



VAT DEVELOPMENTS FOR INTERNATIONAL ASSOCIATIONS

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AGENDA

- Introduction to basic VAT rules crucial for international associations
- VAT package impact 2010 and beyond
- Current VAT weaknesses
 - VAT status, VAT qualification and deduction
 - Impact of subventions, grants and the like
- Insight on future developments

A LITTLE POLL AS STARTER

- Is your association registered for VAT?
 - If not, do you think it should or might be?
- Does it recover VAT on costs incurred?
 - If not, why not?
 - If yes, to what extent?
- Does it charge VAT on membership fees or other income?
 - If not, why not?

BASIC VAT RULES

- WHO? = VAT status
- WHAT? = VAT qualification
 - Taxable
 - Exempt
 - Outside scope
 - What $\gt\lt$ VAT deduction
- WHERE? = Place of supply rules for VAT
- By WHOM? = who should pay the VAT

VAT PACKAGE IMPACT

- New rules for supplies of services!!!
 - B2B >< B2C
 - Exact VAT status of members, other relationships
- Place of supply = which VAT is due?
 - B2B = establishment of customer/member
 - B2C = establishment of supplier/association

VAT PACKAGE IMPACT

- Derogation rules for
 - Seminars, training sessions, events, annual conferences, etc...
 - 2010
 - 2011 and beyond
 - Others (hotel and restaurant, short term hire of passenger cars, ...)

VAT PACKAGE IMPACT

- Impact on compliance and reporting
 - ESL listing
 - New layout of VAT return
 - Info from members, mismatch issues, ...
 - Correct VAT reporting important for data mining, VAT deduction, avoiding fines, ...

VAT WEAKNESSES

- VAT status and qualification

Outside VAT scope

Inside taxable VAT scope

Inside exempt VAT scope

VAT STATUS & QUALIFICATION

- Crucial exercise = exact VAT determination of the activities developed
 - Towards members
 - Towards third parties
 - What does the association provide in return for the income received?

VAT STATUS & QUALIFICATION

- Inside VAT scope >< outside scope of VAT
- Distinction criteria
 - The existence of a (sufficiently) direct link between the service provided and the consideration (membership fee, other) received (Apple & Pear)
 - The existence of “exploitation” in the VAT meaning, i.e. transactions by which it is sought to obtain income on a continuing basis (SPÖ Landesorganisation Kärnten)

VAT STATUS & QUALIFICATION

- If outside scope
 - No VAT due
 - No VAT deduction
- If inside scope
 - Further distinction between taxable and exempt activities

VAT STATUS & QUALIFICATION

- Evolution of the Belgian standpoints
 - Focus on VAT exemption or taxation,
 - NO focus on inside or outside scope until very recently

VAT STATUS & QUALIFICATION

- Circular letter 12 of 29 December 1986
 - Not yet abolished or amended insofar
 - Quite positive : VAT taxable =
 - Individual services
 - Services other than representation or defense of interests
 - Publications and information provision
- Arbitrary split of the fee between taxable and exempt part

VAT STATUS & QUALIFICATION

- VAT Decision of 17 August 1987 (E.T. 59563)
 - Positive
 - Arbitrary and practical split 80% taxable / 20% exempt
 - Initially for employer's organisations
 - In practice accepted for other similar situations as well

VAT STATUS & QUALIFICATION

- ECJ The Institute of the Motor Industry
 - (C-149/97 of 12 November 1998)
 - Positive court case

VAT STATUS & QUALIFICATION

- Interpretation of art. 132, 1 (I) of the Sixth EU VAT Directive
 - “Member States SHALL exempt the following transactions:...the supply of services, and the supply of goods closely linked thereto, to their members in their common interest, in return for a subscription fixed in accordance with their rules, by non –profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition.

VAT STATUS & QUALIFICATION

- VAT exemptions to be interpreted in a limited way
 - the defense of the collective interests
 - representation to appropriate third parties
- AND meeting all other exemption conditions!

