



**THE FINLAND
ARBITRATION
INSTITUTE**

FAI TAX GUIDELINES

**Tax issues concerning the arbitrator's fee and expenses
and
their payment from the advance on costs**

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1. General information

The purpose of these guidelines is to draw the arbitrators' attention to tax issues concerning their fees and expenses. Arbitrators are responsible themselves for assessing the tax treatment of their fees and expenses.

These guidelines are based on Finnish tax regulations, case law and instructions of the Finnish Tax Administration currently in force. The Finnish VAT Act is largely in line with the VAT Directive¹ (the "VAT Directive"). However, as there may be differences between EU Member States regarding the application of the VAT Directive, foreign arbitrators are advised to get acquainted with the tax regulations of their country of domicile.

Further, these guidelines illustrate the payment of arbitrators' fees and expenses from the advance on costs fixed by the Arbitration Institute of the Finland Chamber of Commerce (the "FAI") in arbitrations under the Arbitration Rules of the Finland Chamber of Commerce and the Rules for Expedited Arbitration of the Finland Chamber of Commerce.

2. VAT taxation of the arbitrator's fee and expenses

2.1 Taxability of the arbitrator's fee and expenses

The arbitrator's fee and expenses are subject to VAT if the arbitrator's activity constitutes a business activity with a turnover exceeding the low turnover threshold in an accounting period (EUR 10,000 as of 1 January 2016).

If the arbitrator does not conduct business and provides arbitrator services only occasionally, the arbitrator's activity will not necessarily have the features of a business operation under the Finnish VAT Act and the arbitrator might not be liable to pay VAT. This is a matter of self-assessment by each arbitrator.

Before confirmation, a prospective arbitrator shall return the completed contact and fee information form to the FAI, indicating whether the arbitrator's fee will be charged as trade income or to his/her law firm or other employer, whether the fee is subject to VAT, and the applicable VAT rate. Any subsequent changes to this information shall be notified to the FAI at the latest in conjunction with the arbitrator's request that the FAI determine the costs of the arbitration.

In the request for the determination of the costs of the arbitration, the arbitrator shall inform the FAI whether he/she will charge VAT on his/her fee and expenses, or whether VAT reverse charge will be applicable to a party to the arbitration. VAT reverse liability means that a party to the arbitration will be responsible for paying

¹ Council Directive 2008/8/EC of 12 February 2008

the VAT rather than the arbitrator/company issuing the invoice. To ensure the correct consideration of any possible VAT when determining the arbitrator's fee and expenses, the arbitrator shall inform the FAI in the aforementioned request about the final allocation of the costs of the arbitration as between the parties in the final award. Should the liability for the costs of the arbitration be shared by more than one party, different VAT treatments may be applicable in parallel to the arbitrator's fee and expenses. An arbitrator subject to VAT is responsible for assessing the correct VAT treatment of his/her fee and expenses.

2.2 VAT treatment of the arbitrator's fee in different situations

From the point of view of VAT, the services provided by an arbitrator are treated as sale of immaterial services. The VAT regulations of the country of sale prescribe which country has the right to tax the arbitrator's fee.

If the party liable to pay the arbitrator's fee conducts business and is based in the EU, the arbitrator's fee will be taxed in accordance with Article 65 of the Finnish VAT Act in the country where the party has its fixed establishment or domicile.

In general, a party based in the EU may be considered as conducting business if it provides a valid VAT identification number. The validity of the VAT identification number can be verified on the European Commission's website http://ec.europa.eu/taxation_customs/vies/?locale=en.

If the party liable to pay the arbitrator's fee is based in the EU but does not conduct business, the arbitrator's fee will be taxed in Finland in accordance with Article 66 of the Finnish VAT Act, when the invoice is issued either by a Finnish company that has no fixed establishment in a country other than Finland or by a foreign company with a fixed establishment in Finland.

If the party liable to pay the arbitrator's fee is from outside the EU, the invoice shall be issued without charging VAT, regardless of whether the party conducts business or not.

