

## ANNEX J

### INFORMATION ON THE TAX REGIME APPLICABLE TO GRANT CONTRACTS SIGNED UNDER EuropeAid/135807/DD/ACT/RS

#### 1. Legal Framework

Taxes concerned by this Annex are indirect taxes such as value added taxes, customs and import duties, other fiscal charges and duties.

Taxes, including VAT are not eligible, therefore, they will be considered as part of the estimated total accepted costs of the action for the purpose of co-financing provided the Beneficiary (ies) (or, where applicable, its affiliated entity(ies)) can show they cannot reclaim them.

The European Commission and the Republic of Serbia have agreed in the Framework Agreement signed on 29/11/2007 to fully exonerate the following taxes: customs duties, import duties, taxes or fiscal charges in connection with import, value added tax, documentary stamp or registration duties or fiscal charges having an equivalent effect.

It is the grant applicant's obligation to familiarise itself with the applicable tax regime, for example by addressing the competent authorities of the relevant administration in the country in which the applicant is established and/or of the partner country or countries.

Please note that VAT is not eligible where it is paid by a public body<sup>1</sup> of a Member State in relation to activities it carries out as a public authority of a Member State. These activities are strictly limited to the exercise of sovereign powers or prerogatives of a Member State (police, justice and public domain management)<sup>2</sup>.

#### 2. How can the Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) show that it is not tax-exempted and that it cannot recover taxes?

The grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) must show that it is not tax exempted and that it cannot recover taxes under the applicable national law. The grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) will have to *prove that it has undertaken the necessary steps to obtain an exemption or the recovery of paid taxes vis-à-vis the relevant authorities*.

This evidence may take the following forms:

- An official document from the competent tax authority stating that the entity is not entitled to reclaim taxes incurred for the activities in question (and that this does not depend on the simple fact that it does not wish to be subject to VAT). This official document may be a specific declaration or a refused claim for reimbursement by the competent tax authority.
- The absence of a reply by the competent tax authority within the legal deadline set by the applicable national law to a request submitted in due time (or 6 months in the absence of a legal deadline).
- The entity's annual accounts complemented, if deemed necessary by the Contracting Authority, for example by an extract of the national VAT tax law showing that the entity does

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<sup>1</sup> 'Public body' means a body governed by public law being part of public administrations. This implies that private bodies entrusted with public activities are never considered as acting as public authorities for this purpose.

<sup>2</sup> VAT on activities such as training, capacity building, technical assistance, policy support etc. is therefore eligible.

not have to account for VAT, a declaration of honour from the entity concerned accompanied by an expert statement (e.g. by a lawyer, auditor etc.).

The grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) shall provide the evidence at the latest when submitting the final report.

### **3. Exceptions to the proof obligation**

In the following cases, the grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) will not be required to seek exemption or provide proof of non-recovery of taxes.

However, the no-profit rule must be obeyed in all cases, except where a derogation is provided for in the Grant Contract. A grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) that is not required to submit such proof must therefore certify that the taxes paid by the EU funding or covered by its share of co-financing will ultimately not be recovered from the local tax authorities.

The Contracting Authority has agreed to waive the proof obligation in the following cases:

- 1) **Low value taxes:** no proof needs to be provided for taxes for expenses where the amount of taxes per invoice is less than EUR 200, within a maximum of EUR 2 500 per contract, representing not more than 5 % of the Contracting Authority's contribution.
- 2) **Reimbursement of local expenses, including all taxes:** the following cases will be considered as proof that the grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) has attempted to take the necessary steps to obtain exemption or recovery of taxes from the competent authorities:
  - a) **Excessive cost for tax recovery**
    - i) the grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) demonstrates that the steps necessary for recovery of taxes oblige it to incur costs in a country where it only performs the relevant operations on an ad hoc, one-off basis; and/or
    - ii) the grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) shows that the recovery costs (registration fees in the country or the cost of appointing a tax representative, declaration fees, etc.) clearly exceed the amount of the taxes declared to the Contracting Authority.
  - b) **Excessive length of time for obtaining tax exemption:** where a mechanism for tax exemption has to be agreed for by the relevant authorities prior to the purchase of goods or services and where the grant Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) can demonstrate that the excessive length of time for this prior authorisation endangers the implementation of the Action.
- 3) **Crisis situation:** no proof needs to be provided where a country has been declared in crisis or in need of emergency and post-emergency assistance by the European Commission up to publication of guidelines (or corrigendum) and as long as the country remains in that situation. Grant applicants that are invited to submit a full proposal will be informed whether the country(ies) referred to in their proposal has (have) been declared in crisis.

The Beneficiary(ies) (or, where applicable, its affiliated entity(ies)) must prove that the above requirements have been met at the latest when submitting the final report.