

# DELIVERABLE D.T 2.2.4

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Country specific guides on legal and tax for  
SMEs

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## DISCLAIMER

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## 1. Introduction

The present deliverable constitutes a guide on crowdfunding providing legal tips for Small and medium enterprises (SMEs) of the Central-Eastern (CE) area of the EU.

The EU Central-Eastern area includes: Austria, Croatia, Czech Republic, Germany, Hungary, Italy, Poland, Slovakia, Slovenia.

SMEs are at the heart of the new growth strategy of the European Union (Europe 2020, available [here](http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf) <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>), as it is doubtless that recovering from the ongoing crisis will depend on the foothold gained by this kind of companies on the (EU) market. Indeed, SMEs constitute 99% of companies in the EU (see: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics\\_on\\_small\\_and\\_medium-sized\\_enterprises](http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_small_and_medium-sized_enterprises)); furthermore, SMEs are strategic actors for the production of services, which account for 70% of the GDP and employment of the EU (see: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586673/EPRS\\_BRI\(2016\)586673\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586673/EPRS_BRI(2016)586673_EN.pdf)).

Basing on these considerations, the link between SMEs and crowdfunding is extremely important for two reasons. First, SMEs will have better chance to develop if they manage to operate on a large scale and to become innovative; in this regard, crowdfunding is likely to open new market windows for many SMEs. Second, SMEs need to be supported in many ways; accordingly, crowdfunding might be an efficient supporting tool with reference to the activities carried out by SMEs.

Nevertheless, acceding such new “world” for SMEs is not easy, as crowdfunding has started developing recently. So, companies interested in engaging themselves in crowdfunding projects (also called “crowdfunding campaigns”) are likely to face many obstacles, especially if they are not particularly large in size.

Among the main barriers are the legal issues surrounding the activities to be carried out before, during and after a crowdfunding project; in fact, knowing the “rules of the game” is fundamental but most of the times it is difficult to understand even how to find those rules.

Therefore, this guide is aimed at providing relevant information of legal nature that will hopefully help SMEs to efficiently participate in crowdfunding projects, in particular if those projects involve subjects located in different CE-EU Member States.

Please note that the guide has not been construed to set forth all the rules applicable to the actors participating in crowdfunding projects. Instead, the very scope of the guide is to envisage and answer some major doubts that SMEs are supposed to cope with. Here, SMEs will find a list of operational questions, formulated as “FAQs”.



Selected questions and consequent answers are the fruit of recent studies on the legal framework of crowdfunding in the EU Member States of the CE area, including the law of the EU and the laws of its Member States.

## 2. Preliminary Dos & Don'ts

### ➤ DO NOT UNDERESTIMATE THE IMPORTANCE OF LEGAL ADVICE

SMEs involved in crowdfunding projects will have to tackle legal issues which are frequently unknown to the general public. For this reason, if you run a SME and want to participate (occasionally or on a regular base) to crowdfunding projects do not forget to get legal support by qualified professionals.

The following sectors are the ones which raise more legal issues as far as crowdfunding is concerned:

- tax law
- criminal law (especially money laundering and fraud)
- intellectual property (especially patenting of ideas)
- legal informatics (with regard to the activities carried out by platforms as service providers)

### ➤ DO NOT FOCUS ON YOUR DOMESTIC LAW ONLY

Unless the crowdfunding project that you are interested in equals to a purely internal situation (all the subjects belong to the same country and perform their activities only in that country), make sure to accede all relevant applicable norms and practices. In particular, you should hire or consult legal advisors who know: the law of the EU and the other States where the crowdfunding project is meant to impact

the languages of the other States where the crowdfunding project is meant to impact or, at least, the English language.

### ➤ MAKE SURE YOU HAVE ALL THE DOCUMENTS PROVING THE NATURE OF YOUR COMPANY

We will shortly see that companies can be qualified as SMEs if they fulfil some requirements. In order to carry out this assessment, always check if you have or can quickly get the documents you need.

### ➤ REMEMBER THE MEMBER STATES OF THE EUROPEAN UNION



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If you decide to get your SME participating in crowdfunding projects involving companies located or activities to be carried out in more than one EU Member States, remember that EU norms are more likely to apply. Thus, pay attention to what is and what is not a Member State of the EU.

EU Member States (in alphabetical order): Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, The United Kingdom (at least until now)

Examples of non-EU Member States: Norway, Serbia, Switzerland, Russia, Turkey (and more).