VAT STATUS & QUALIFICATION

- Parliamentary Question n° 3-5634 of Mrs. Nyssens of 12 July 2006
 - “ay, there’s the rub”
 - Very negative
 - VAT exemption broadened
 - Wrong interpretation of the ECJ case of The Institute of the Motor Industry

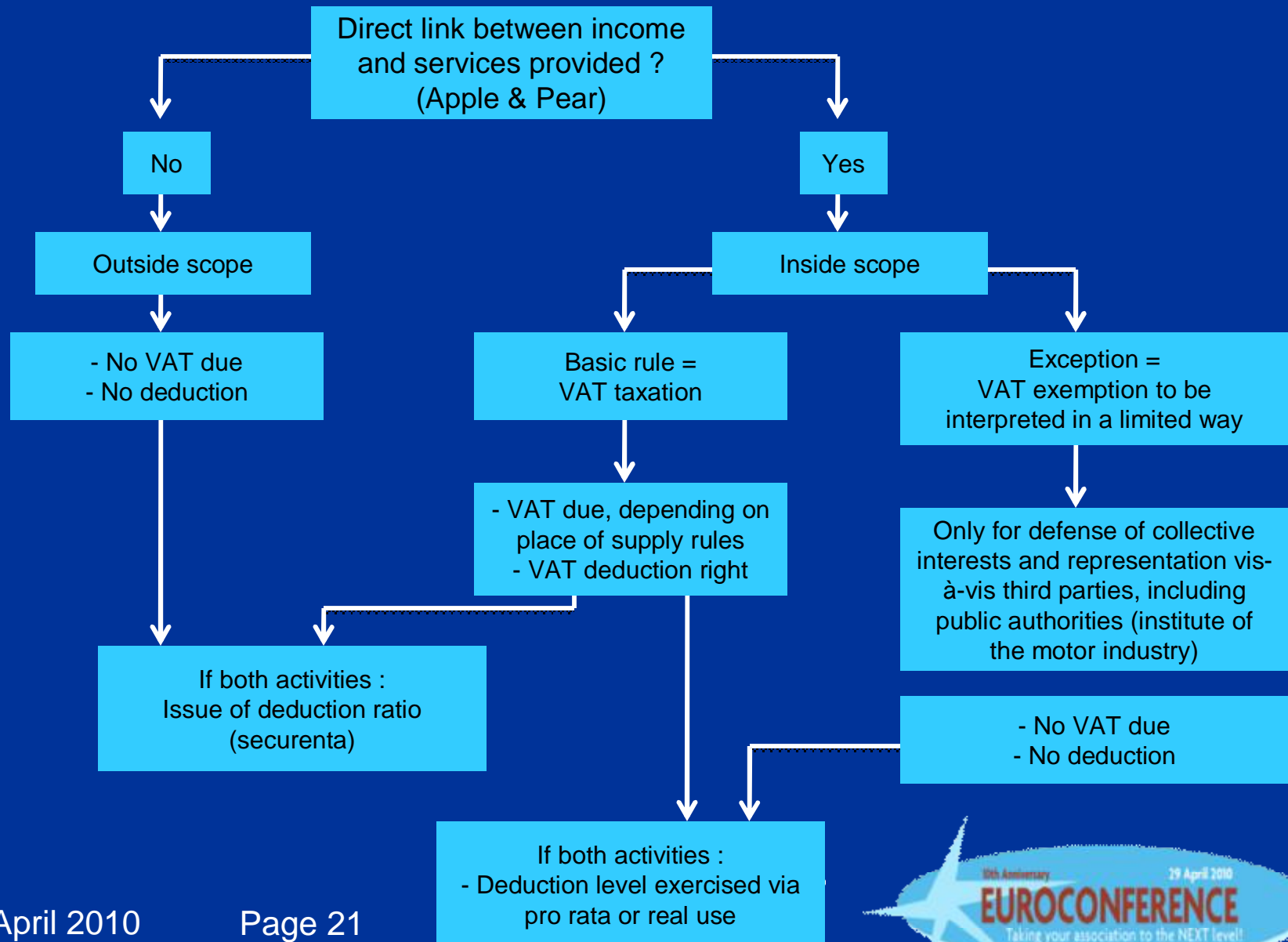
VAT STATUS & QUALIFICATION

- Oral Question n° 15148 of Mr. De Donnea of 23 April 2007
 - Status quo
 - Rather positive
 - Problem under examination
 - Awaiting new guidelines
 - Until then the old standpoints remain applicable

