

ERICs and Tax exemptions

rationale and procedures

Andrea Santelli and Carlo Rizzuto

CERIC-ERIC

Rationale and legal frame

Each ERIC qualifies as an international body for exemption from VAT and as international organization for exemption from Excise duties*.

Exemptions apply to purchases **by both the ERIC and its Members**.

The rationale (“**useful effect**”) is twofold: a) avoid taxation of non-host Country contributions by host Country, b) “Indirect” support to the ERICs by the EU (while avoiding to be a Member).

Two conditions apply: a) subjective: the purchase is made by the ERIC or by a Member, b) objective: the purchase is for the sole use of the ERIC.

Additional limits and conditions of the VAT/Excise duty exemptions shall be defined in the Statutes or as separate agreement between the Members

* Council Directive 2006/112/EC and Reg. 282/2011 for VAT, Council Directive 92/12/EEC and 2008/118/EC for Excise, ERIC Regulation Art. 5 (1) (d))

Some procedural tips I

- Verify the specific **wording of each ERIC Statute**: does it limit the Regulation (e.g. excludes the Members, or sets a minimum exempt value? Possibly make specific reference to Internal Rules.
- Check carefully **national language translation** (of the Statute and the Regulations)* is it correct in the relevant points?: English version as reference.
- **Define**, in internal regulations, **any further scope/clarification/procedure** (e.g. Does the ERIC “perimeter” include also “hubs” explicitly entitled to purchase in the name of the ERIC?).
- **Contact and inform directly and personally local Tax authorities** implementing VAT and Excises: ERICs are not yet well known (e.g. invite them to visit the RI: often they have no clue of research activities). Possibly define a “framework agreement” with them.

*it is very likely that your tax authorities will read only the national language version!

Some procedural tips II

- Clarify that it is a “**Tax Exemption**” (define procedure, between direct application or through a tax refund mechanism)
- **Ensure separate accounting/inventorying/auditing** of exempted goods and services purchased both directly or indirectly, either in property or in availability (define technical lifetime, detail use for sole ERIC activities and scope).
- If the purchased goods may be used in part for (limited) **commercial activities**, define, in agreement with the Authorities, how this part will be subject to taxation.
- For **cross-border procurement**, define with the Authority how to fill the required “**EU 15.10 certificate**” and which authority issues the **visa** confirming that the signatory is tax exempt (or exempts from the visa and informs the EU)

Summary of “cases” I

The ***direct*** purchase of goods and services ***by the ERIC or by the Member (as an IKC)**** has a number of sub-cases:

- Purchase and subsequent use within the same EU Country (self declaration to the provider)
- Purchase by the ERIC through its Hub in the Hub’s Country (as above)
- Purchase in one EU Country and use in another (needs the Art 51 VAT – Reg. 282/2011 “15.10” certificate)
- Purchase outside the EU and use in an EU Country (self declaration to the custom authorities)
- Purchase in an EU Country and use outside the EU, e.g. in Chile for astronomy (or on ship/air/space platforms) (exempt if sole use of ERIC)
- Purchase and use outside the EU (falls within the legal frame of the States involved, may be exempt if the ERIC is recognized)

* The ***direct*** purchase by a Member is a rare case (a Ministry has rarely the technical resources and the inventory), in most cases it is implemented as in the next slide. If the Member is an International Organization, it has already the exemption and the situation is clear

Summary cases II

The (tax exempt) *indirect* purchase* *by the ERIC or the Member* can be implemented:

- Through a specific Entity** delegated (for a specific purchase) **by the ERIC** to act **in its name and on its behalf** ***for this limited purpose (e.g. a specific procurement, in which the ERIC as the final owner is specified). The mandate must define the specific terms, for example, it could indicate the final transfer of property.
- **On behalf of the Member*** through a “Representing Entity”** (Article 9 (4) of the ERIC Regulation). This requires that the Member indicates clearly the right of the RE to exercise the tax exemptions “on its behalf” (within “the exercise of specified rights and the discharge of specified obligations as a Member of the ERIC”, as defined in the Regulation).
- **An open question: the choice between the RE keeping the ownership (and making available procured goods&services) or transferring the ownership.**

* Most “in-kind” contributions are “indirect purchase by the Member” (through scientific institutions)

**Not to be confused with the “Representing Entity” of the Member!

*** The case of a Member delegating to act in its name is only theoretical because Ministries would become direct owners, while do not normally own research equipment, therefore the only realistic case is “on behalf”