

TAX GUIDELINES

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

1 January 2024

Table of contents

1. General information	3
2. VAT taxation of the arbitrator’s fee and expenses	3
2.1. Taxability of the arbitrator’s fee and expenses	3
2.2. VAT treatment of the arbitrator’s fee in different situations	4
2.2.1. The arbitrator and the party are from the same EU country	4
2.2.2. The arbitrator and the party are from different EU countries	4
2.2.3. The arbitrator is from an EU country and the party is from a non-EU country	5
2.2.4. The arbitrator is from a non-EU country and the party is from an EU country	5
2.2.5. The arbitrator and the party are from outside the EU	5
2.3. VAT treatment of the arbitrator’s expenses	5
3. Income tax on the arbitrator's fee.....	8
3.1. Fee of an arbitrator domiciled in Finland	8
3.2. Fee of an arbitrator domiciled outside Finland	8
4. Payment of the arbitrator's fee and expenses from the advance on costs.....	8
4.1. Arbitrator subject to VAT.....	9
4.2. Arbitrator domiciled in Finland not subject to VAT	10
4.3. Fee payable to an arbitrator domiciled outside Finland as trade income	10
SAMPLE INVOICE 1 - Sample invoice in accordance with the Finnish VAT Act when VAT is charged on the arbitrator's fee.....	11
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)	12
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	13
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.....	14

1. General information

The purpose of these Tax Guidelines issued by the Finland Arbitration Institute (FAI) is to draw the arbitrators' attention to tax issues concerning their fees and expenses.

Arbitrators are responsible themselves for assessing the correct tax treatment of their fees and expenses.

The FAI may determine the fees and expenses of the arbitrators without VAT. Specifying the correct VAT treatment of each of the fees and expenses in the final award, consent award of order for the termination of the proceedings is at the responsibility of the arbitrators. Arbitrators are also responsible themselves for the correct VAT treatment of their fees and expenses vis-à-vis the tax authorities.

These guidelines are based on Finnish tax regulations, namely the Finnish VAT Act (1993/1501, as amended), case law and instructions of the Finnish Tax Administration. The Finnish VAT Act is largely in line with the EU 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 state of domicile.

Further, these guidelines illustrate the payment of the arbitrators' fees and expenses from the advance on costs fixed by 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 provision of arbitrator services constitutes a business activity with a turnover exceeding the low turnover threshold during an accounting period (EUR 15,000 as of 1 January 2021).

If the arbitrator does not conduct business and provides arbitrator services only occasionally, the arbitrator's arbitrator activity will not necessarily meet the definition of a business activity under the Finnish VAT Act, and the arbitrator may not be liable to pay VAT. The matter must be assessed independently by each arbitrator. The definition of conducting business has not been explicitly defined under the Finnish VAT Act. However, in general, **a business activity is typically defined as a profitable, continuous, outward, and entrepreneurial activity involving a normal entrepreneurial risk.**

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 their 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 they will charge VAT on their fee and expenses, or whether the VAT reverse charge procedure will be applicable to a party to the arbitration. VAT reverse charge procedure means that a party to the arbitration will

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

be responsible for paying 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, if possible. 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 their fee and expenses. The parties concerned are also responsible for the VAT treatment of their own arbitration service purchases in relation to the tax authorities.

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

From the point of view of VAT legislation, 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 place of establishment of the business.

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](#).

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. **When using the sample invoices, please note that other activities of the arbitrator and the parties in addition to the arbitration proceedings at hand may affect the VAT treatment of the arbitrator's fee.**

A foreign arbitrator shall comply with the invoicing requirements of their 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 their fee with an invoice including VAT following the VAT rate of the arbitrator's country of domicile ([Sample invoice 1](#)).

2.2.2. The arbitrator and the party are from different EU countries

If the party conducts business, the arbitrator's fee will be taxed in the EU country where the party has its fixed establishment or place of establishment of the business. 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 their fee with an invoice including VAT following the VAT rate of the arbitrator's country of domicile ([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, as 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 may be 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 in accordance with the domestic legislation of the country of domicile of the arbitrator and the party or parties. In this situation, the arbitrator's fee is not subject to the provisions of the VAT Directive or local EU VAT regulations.

2.3. VAT treatment of the arbitrator's expenses

An arbitrator subject to VAT may deduct the VAT included in the expenses incurred in connection with the arbitration in their own taxation, if the arbitrator is entitled to VAT deduction based on the invoices for the expenses.

Expenses are treated as a part of the tax base of the arbitration service in a net amount. The arbitrator's expenses are subject to the same VAT rate as the arbitrator's fee. Where the VAT reverse charge procedure is applicable to the arbitrator's fee, it applies to the arbitrator's expenses as well.