In the following subsections, you will find examples of VAT treatment of the arbitrator's fee in different situations. For each situation, a sample invoice prepared in accordance with the Finnish VAT Act is mentioned and enclosed to these guidelines. A foreign arbitrator shall comply with the invoicing requirements of his/her country of domicile.

2.2.1 The arbitrator and the party are from the same EU country

If the arbitrator and the party are from the same EU country, the arbitrator shall charge VAT of his/her country of domicile on the arbitrator's fee ([Sample invoice 1](#)).

2.2.2 The arbitrator and the party are from different EU countries

In this situation, if the party conducts business, the arbitrator's fee will be taxed in the EU country where the party has its fixed establishment or domicile. Hence, the arbitrator shall not charge VAT on the arbitrator's fee, but the party is liable to pay VAT on the arbitrator's fee based on the VAT reverse charge procedure in the country in which it is based. ([Sample invoice 2](#)).

If the party does not conduct business, the arbitrator shall charge VAT of his/her country of domicile on the arbitrator's fee ([Sample invoice 1](#)).

2.2.3 The arbitrator is from an EU country and the party is from a non-EU country

If the party is from outside the EU, the arbitrator shall not charge VAT on the arbitrator's fee, regardless of whether the party conducts business or not. ([Sample invoice 3](#): Non-EU party conducts business; [Sample invoice 4](#): Non-EU party does not conduct business).

2.2.4 The arbitrator is from a non-EU country and the party is from an EU country

The arbitrator's fee may include a local tax or be tax-free depending on the VAT or other consumption tax legislation of the arbitrator's country of domicile. If a party based in the EU conducts business, the party must pay VAT under the VAT reverse charge procedure in the country where the business has its domicile because, pursuant to the VAT Directive, the fee is taxable in the country where the party is based. In this situation, the provisions of both EU and non-EU VAT regulations are likely to apply. Double taxation is likely as well.

2.2.5 The arbitrator and the party are from outside the EU

The VAT treatment is assessed on a case-by-case basis pursuant to the domestic legislation of the country of domicile of the arbitrator and the parties. In this situation, the arbitrator's fee is not subject to the VAT Directive or local EU VAT regulations.

2.3 VAT treatment of the arbitrator's expenses

An arbitrator subject to VAT may deduct VAT on expenses incurred in the arbitration if he/she is entitled to VAT deduction based on an invoice for expenses. Expenses are considered as part of the net value of the service provided by the arbitrator. The arbitrator's expenses are subject to the same VAT rate as the arbitrator's fee. When the VAT reverse charge procedure is applicable, it applies to both the arbitrator's fee and the arbitrator's expenses.

3. Income tax on the arbitrator's fee

In Finland, the taxable status of an arbitrator depends on whether he or she is considered as a general taxpayer or a limited taxpayer. General taxpayers are individuals domiciled in Finland, and limited taxpayers are those domiciled outside Finland. General taxpayers pay tax on their income earned in Finland and abroad, while limited taxpayers are required to pay tax only on income earned in Finland and their income is, as a rule, subject to tax at source.

Where the arbitrator's fee is invoiced through the arbitrator's company or by his/her employer, the company is subject to tax in Finland if it has a Finnish business identification number.

3.1 Fee of an arbitrator domiciled in Finland

Pursuant to the Prepayment Act, the fee invoiced by an arbitrator as a private individual is not treated as being wages, but as compensation for work. In this event, the arbitrator's fee is subject to withholding tax, unless the arbitrator is entered in the prepayment register at the time of the payment. The tax is withheld and remitted to the tax authorities based on a separate tax card. If no tax card is presented, the arbitrator's fee is subject to withholding tax of 60%. If the arbitrator's fee includes VAT, the withholding tax is applicable to the amount without VAT. If the arbitrator is on the prepayment register, the arbitrator is himself/herself responsible for remitting the withheld tax amount to the tax authorities in advance. The employer's social security contribution is not payable on compensation for work.

Where the arbitrator's fee is invoiced through the arbitrator's company or by his/her employer, the amount of the invoice is to be paid without withholding tax if the company is prepayment registered. If the company is not prepayment registered, the arbitrator's fee is subject to withholding tax of 13%. If the invoice includes VAT, the withholding tax is applicable to the amount without VAT.