## 3. QUESTIONS

### 3.1. CONCEPT OF SME

#### 1) HOW TO FIND OUT IF YOU ARE AN SME?

Within the EU, the concept of SME is now defined according to EU-based indicators, set forth by the European Commission in a recommendation (Commission recommendation 2003/361/EC of 6 May 2003). Recently, EU countries have started to qualify as “SMEs” those companies fulfilling the requirements laid down in that recommendation. So, in order to understand whether your company is a SME or not, you shall make reference to those EU guidelines.

However, please remember that before checking if you run a SME you have to make sure that your business is...an enterprise. Again, it is enough to refer to the applicable definition deriving from the law of the EU: any entity engaged in an economic activity, irrespective of its legal form. An economic activity is usually seen as the sale of products or services at a given price, on a given/direct market

#### 2) DO EU GUIDELINES ON SMEs PROVIDE FOR QUALITATIVE INDICATORS?

Yes. According to the EU guidelines on the definition of SME, the following qualitative indicators must be considered: staff headcount, annual turnover, annual balance sheet total. These indicators shall be assessed during the reference year.

**Staff headcount.** This broad category includes full-time, part-time, temporary and seasonal staff, as determined according to national law. So, when calculating your staff do not forget to rely on the applicable norms of your country, otherwise you risk committing mistakes affecting the qualification of your company.

Please, note that workers shall not always be counted in the same way. Each full-time worker employed by the company or working on its behalf counts as one unit. The other workers count as fractions of unit.

**Annual turnover.** This is the income that the enterprise received during the reference year from the sale of products and provision of services. Economic operations to be calculated:

- are those carried out in the framework of the company’s ordinary activities and
- should not include VAT or other indirect taxes.

**Annual balance sheet total.** This refers to the value of a company’s main assets.



### 3) DO EU GUIDELINES ON SMEs PROVIDE FOR QUANTITATIVE INDICATORS?

Yes. That is how to assess the nature of an individual company against the EU applicable scheme on SMEs.

Company category	Staff headcount	Turnover	or	Balance sheet total
Medium-sized	< 250	≤ € 50 m		≤ € 43 m
Small	< 50	≤ € 10 m		≤ € 10 m
Micro	< 10	≤ € 2 m		≤ € 2 m

### 4) IS THERE ANYTHING MORE YOU SHOULD CONSIDER WHEN ASSESSING THESE INDICATORS?

Yes. The calculation of quantitative indicators depends on the nature of your enterprise. Is your enterprise individual or not? And how to calculate the indicator in both cases?

**Individual enterprises.** Individual enterprises are autonomous. An enterprise is autonomous unless:

- it holds at least 25 % of the capital or voting rights (whichever is higher) in one or more other enterprises and/or
- the other way around.

To find out if your individual enterprise is a SME, just refer to the guidelines provided above.

**Non-individual enterprises.** If your company is not an individual one (i. e. because it is part of a group), the applicable criteria might change; accordingly, sometimes that company could not be considered a SME even if it is apparently small with regard to staff headcount, turnover and balance sheet total.

There are two types of non-individual enterprises.

- a) Partner enterprises. Basically, a company is a “partner enterprise” when the holding criteria indicated above (for individual enterprises) are between 25% and 50%.

To find out if your partner enterprise is a SME you shall first calculate the data of your specific enterprise and then add the relevant percentages of the data of the other enterprises involved in the participation.

- b) Linked enterprises. Basically, a company is a “linked enterprise” when the holding criteria indicated above (for individual enterprises) are higher than 50%.



To find out if your linked enterprise is a SME you shall calculate the whole total data all the enterprises involved in the link (included your specific enterprise, of course).

## 5) ARE THERE MATERIAL EXCEPTIONS TO THESE CALCULATION CRITERIA?

Yes. An enterprise is ranked as autonomous if any of the following types of investor holds 25-50 % of its capital or voting rights:

- public investment corporations, venture capital companies and business angels;
- universities and non-profit-making research centers;
- institutional investors, including regional development funds;
- autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5.000 inhabitants.

However, you might also fill the SME self-assessment questionnaire available here: <http://ec.europa.eu/growth/tools-databases/SME-Wizard/>

## 3.2. CROWDFUNDING PROJECTS

### 6) HOW MANY TYPES OF CROWDFUNDING COULD YOU BE INVOLVED IN?

There are multiple categories of crowdfunding, even though a major distinction can be made between crowdfunding projects where external supporters act in view of an economic return or for free.