- Example: An arbitrator subject to 24% VAT has travelled by taxi in connection with the arbitration proceedings at a cost of EUR 100 + VAT of EUR 10, i.e., a total cost of EUR 110. The arbitrator's fee is EUR 1,000. The arbitrator shall invoice EUR 1,000 (the arbitrator's fee without VAT) + EUR 100 (the taxi fare without VAT) + VAT 24% (EUR 264), i.e., a total amount of the invoice including VAT shall be EUR 1,364. The invoice shall indicate the outstanding VAT amount of EUR 264. The VAT on the invoice is deductible to a party subject to VAT, if the arbitration and expenses incurred in relation thereto relates to such activities of the party that are subject to VAT. Therefore, the aggregate cost to the party will amount to EUR 1,100.

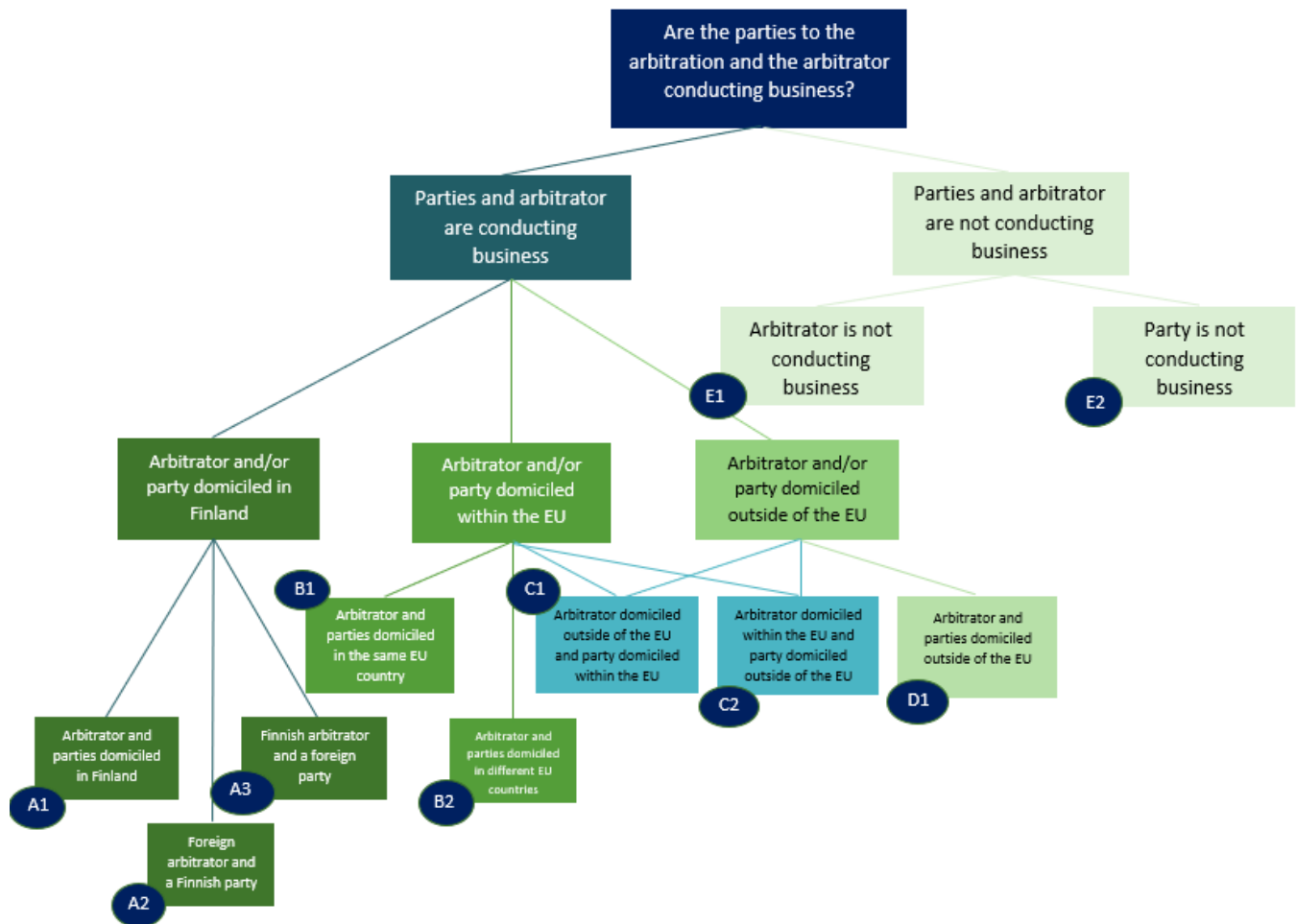
An arbitrator not subject to VAT cannot deduct the VAT included in the expenses incurred by them in connection with the arbitration proceedings based on VAT regulations.

When the arbitrator invoices their fee, the expenses incurred, which the arbitrator is entitled to invoice, must be charged without VAT. In order to cover the expenses incurred in their entirety, an arbitrator not subject to VAT must charge the expenses at the original price including VAT, as the arbitrator will bear the cost of the expense including the VAT.