3.2 Fee of an arbitrator domiciled outside Finland

In Finland, the income tax treatment for an arbitrator (private individual or company) domiciled outside Finland depends on the provisions of the tax treaty concluded between Finland and the country of domicile of the arbitrator, as well as on tax regulations of these countries. The income tax treatment for an arbitrator domiciled outside Finland and for a foreign company needs to be assessed on a case-by-case basis.

4. Payment of the arbitrator's fee and expenses from the advance on costs

Where the FAI has fixed an advance on costs, as a rule, the FAI will pay the costs of the arbitration from the advance on costs after the arbitrator has rendered the final award, consent award or order for the termination of the proceedings. The FAI acts as money intermediary only when paying the costs of the arbitration from the advance on costs. The ultimate responsibility for paying the costs and taxes remains with the parties.

Where the FAI has not fixed an advance on costs, the arbitrator shall send an invoice for the arbitrator's fee and expenses to the party or parties who are liable for the payment. The arbitrator may either require that the party or parties pay the invoice, or cover the costs from the advance on costs that he/she may have fixed.

The arbitrator shall provide the following information to the FAI for the payment of the arbitrator's fee and expenses from the advance on costs.

4.1 Arbitrator subject to VAT

Obligation to issue an invoice

The arbitrator subject to VAT or the company issuing the invoice shall produce an invoice for the arbitrator's fee and expenses. If the VAT reverse charge procedure is applicable to the arbitrator's fee and expenses, the arbitrator shall issue the invoice no later than the 15th day of the calendar month following that in which the arbitral award or order for the termination of the proceedings was issued.

Who to invoice

The arbitrator's invoice shall be issued to the party or parties who are finally liable for the payment of the costs of the arbitration as between the parties, as decided in the final award, irrespective of what party has paid the advance on costs. Should the liability for the costs of the arbitration be shared by more than one party, the arbitrator shall issue a separate invoice to each party in accordance with the final allocation of the costs of the arbitration.

Where the FAI has fixed an advance on costs, the arbitrator shall send the arbitrator's invoice to the FAI for payment. After payment of the invoice from the advance on costs, the FAI will proceed to send the invoice to the paying party or parties, which is a condition necessary for the right to deduct VAT.

Invoice content requirements

The arbitrator's invoice shall indicate the FAI reference case number and the names of the parties. In addition, the invoice must meet the mandatory invoicing requirements under the Finnish VAT Act. A foreign arbitrator shall comply with the invoicing requirements of his/her country of domicile.

Mandatory invoicing requirements pursuant to Article 209 e of the Finnish VAT Act are the following:

- date of issue of the invoice
- invoice number
- VAT identification number of the seller (arbitrator/company issuing the invoice)
- VAT identification number of the buyer (party) when VAT reverse charge is applicable
- name and address of the seller (arbitrator/company issuing the invoice) and the buyer (party)
- scope and type of services
- date of performance of the services (date of the arbitral award or of the order for the termination of the proceedings) or date of an advance payment
- VAT basis (not when VAT reverse charge is applicable)
- VAT rate (not when VAT reverse charge is applicable)
- indication that the arbitrator's fee and expenses are exempt from VAT/reference to the respective provision of the Finnish VAT Act or VAT Directive when VAT reverse charge is applicable
- inclusion of the words "reverse charge" when VAT reverse charge is applicable
- in case of amendment of invoice, reference to the previous invoice

Payment of arbitrator's expenses from the advance on costs during the arbitration

Where the arbitrator's expenses are paid from the advance on costs during the arbitration, it is yet unknown how the costs of the arbitration will be allocated among the parties. For this reason, the arbitrator cannot in practice issue an invoice to the party or parties for the expenses. From the point of view of VAT, the reimbursement of expenses incurred in an arbitration is treated as an advance payment to the arbitrator before the rendering of the final award. After conclusion of the arbitration, the arbitrator's invoice must indicate that part of his/her expenses have already been paid from the advance on costs, and the date of such advance payment.