The main types of crowdfunding are the following:

- Investment-based
- Lending-based
- Invoice trading
- Reward-based
- Donation-based

Please consider that the definitions of those types of crowdfunding have been framed in order to be used in a legal context and follow the taxonomy used in other deliverables developed by UNIBO under this project. In particular, reference has been made to the following document: “Commission Staff Working Document on Crowdfunding in the EU Capital Markets Union”, doc. SWD(2016) 154 final, 3 May 2016, Annex I.

### 7) WHICH ARE THE MAIN ROLES AN SME CAN PLAY IN CROWDFUNDING PROJECTS?





Chiefly, the main roles an SME can play in crowdfunding projects are three.

- Promoters. SMEs generally act as promoters of the initiative(s) to support through a crowdfunding campaign. Probably, this is the most important role a SME can play with reference to crowdfunding projects; that is why the attention will be primary directed towards the aspects that SMEs acting as promoters in crowdfunding projects should consider.
- Platforms. SMEs can also act as online platforms through which crowdfunding campaigns are developed.
- Donors/Supporters/Investors. SMEs might as well be involved in crowdfunding projects as donators (when they are not expected to get anything back), supporters and non-qualified investors (as to crowdfunding projects with economic return).

## **8) WHEN ARE YOU INVOLVED IN CROSS-BORDER CROWDFUNDING PROJECTS?**

Basically, that happens when one or more subjects involved in the project are located in one or more States other than the one your SME is located. Crowdfunding projects entail the performance of services and services are cross-border when at least two States are concerned in terms of subjects involved and/or impact of the activities.

### **3.3. REGULATIONS DIRECTLY TARGETING CROWDFUNDING**

## **9) WHICH ARE THE EU MEMBER STATES BEARING A REGULATION FOR CROWDFUNDING?**

The EU Member States where crowdfunding is regulated, at least in part and regardless of the applicable binding sources, are: Austria, Finland, France, Germany, Italy, Lithuania, The Netherlands, Portugal, Spain and the UK. By consequence, only 3 Member States of the CE area have so far adopted norms (not just non-binding guidelines) directly targeting crowdfunding.

## **10) ARE REGULATIONS ON CROWDFUNDING SIMILAR IN THE EU MEMBER STATES CONCERNED?**

No, they are not similar. Even if just a few EU Member States have so far decided to regulate certain aspects of crowdfunding, domestic regulations on crowdfunding vary on many points. In particular, the fields of application of those regulations cover different issues in terms of crowdfunding types and subjects. This means that



before starting a crowdfunding project involving an EU country providing for a national regulation on crowdfunding, you are encouraged to check at least the most relevant norms of the national applicable discipline.

## 11) IS THE LAW OF THE EU REGULATING CROWDFUNDING?

No, although the EU law is nevertheless applicable on many partial aspects of crowdfunding, therefore must be considered in individual cases. Moreover, it is useful to refer to EU soft law acts and relevant documents to better understand the major barriers and potentials of crowdfunding (within the EU) and to find out the EU discipline of some specific areas and sectors somehow dealing with crowdfunding.

Also, it is useful to monitor the studies and report conducted by external subjects on behalf of the EU.

## 3.4. INTELLECTUAL PROPERTY

### 12) WHAT DOES INTELLECTUAL PROPERTY ENCOMPASS?

The expression “intellectual property” is broader than it seems. Basically, it refers to human innovations and its aim is to prevent third subjects from using without authorization any aspect of the owner’s/inventor’s innovation. However, intellectual property lies on some pillars.

- Patents, to protect technical inventions
- Copyrights, to protect artistic creations
- Designs and models, which specify the look of the product
- Trademarks, which indicate the who produced the good
- Geographical indications, which indicate the place where the good come from

### 13) WHY IS INTELLECTUAL PROPERTY RELEVANT FOR SMEs TAKING PART IN CROWDFUNDING CAMPAIGNS?

Chiefly, because of two reasons.

- On the one hand, SMEs looking for support through crowdfunding campaigns could be forced to disclose an innovative idea and if they do not trigger the most appropriate form of protection anyone else could somehow take advantage of the information shared with the public.
- On the other hand, an SME might as well use crowdfunding campaigns to promote innovations which have already been subject to intellectual property rights by other



subjects; in this case, the SME concerned could be held responsible for breaching intellectual property rights.