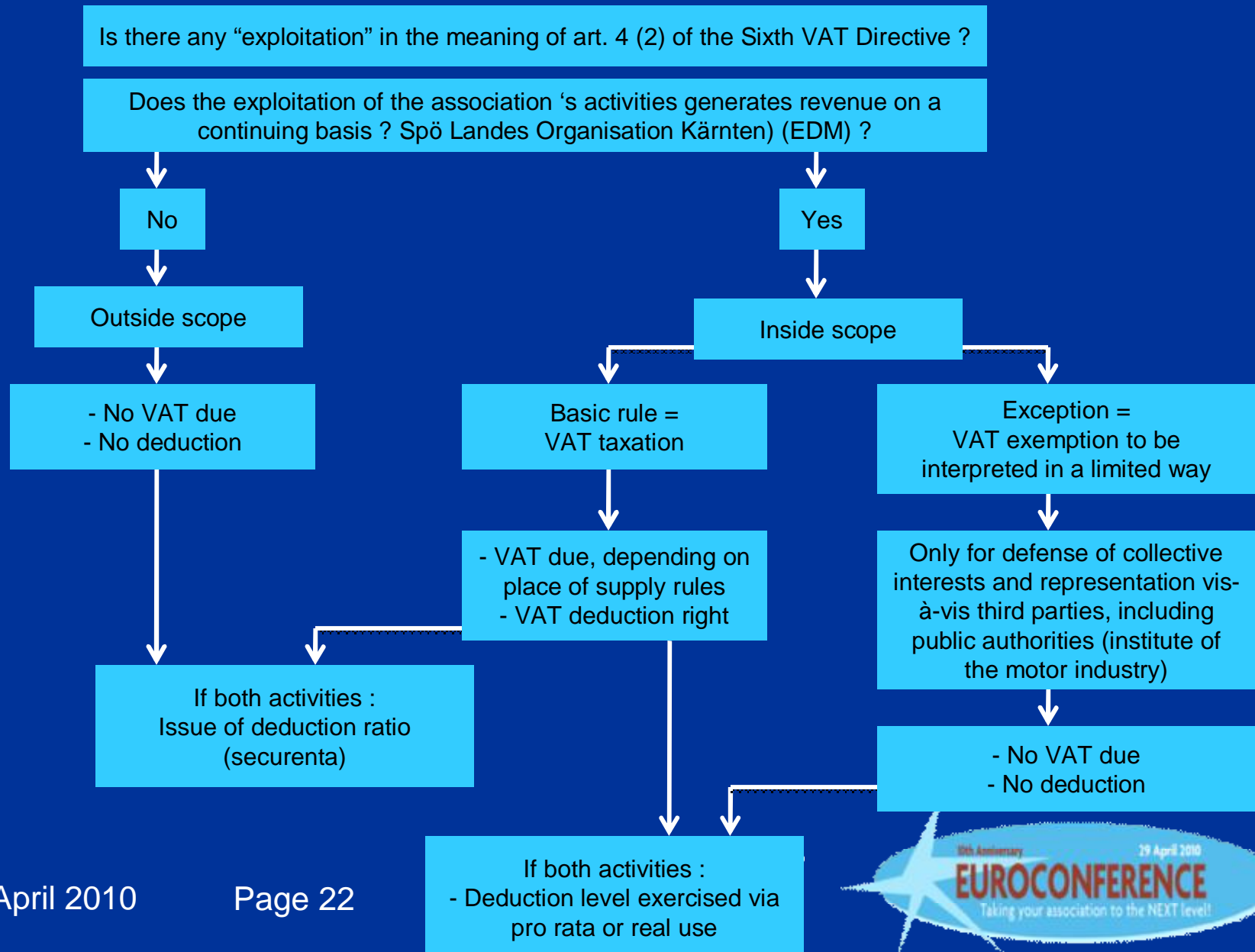
VAT STATUS & QUALIFICATION

- Belgian Rulings
 - Voorafgaande Beslissing n° 500.135 of 16 March 2006
 - Rather positive
 - Limited scope of exemption: not for services in the personal interest of members
 - Décision Anticipée n° 500.119 of 25 August 2005
 - Cost sharing structure