4.2 Arbitrator domiciled in Finland not subject to VAT

Where the arbitrator's fee is paid from the advance on costs fixed by the FAI, the Finland Chamber of Commerce is considered as a substitute payor for the party. If the arbitrator is not entered in the prepayment register, the Finland Chamber of Commerce will withhold tax on the payment of the arbitrator's fee and give the tax authorities the necessary notices.

The arbitrator is required to provide the FAI with the following information for the payment of his/her fee:

- arbitrator's full name
- arbitrator's personal identification number
- arbitrator's home address
- taxing municipality
- tax card (if no tax card is presented, the withholding rate is 60%)
- bank account information

4.3 Fee payable to an arbitrator domiciled outside Finland as trade income

As a rule, an arbitrator domiciled outside Finland shall issue an invoice for his/her arbitrator's fee and expenses. The arbitrator's invoice shall indicate the FAI reference case number and the names of the parties. In addition, the arbitrator must comply with any invoice requirements of his/her country of domicile.

In addition, in compliance with Finnish tax regulations, a foreign arbitrator is required to provide the FAI with the following information for payment purposes:

- arbitrator's full name
- arbitrator's date of birth
- arbitrator's address in his/her country of domicile
- tax identification number in his/her country of domicile
- bank account information

The Finland Chamber of Commerce shall inform the Finnish tax authorities of the fees paid to a foreign natural person.

SAMPLE INVOICE 1 – Sample invoice in accordance with the Finnish VAT Act when VAT is charged on the arbitrator's fee

Name, address and VAT number of the arbitrator/company issuing the invoice

INVOICE

Party's name and address

Date:

Invoice number:

Payment terms:

Due date:

Late payment interest:

Payment instructions:

[Bank]
IBAN:
SWIFT / BIC:

Arbitration FAI [case number]: [Claimant]/[Respondent]
Final award rendered on [date]

Breakdown	Net	VAT %	VAT	Total
Arbitrator's fee	EUR []	[] %	EUR []	EUR []
Arbitrator's expenses	EUR []	[] %	EUR []	EUR []
Total	EUR []		EUR []	EUR []

SAMPLE INVOICE 2 – Sample invoice in accordance with the Finnish VAT Act when reverse charge is applicable to the arbitrator's fee (EU party that conducts business based in an EU country other than that of the arbitrator)

Name, address and VAT number of the arbitrator/company issuing the invoice

INVOICE

Party's name, address and VAT number

Date:

Invoice number:

Payment terms:

Due date:

Late payment interest:

Payment instructions:

[Bank]

IBAN:

SWIFT / BIC:

Arbitration FAI [case number]: [Claimant]/[Respondent]

Final award rendered on [date]

Breakdown

Arbitrator's fee
Arbitrator's expenses

Total

EUR []
EUR []

Total

EUR []

VAT 0 %, reverse charge procedure under Article 44 of the VAT Directive

SAMPLE INVOICE 3 – Sample invoice in accordance with the Finnish VAT Act when the arbitrator’s invoice is issued to a non-EU party that conducts business

Name, address and VAT number of the arbitrator/company issuing the invoice

INVOICE

Party’s name and address

Date:

Invoice number:

Payment terms:

Due date:

Late payment interest:

Payment instructions:

[Bank]

IBAN:

SWIFT / BIC:

Arbitration FAI [case number]: [Claimant]/[Respondent]
Final award rendered on [date]

Breakdown	Total
Arbitrator’s fee	EUR []
Arbitrator’s expenses	EUR []
Total	EUR []

VAT 0 %, reverse charge procedure under Article 44 of the VAT Directive

SAMPLE INVOICE 4 – Sample invoice in accordance with the Finnish VAT Act when the arbitrator's invoice is issued to a non-EU party that does not conduct business

Name, address and VAT number of the arbitrator/company issuing the invoice

INVOICE

Party's name and address

Date:

Invoice number:

Payment terms:

Due date:

Late payment interest:

Payment instructions:

[Bank]

IBAN:

SWIFT / BIC:

Arbitration FAI [case number]: [Claimant]/[Respondent]

Final award rendered on [date]

Breakdown

Arbitrator's fee
Arbitrator's expenses

Total

EUR []
EUR []

Total

EUR []

VAT 0 %