**14) DO DOMESTIC LAWS REGULATE ALL FORMS OF PROTECTION IN THE SAME WAY?**

Domestic legal systems generally regulate all intellectual property rights, but differences between legal orders exist in terms of the content of the protection afforded to the applicant and procedures to follow, especially as far as patents are concerned.

In general, if you want to obtain intellectual property rights in one or more States, registration procedures concerning the subject matter of the right required must be finalized within the competent authorities of each country.

However, it is advisable to check the national discipline applicable to your own case before launching a crowdfunding campaign. Please, consider that being entitled intellectual property rights could be the result of expansive and time-consuming activities, so you'd better prepare yourself way in advance.

**15) ARE THERE ANY EU-BASED FORMS OF PROTECTION CONNECTED TO INTELLECTUAL PROPERTY?**

Yes. For example, nowadays it is possible to apply for a “unitary patent” or a “EU trademark” provided that all the requirements laid down in the EU rules are fulfilled by the applicant.

Nevertheless, these EU-based forms of protections imply higher costs and longer procedures. Given that could be a huge problem for SMEs, the EU funds four helpdesks composed by experts who can provide free advice and training sessions on intellectual property issues.

**16) WHICH KIND OF LIABILITY ARISE FROM THE VIOLATION OF INTELLECTUAL PROPERTY LAW?**

Whether the consequences of violating intellectual property law are of civil or criminal nature, it depends on the regulation applicable at national level. It is therefore advisable to check the legal framework applicable to your own case, to be sure of the applicable legal regime.

### 3.5. TAX LAW

**17) WHO AM I?**



The applicable tax regime changes according to your position in the crowdfunding scheme and according to the model of crowdfunding that you are going to consider.

The only position that you may consider distinctly is the one of the platforms. Managing a platform means offer a virtual market to promoter and supporters where supply and offer are bring virtually together. This is the main service that the platform offers, hence the platform's revenues are the net commissions on those services, which is also the main focus to qualify such revenues and supplies for tax purposes.

Tax regime applicable to supporters and promoters is way far more influenced by the model of crowdfunding as well as by the previous nature of the subjects involved in the transaction.

Anyway you have to know, each time, if you act as a supporter or as a promoter and, in any case, if you act as a legal entity or as a private citizen.

A promoter may be a common citizen that, out of his main business, tries to sell his sculptures through a crowdfunding campaign, but the promoter may also be a charities that sold some sculptures to fund a benefic campaign or a sculptor that, to finance the opening of his own exhibition, sell some of his operas in a crowdfunding campaign.

Each of this situation has different implication both for direct and indirect taxation.

## 18) DO I ACT AS PRIVATE OR DO I ACT AS AN ENTERPRISE OR A PROFESSIONIST?

You have to answer to this question any time you consider the tax regime applicable to a crowdfunding operation. It is really important because, generally speaking, when you act as a private or, if you are the supporter of a campaign, even if you are an enterprise, if you act out of your business, the operation it isn't relevant for tax purposes.

### **ALERT**

Despite VAT regime is similar in all the member State, the tax revenue system is peculiar in each member state, so if you must verify if, according to your specific tax system there is a provision of exemption for non professional and occasional revenues, produced by private people out of any kind of business.

## 19) THERE IS ANY SPECIFIC TAX INCENTIVES FOR SME'S CROWDFUNDING PROJECTS?

Not at the European level. Here we can consider if there is any form of incentives connected with crowdfunding in each Interreg State or any form of special tax regime for the SME, also regardless of the crowdfunding.

Pay attention that such incentives, both to SME in general and particularly to crowdfunding activities, could change in a short time. The situation may be



changed when you will start your campaign for real, so please verify with your tax account or with your legal service if there is any particular incentive ongoing on that moment.

You can consider this like a short guide for a first overview, even though not necessarily the requirements to obtain tax incentives for SMEs fulfill the characteristics of a crowdfunding campaign (see Croatia).

### **Austria**

Austria has no special tax incentives for SMEs in place. There is an adjusted minimum tax for newly founded companies of € 1,092 that only benefits low income companies.

### **Croatia**

Croatia provides very comprehensive tax incentives for new investments. Income from new investments can be subject to reductions of the corporate income tax rate of 50-100% for 10 years.

This depends on the size of the investment and on the number of newly created jobs related to the investment:

- 100% reduction if investment of at least € 3 million and related to 15 new employees;
- 75% reduction if investment of at least € 1 million and related to 10 new employees;
- 50% reduction if investment of less than € 1 million and related to 5 new employees.

