

INSIGHTS ON THE TAX ISSUES OF EUROPEAN RESEARCH INFRASTRUCTURES

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ELRI Conference - Trieste - 24-25 September 2014

The evolving landscape of Research Infrastructures in Europe

OUTLINE

BRIEF OVERVIEW OF TAX LANDSCAPE OF RIs

RIs & TAXES - 3 MAIN SITUATIONS

Treaty-based organizations

ERICs

National legal forms

REVIEW OF EXPERIENCES WITH ERICs & AISBLs

THE CASE FOR EXEMPTION

THE TAX LANDSCAPE OF RIs

TYPES OF TAXES

Taxes on income (corporate tax, capital gains)

Social security contributions

Taxes on payroll and workforce

Taxes on property

Taxes on goods and services (VAT, excises)

Customs duty

RI SPECIFICITIES

Biggest cost categories: payroll, equipment, energy

International dimension

Non-profit activities

STRONG INFLUENCERS

Legal form

National jurisdiction

Interpretation

3 MAIN SITUATIONS

TREATY-BASED RIs

International organizations (CERN)
RIs using national legal forms (XFEL, ESRF)

ERICs

NATIONAL LEGAL ENTITIES

Limited liability company, foundation, association

TREATY-BASED RIs

International organizations

Traditional immunities and privileges

Conditions defined in treaty

Implementation via bilateral agreements

Example: CERN (Article IX of CERN Convention)

The Organization and the representatives of Member States on the Council, the members of any sub-ordinate bodies established under paragraph 12 of Article V, the Directors-General and the members of the staff of the Organization shall be accorded, in the metropolitan territories of Member States, by virtue of agreements to be concluded between the Organization and each Member State concerned, such privileges and immunities, if any, as they agree to be necessary for the exercise of the functions of the Organization.

TREATY-BASED RIs

Treaty-based RIs using national legal forms

Possibility to define specific exemptions in convention

Example: ESRF (Article 7 of ESRF Convention)

(1) The Company is subject to French value added tax.

Contributions by Members established outside France shall not be subject to value added tax in France. This provision does not limit the right of the Company to deduct.

(2) Goods imported by the Company from other countries shall benefit from exemption from customs duties in accordance with the regulations of the European Community.

ERICs

EXEMPTION REGIME

An ERIC is recognized by the country hosting its seat as an international body or organisation for the purposes of the directives on value added tax (VAT) and excise duties.

Conditions

- 1/ Declaration of host country recognizing ERIC as international body/ organization for the purposes of VAT and excise duties directives
- 2/ Stipulation of conditions and limitations of the exemption in an agreement between the members of the ERIC or in a host agreement.

ERICs

STATUS REPORT

9 ERICs established so far:

- 1/ European surveys (SHARE and ESS) and
- 2/ Other ERICs: distributed infrastructures in the area of materials, biological and medical sciences, environmental sciences and social sciences and humanities

15 ERICs expected by end 2015

20 out of 48 ESFRI projects using or planning to use the ERIC form

5 different host countries

ERICs

EXAMPLE: DARIAH-ERIC (Art. 23 of Statutes)

3. VAT exemption (...) shall be limited to the value added tax for such goods and services which are for official use by DARIAH ERIC, exceed the value of EUR 150, and are wholly paid and procured by DARIAH ERIC. Procurement by individual Members shall not benefit from these exemptions.

4. VAT exemption shall apply to non-economic activities, not to economic activities.

5. VAT exemption shall be applied to goods and services for the scientific, technical and administrative operations undertaken by DARIAH ERIC in line with its principal tasks. This also includes expenses for conferences, workshops and meetings directly linked to the official activities of DARIAH ERIC. However travel and accommodation expenses shall not be covered by VAT exemption.

ERICs

EXAMPLE: SHARE-ERIC (Art. 13 of Statutes)

5. Excise goods as defined in points (b) and (c) of Article 1(1) of Council Directive 2008/118/EC (OJ L 9, 14.1.2009, p. 12) may be granted an exemption from payment of excise duty in accordance with point (b) of Article 12(1) of that Directive **provided that those excise goods are intended exclusively for official use by the SHARE-ERIC and are procured and paid for by it.**

No exemption from payment of excise duties shall be granted for excise goods intended for the personal use of the SHARE-ERIC employees or of third parties.

