entrepreneurs is to be considered as **carrying out an economic activity**. Furthermore, it was almost unanimously accepted that the supplies of services made by these platforms should be subject to VAT unless they could qualify as exempt financial services.

Comment

Even though these guidelines are not binding, the fact that they were all either unanimously or almost unanimously adopted demonstrates that the positions set out therein are generally representative of the views of the VAT authorities of the Member States. They are also a useful reminder that crowdfunding, even if it is of a mere “participative” or “alternative” nature, **remains part of the economic sphere with all related VAT consequences**. In particular, consideration should be given to the nature of the reward granted to the contributors in return for their contribution, as different rewards may have very different VAT implications and ignoring this could lead to very unpleasant consequences for the crowdfunding platform. **The crowdfunding community cannot, therefore, ignore VAT rules and their impacts.**

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