For micro companies, a special regime exists that grants a 50% relief (resulting in a tax rate of 10% compared to the normal 20%) if the investment amounts to at least € 50,000 and creates 3 new jobs.

### **Czech Republic**

Small business may opt to pay a lump sum income tax payment instead of paying tax on actual profits. This option applies if an individual operates a business as a sole propieter and did not have annual income of more than CZK 5 million for the previous three tax years but is rarely used.

### **Germany**

Germany has two tax incentives in place that target specifically small companies. For both reliefs, the following criteria must be met in order to be eligible:

- Net assets must be smaller than € 235,000 if the company applies the net worth method to determine the taxable income and smaller than € 100,000 if the company applies the net income method.
- The relevant assets must remain in a domestic permanent establishment of the company for at least one year.

The benefits connected to fulfilling these criteria are twofold: First, an additional depreciation of 20% of the acquisition or manufacturing costs of new movable assets can be incurred in the year of acquisition or manufacturing and the following four years (20% at most in all five years together). The additional depreciation reduces subsequent depreciations accordingly.



Second, an investment reserve of up to 40% of future acquisition or production costs of depreciable assets can be recognized. Income entering the reserve is tax-free upon recognition but is taxed later as soon as the respective assets start to be depreciated. The investment reserve is limited to € 200,000. The acquisition or the manufacturing of the asset for which the deduction is claimed must be made within three years and it must be used in a domestic permanent establishment almost exclusively for business purposes.

### Hungary

A development tax allowance is available in the form of a reduced tax liability, depending on the scope of the investment, its location and its job creation potential. The allowance may be granted for investments by SMEs that exceed HUF 500 million, if the enterprise increases the number of employees by five (for small enterprises) or 10 (for medium-sized enterprises) within the following four years, or increase its wage of costs by at least 10 times (for small enterprises) or 25 times (for medium-sized enterprises) the annual minimum wage.

### Italy

Tax incentives for corporate and private investments in startups, both by individuals and by legal entities. This benefit, stabilised and significantly bolstered by the 2017 Budget Law (art. 1, par. 66), envisages for individuals a deduction on personal income tax (IRPEF) amounting to 30% of the amount invested, up to a maximum sum of € 1 million; for legal entities the benefit consists in a fiscal deduction on the taxable income for company tax purposes (IRAP) equal to 30% of the amount invested, up to a maximum of € 1.8 million. Until 2016, these incentives amounted to 19% for investments made by individuals and to 20% for investments made by legal entities, except the special rates, respectively amounting to 25% and 27%, reserved to investments in innovative startups with social goal or operating in the energy field: since 2017 the 30% flat rate applies to these special typologies as well (see Implementing Decree for 2013-2015; Implementing Decree for 2016). These subsidies apply both in case of direct investments in startups and in Italy's Startup Act: executive summary Italian Ministry of Economic Development - 19 - case of indirect investments by means of other companies, such as CIUs, investing predominantly in startups and innovative SMEs. Starting from 2017, the incentives are conditioned to a holding period of the shareholding in the innovative startup for a minimum of 3 years (previously, 2 years). 11. Possibility to collect capital through equity crowdfunding authorised online portals. In July 2013, Italy was the first country in the world to enact comprehensive regulation for this instrument. In early 2015, the already mentioned Decree-Law 3/2015 introduced three important amendments: - innovative SMEs can now take advantage from the instrument; - CIUs and other corporations that invest predominantly in innovative startups and SMEs can resort to equity crowdfunding as well, an evolution that allows for the diversification of the portfolio and decreased risk towards retail investors; - once again waiving ordinary norms, the transfer of shares of innovative startups and SMEs is dematerialised, and as such related burdens are reduced, aiming for higher fluidisation of the secondary market. By a deliberation on 24 February 2016, CONSOB2 has updated the Regulation, adding to the aforementioned measures new procedural simplifications. The verification of adequacy of the investment can now



be carried 2 Commissione nazionale per le società e la borsa (CONSOB) is the Italian Securities and Exchange Commission (SEC). Italy's Startup Act: executive summary Italian Ministry of Economic Development - 20 - out by the administrators of the portals themselves, and not exclusively by banks as required before, bringing the entire procedure online. Moreover, two new categories of professional investors have been added: "professional investors on request", identified according the EU directive "Markets in Financial Services" (Mifid), and "investors in support of innovation", which includes business angels. Finally, the 2017 Budget Law has launched the process to extend the applicability of this instrument to all Italian SMEs.