ERICs

NEW DEVELOPMENT: CERIC-ERIC (Art. 5 of Statutes)

5. **VAT, Excise Duty and other exemptions** granted, based on Articles 143(1) (g) and 151(1)(b) of Council Directive 2006/112/EC and in accordance respectively with Articles 50 and 51 of Council Implementing Regulation (EU) No 282/2011, and on Article 12 of Council Directive 2008/118/EC, **shall only apply to purchases made by CERIC-ERIC as well as to those made by each Member, in direct connection with and for the official and exclusive use of CERIC-ERIC, provided that such purchase is made solely for the non-economic activities of CERIC-ERIC in line with its activities. VAT exemptions shall be limited to purchases exceeding the value of EUR 300.**

6. CERIC-ERIC shall record the costs and revenues of its **economic activities** separately and shall charge market prices for them, or, if these cannot be ascertained, full costs plus a reasonable margin. **These activities shall not be covered by tax exemptions.**

ERICs

NEW DEVELOPMENT: CERIC-ERIC

In-kind contributions made by Members benefit from VAT exemption

Conditions:

- 1/ direct connection with and for the official and exclusive use of CERIC-ERIC
- 2/ In line with activities
- 3/ Non-economic

Additional institutional condition:

Article 16: An Independent Audit Expert Body shall be established by the General Assembly to certify that purchases acquired for use as in-kind contributions, that are included by the General Assembly in the Annual Budget of CERIC-ERIC, comply with the requirements set out in Article 7(5).

Main implementation issue: local tax jurisdictions to decide on whether exemption should apply to representing entities

ERICs

CONCLUSIONS ON CURRENT STATUS

Main issue: some time was needed for Member States to adopt the appropriate measures and procedures for being able to host or for becoming a member of an ERIC
Internal decision making procedures have been adopted to organise and speed up the internal approval process.

No serious issues on use of tax exemption

CERIC-ERIC to pioneer the implementation of exemption for in-kind contributions

NATIONAL LEGAL FORMS

EXAMPLE: AISBLs (PRACE, ELI-DC)

Main tax issues:

- 1/ Taxation of membership fees
- 2/ Taxation of in-kind contributions

Critical questions:

- 1/ Tax nature of the activities of the AISBL
- 2/ Are the Members the primary and direct beneficiaries of the activities
- 3/ Should in-kind contributions be regarded as services and be subject VAT?

NATIONAL LEGAL FORMS

EXAMPLE: AISBLs

PRACE-AISBL

- 1/ Membership fees (cash) not subject to VAT (primary / direct beneficiary of activities is the scientific community)
- 2/ In-kind contributions not subject to VAT: direct contractual relation between access provider and user

ELI-DC AISBL

- 1/ Due contributions not subject to VAT (primary / direct beneficiary of activities is the scientific community)
- 2/ In-kind contributions not subject to VAT

CONCLUSION

THE CASE FOR EXEMPTION

FLASHBACK - DEBATE ON THE EXEMPTION OF ERICs

- Conflict within EC on legal basis for exemption
 - DG RTD in favor of granting VAT exemption at national level with ERIC based on Article 171 TEU instead of Taxation Chapter
 - Consequences on inter-institutional decision-making process (discussed by Research and Competitiveness Council with qualified majority instead of unanimity within ECOFIN)
 - DG TAXUD criticizing this approach as *financially attractive* or promoting *free-riding* situations
 - Arbitrage in favor of DG RTD at highest EC level

(see Hartlapp, Metz, Rauh (2014), *Which Policy for Europe?: Power and Conflict inside the European Commission*, Oxford University Press)

CONCLUSION

THE CASE FOR EXEMPTION

Positive externalities of Research Infrastructures as strong justification for exemption

Need for demonstration of socio-economic impact of RIs as a basis for exemption

Need for strong partnership between RIs and research ministries to support the case for tax exemption