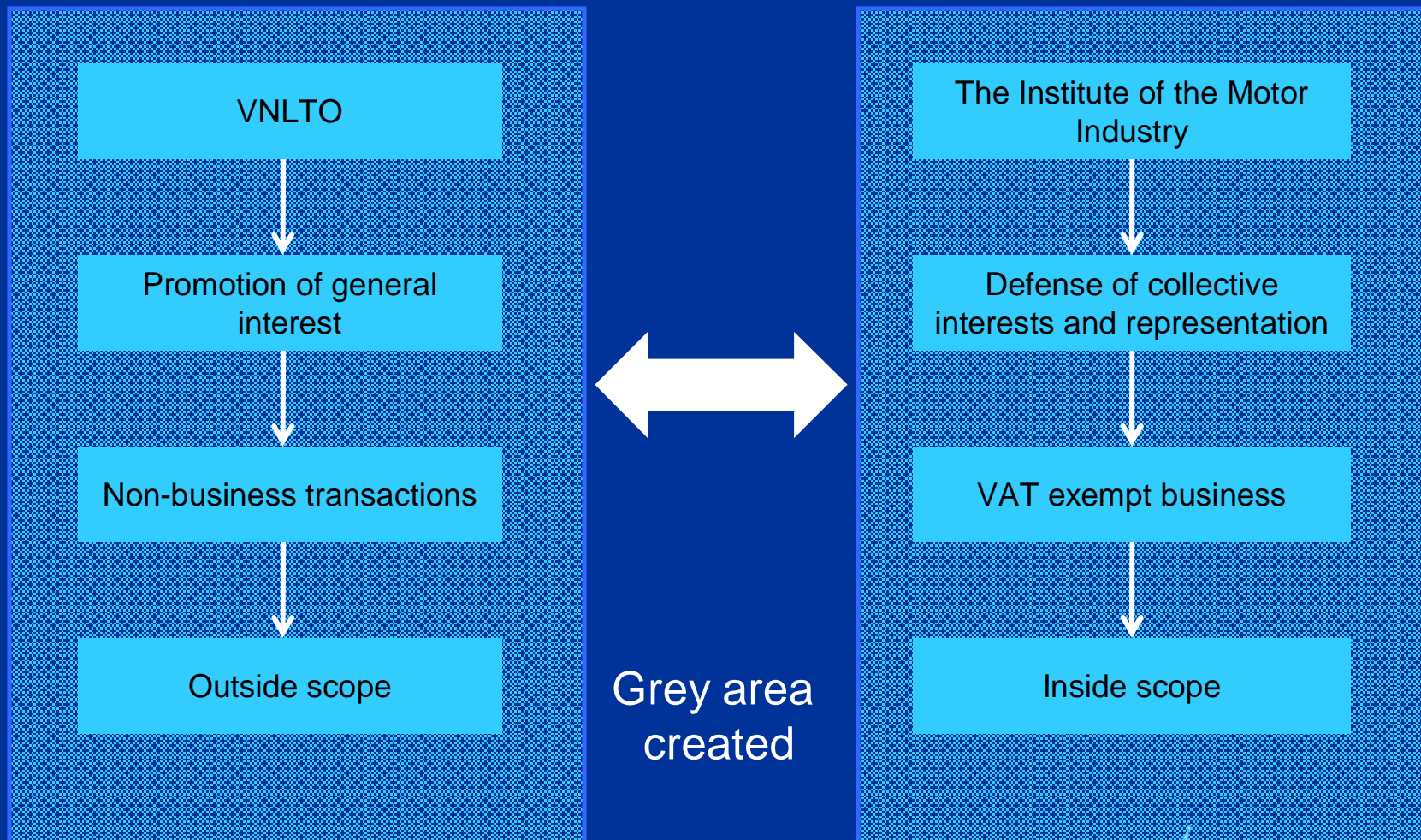
INCOME OF INTERNATIONAL ASSOCIATIONS



INCOME OF INTERNATIONAL ASSOCIATIONS



VNLTO "CONFUSION"



VAT STATUS & QUALIFICATION

- VAT Status of certain European Union agencies and bodies

VAT exemption linked with the Protocol of 8 April 1965 on the privileges and immunities of the European Communities

VAT STATUS & QUALIFICATION

- Broadened by Council Directive 2009/162/EU of 22 December 2009 (applicable 1 January 2011)
- Exemption to bodies set up by the Communities
- Joint Undertakings established in accordance with Article 187 of the Treaty

VAT STATUS & QUALIFICATION

- JTI's
 - Exemption by Regulation establishing the JTI
- VAT philosophy = VAT neutrality
 - Supplies to JTI's = exempt
 - BUT with VAT deduction for the supplier

IMPACT OF SUBVENTIONS / GRANTS

- Main question
 - To whom the subventions/grants are destined?
 - Who is the real beneficiary?

IMPACT OF SUBVENTIONS / GRANTS

- Main distinction between
 - Subsidies directly linked with the price
 - General subventions/grants not directly linked with a price

IMPACT OF SUBVENTIONS / GRANTS

- Subsidies directly linked with the price
 - Element of the taxable basis for VAT (if the subsidised service is taxable)
 - No direct negative impact on VAT deduction

IMPACT OF SUBVENTIONS / GRANTS

- General subventions/grants not directly linked with a price
 - May impact in a negative way on VAT deduction, in particular if link with outside VAT scope; if link with activities that do not entail any output (to some extent compare with the outside scope criterion withheld in the ECJ case SPÖ – exploitation generating revenues on a continuing basis)

IMPACT OF SUBVENTIONS / GRANTS