- Example: An arbitrator not subject to VAT has travelled by taxi in connection with the arbitration proceedings at a cost of EUR 100 + VAT of EUR 10, i.e., a total cost of EUR 110. The arbitrator's fee is EUR 1,000. The arbitrator shall invoice EUR 1,000 + EUR 110, i.e., a total amount of EUR 1,110 without reference to VAT. The aggregate cost to the party concerned will amount to the entire EUR 1,110, meaning that the party will not receive any VAT deductions on the basis of the arbitrator's invoice, even if the proceedings were related to such activities of the party that are subject to VAT.

To clarify the VAT treatment of the arbitrator's fee, below is a graph illustrating the implications of the legal status and the place of establishment of the parties to the proceedings on the VAT treatment of the fee.

The graph is also available on the FAI website.



- A1** As a rule, the arbitrator charges their fee with an invoice including VAT. The arbitrator is responsible for assessing the correct VAT treatment of the fee.
- A2** Reverse charge procedure may become applicable if, e.g., the arbitrator is a foreign person conducting business, who has not entered into the Finnish VAT register, and the party is a Finnish person or entity conducting business. In this case, the invoice should indicate the applicability of the reverse charge procedure, e.g., "VAT 0% reverse charge", and VAT numbers of both the arbitrator and the party.
- A3** A Finnish arbitrator charges their fee from a foreign party conducting business with an invoice exempt from VAT. The invoice should indicate the applicability of the reverse charge procedure, e.g., "VAT 0% reverse charge", and VAT numbers of both the arbitrator and the party. If the party is from outside of the EU, indicating the VAT number is not mandatory.
- B1** If both the arbitrator and the party are domiciled in the same EU country, the arbitration service is deemed to be sold in the EU country in question. As a rule, the arbitrator charges their fee with an invoice including VAT, applying the VAT rate of the EU country in question. Requirements regarding the content of the invoice are determined pursuant to the legislation of the EU country in question.
- B2** If the party is conducting business, the arbitration service is value added taxed in the EU country where the party has its permanent establishment or place of business. The arbitrator charges their fee with an invoice exempt from VAT, and the party applies the reverse charge procedure in its state of domicile.
- C1** The VAT treatment of the arbitrator's fee will be determined in accordance with the VAT legislation of the arbitrator's state of domicile. The fee may be subject to or exempt from VAT depending on the legislation of the country in question. If the party is conducting business, the party must apply the reverse charge procedure in its state of domicile.
- C2** If the party is from outside of the EU, the arbitrator can charge their fee exempt from VAT in accordance with the EU VAT Directive, regardless of whether the party is conducting business or not.
- D1** The VAT treatment of the arbitrator's fee is determined on a case-by-case basis in accordance with the VAT legislation of the states where the arbitrator and the parties are domiciled.
- E1** If the arbitrator is not deemed to conduct business, i.e., if it is considered that the arbitrator does not provide arbitration services as a business activity, the arbitrator charges their fee exempt from VAT. In such cases, the arbitrator is not subject to the invoicing provisions under the Finnish VAT Act. Please note that the FAI will request an invoice from the arbitrator regardless. The arbitrator charges their fee exempt from VAT regardless of whether the party is conducting business or not.
- E2** If the party is not conducting business, the arbitrator subject to VAT charges their fee with an invoice including VAT in accordance with the VAT rate of the arbitrator's state of domicile.

3. Income tax on the arbitrator's fee

In Finland, the taxable status of an arbitrator depends on whether the arbitrator is considered as a general taxpayer or a limited taxpayer. General taxpayers are individuals domiciled in Finland, and limited taxpayers are those domiciled outside of 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 their 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 Finnish Prepayment Act (1996/1118, as amended), the fee invoiced by an arbitrator as a private individual is not treated as wages but as trade income. The arbitrator's fee is subject to withholding tax, unless the arbitrator is entered in the prepayment register at the time of payment of the arbitrator's fee. 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 responsible for remitting the withheld tax amount to the tax authorities in advance. The employer's social security contribution is not payable on trade income.

Where the arbitrator's fee is invoiced through the arbitrator's company or by their employer, the amount of the invoice is to be paid without withholding tax if the company is entered in the prepayment register. 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

The income tax treatment of an arbitrator domiciled outside Finland (the arbitrator's fee is invoiced by a private individual or a company outside Finland) depends on the provisions of the tax treaty between Finland and the country of domicile of the arbitrator, as well as on tax regulations in these countries. The income tax treatment of an arbitrator domiciled outside Finland and of a foreign company must 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 advance on costs fixed by the FAI does not cover the costs of the arbitration in their entirety, the arbitrator shall send an invoice for the arbitrator's fee and expenses for the remaining amount to the party or parties who are liable for the payment.

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 which 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 their country of domicile.

The 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 their 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 their 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 their 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 their 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 their country of domicile
- tax identification number in their 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 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 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

Arbitrator's fee

Arbitrator's expenses

Total

Total

EUR []

EUR []

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

Total

EUR []

EUR []

EUR []

VAT 0 %