

ANNEX J

INFORMATION ON THE TAX REGIME APPLICABLE TO GRANT CONTRACTS SIGNED UNDER THE CALL FOR PROPOSALS EuropeAid/131792/C/ACT/Multi

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 in beneficiary countries.

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 (or, where applicable, its partners) can prove it cannot reclaim them.

The European Commission has concluded several agreements with different third countries by which EU funded projects are partially or totally exonerated of certain taxes. It is the grant applicant's obligation to familiarise itself with the generally 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 beneficiary country or countries.

2. How can the Beneficiary show that it is not tax-exempted and that it cannot recover taxes?

The grant Beneficiary must show that it is not tax exempted and that it cannot recover taxes under the applicable national law. The grant Beneficiary will hence have to *prove that it (or partners) 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:

- 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.
- 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 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 Beneficiary 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 will be exempted from seeking exemption or providing proof of non-recovery of taxes. In any event, the rule of non-profit must be respected in all cases, except where a derogation to the non-profit rule is provided for in the Grant Contract. To this end, the grant Beneficiary receiving a waiver to submit such proof must certify that the taxes paid by the EU funding or covered by his/her 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:

a) Low value taxes: no proof must 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.

b) Reimbursement of local expenses, including all taxes: the following cases may be considered as proof that the grant Beneficiary has initiated the necessary steps to obtain exemption or recovery of taxes from the competent authorities (all the following conditions must be met):

- i) Where the grant Beneficiary demonstrates that the steps necessary for recovery of taxes oblige him to incur costs in a country where it only performs the relevant operations on an ad hoc and isolated basis;
- ii) These costs for recovery (e.g., registration fees in the country or the costs for appointing a tax representative, declaration fees, etc.) clearly exceed the amount of the taxes declared to the Contracting Authority.

c) crisis situation: no proof must be provided where a country has been declared in crisis situation or in the need for emergency and post-emergency assistance by the European Commission up to publication of guidelines (or corrigendum) and as long as the country remains in such a situation. Grant applicants that are invited to submit a full proposal will be informed whether the concerned country (ies) by their proposal has (have) been declared in crisis.

d) Projects for the protection of fundamental rights of peoples: In the context of projects with a human rights dimension, it is understood that in these cases an attempt to recover taxes is not necessarily possible, by virtue of the nature of the project and/or the context of the intervention.

The Beneficiary shall prove that the above requirements are met at the latest when submitting the final report.