- Voorafgaande beslissingen n° 800.309 of 21 October 2008, n° 800.396 of 22 September 2009
- Parliamentary Question n° 314 of Mrs. Nyssens of 22 December 1999
- Belgian Jurisprudence

IMPACT OF SUBVENTIONS / GRANTS

- How to calculate the VAT deduction impact?
 - Specific pro rata
 - Other methods based on the ECJ case of Securenta;

IMPACT OF SUBVENTIONS / GRANTS

- Distinction between price related subsidies and general grants/subventions is interpretable
 - Cf. ECJ cases Keeping Newcastle Warm (C-353/00), Office des produits wallons (C-184/00), ...
 - Cf. Parliamentary Question n° 300 of Mr. Fournaux of 23 February 1996 and n° 1959 of Mr. Istasse of 14 March 2002

INSIGHT ON LATEST DEVELOPMENTS

- A lot of endless discussions with the Belgian VAT administration about the deduction level
 - Non deductible VAT, administrative fines (10%) and interest impacting directly on budgets
- (Limited) Impact of the European Transparency Initiative

INSIGHT ON LATEST DEVELOPMENTS

- Latest Belgian standpoint seems to be “all or nothing” position: no deduction or 100% deduction
 - Accessorium sequitur principale
 - What is ancillary to what? (defense of interest and representation versus other activities – negative Brussels Tribunal Court case of 6 March 2008)
 - ECJ case Card Protection Plan: Is the service an aim to the customer/member or merely a means to better supply a main service (exempt or taxable)

INSIGHT ON LATEST DEVELOPMENTS

- Recent negative impact of “outside scope” principle evoked in ECJ cases SPÖ and VNLTO
- Final position not expected in the near future
 - Legal uncertainty

QUESTIONS ???

29 April 2010

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THANK YOU!!!

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