

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.3 Origin: Commission**
References: Articles 2(1)(b) and (c), 65, 73 and 135(1)(b) and (f)
Subject: VAT treatment of crowdfunding
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1. The VAT Committee **unanimously** agrees that reward-based crowdfunding, where the person giving funds to a crowdfunding campaign (“the contributor”) receives in exchange for a contribution a non-financial reward in the form of goods or services from the person receiving funds from contributors through a crowdfunding campaign (“the entrepreneur”), shall constitute a taxable transaction for VAT purposes, provided that there is a direct link between the supply of goods or services and its corresponding consideration collected by way of crowdfunding, and that the entrepreneur is a taxable person acting as such.

Where reward-based crowdfunding constitutes a taxable transaction and accounting for the fact that a contribution is typically given by the contributor before any goods or services are supplied in exchange, the VAT Committee **unanimously** agrees that the contribution may be regarded as a payment made on account of those goods or services on which VAT shall become chargeable upon receipt of the payment pursuant to Article 65 of the VAT Directive, provided that the goods or services to be supplied are precisely identified when the payment on account is made.

Given that transactions are subject to VAT pursuant to Article 2 of the VAT Directive if goods or services are supplied by a taxable person for consideration, and that that “consideration” has been defined by the Court of Justice of the European Union as being a subjective value and not the open market value, the VAT Committee **unanimously** agrees that although the open market value of the goods or services supplied by the entrepreneur to the contributor may be lower than the amount of the contribution received, such transactions shall in principle fall within the scope of VAT.

The VAT Committee however **almost unanimously** agrees that where the open market value of the goods or services supplied by the entrepreneur in return for the contribution given is lower than the amount of the contribution received, crowdfunding may be assimilated to a donation but only in cases where the benefit received by the contributor is negligible or totally unrelated to the amount of the contribution. In such circumstances, where the benefit received by the contributor consists of goods forming part of the business assets of the entrepreneur other than goods applied for business use as samples or as gifts of small value, or of services that the entrepreneur carries out, the VAT Committee concurs **almost unanimously** that the application of those goods or the carrying out of those services shall be subject to VAT in accordance with Articles 16 or 26 of the VAT Directive.

2. As to crowd-investing, where the financial reward received by the contributor of a crowdfunding campaign from the entrepreneur takes the form of participation in future profits by means of intellectual property rights, the VAT Committee **unanimously** agrees that the transfer of such intellectual property rights shall constitute a taxable supply, provided that the conditions laid down in Article 2 of the VAT Directive are met. On the other hand, if the financial reward received by the contributor of a crowdfunding campaign from the entrepreneur takes the form of securities, such as shares or bonds, the VAT Committee **unanimously** agrees that its supply may be exempt under Article 135(1)(f) of the VAT Directive, depending on the type of security.
3. Regarding crowd-lending, where the financial reward received by the contributor of a crowdfunding campaign from the entrepreneur takes the form of interests on loans, the VAT Committee **unanimously** agrees that insofar as the contributor is a taxable person, the granting of credit to the entrepreneur shall be a taxable transaction exempt pursuant to Article 135(1)(b) of the VAT Directive.
4. The VAT Committee **unanimously** agrees that, for VAT purposes the activity of crowdfunding platforms supplying services to entrepreneurs shall constitute an economic activity. The VAT Committee further **almost unanimously** agrees that the supply of such services shall fall within the scope of VAT and must be taxed unless what is provided consists in financial services exempted under Article 135(1) of the VAT Directive.