### **Poland**

Poland provides several incentives to SMEs. First, small and medium-sized enterprises incur higher rates for the allowance on investments in new technologies that is generally available for all enterprises. Depending on the size of the company, a deduction of 70% (small entities) or 60% (medium-sized) instead of 50% applies. Additionally, SMEs may receive a credit for investing in new technologies with the option to benefit from a waiver of up to 70% of costs incurred (depending on the size of the company and the project location). The technology needs to be new and sufficiently innovative. The maximum credit is PLN 4 million ( $\approx$  € 950,000) and the project must not involve investments in new technology of more than € 50 million. The definition of SMEs corresponds to the one given by the European Commission. Further incentives are in place for micro companies. Enterprises with a turnover of less than € 1.2 million are allowed to immediately depreciate the costs of certain fixed assets up to an amount of € 50,000. Eligible enterprises may also opt for quarterly advance tax payments instead of monthly payments. Newly founded small and micro companies can even receive a credit of 100% of the income tax due in the first year of operations that must be repaid within five years, though.

### **Slovakia**

The 'Exemption for start-ups from income tax for the first two years of their existence' (Oslobodenie od dane z príjmu pre start-upy) allows start-ups offering innovative solutions to be exempt from income tax for their first two years of activity. Afterwards, they pay tax at a rate lower than the standard 22 % corporate tax rate for up to three years.

### **Slovenia**

Slovenia does not provide tax incentives specifically designed for SMEs. They are, however, granted advantageous tax treatment in special economic zones where the maximum intensity of aids in form of tax concessions is 50% (small entities) or 40% (medium-sized enterprises) instead of 30%. Moreover, SMEs are subject to less restrictive holding requirements for assets that qualify for the investment deduction in the region of Pomurje. The deduction amounts to 70% of incurred costs of eligible equipment and intangibles with a maximum allowance of € 30,000. Lastly, there are reduced penalties for micro, small and medium-sized enterprises in case of delayed or insufficient tax payments.



## Sec. I - I'M A PLATFORM AND I'M A SME

Answering those questions we assume the hypothesis that the platform is managed by an enterprise, that acts for profit purposes. So we assume that such enterprise is a taxable person for VAT purposes.

### 20) IS VAT CHARGEABLE TO MY OPERATIONS?

Generally speaking, no. The platform usually is remunerated for its use, most likely by the investee, and usually in the form of a percentage of the money collected. This will be a taxable supply of services by the platform to the investee.

### 21) IF I CARRY OUT ALSO COLLECTION SERVICES, IS VAT CHARGEABLE TO MY OPERATIONS?

These services are to be considered separate services these services qualify as debt collection and falling outside the scope of the VAT exemption of article 135(1)(d) of the VAT Directive. As a matter of fact, a service qualifies as debt collection when the object of that service is to benefit its customers by payment of the sums of money due to those customers from their clients. By undertaking the recovery of debts for the account of those entitled to them, such a taxable person releases its customers from the burden of recovering payments.

### 22) DO I HAVE RIGHT OF DEDUCTION OF VAT?

You do. As VAT taxable person you have the right of deduction of the VAT paid to all of yours suppliers (both of goods and services). In crowdfunding, like in any other commercial activity affected by VAT, taxation must be neutral for taxpayers, so you are able to exercise your right of deduction of any VAT that you have paid for goods or services that you have bought within the scope of your business.

Invoicing obligations and formal requirements for the right of deduction are regulated by each national legal system.

### 23) HOW VAT IS APPLICABLE FOR CROSS-BORDER CROWDFUNDING PROJECTS?

Considering that it is a supply of service B2B you have to apply the reverse charge mechanism, which means that you don't charge the VAT to such operation and you'll send an invoice with the expression "exempted due to the intra-EU purchase of services".

Please check how such reverse-charge mechanism must be formally applied in your country.

### 24) AM I A TAXABLE PERSON FOR REVENUE TAXES?

Yes. If an enterprise, or even a single person, manages a platform for crowdfunding as his main business, all the revenues coming from such activity shall be taxable, according with the rules of each national tax system.





## 25) WHAT KIND OF REVENUE I WILL PRODUCE?

It depends from your national legal system, but, generally speaking, if you are an enterprise you will be affected by the taxation on enterprises' revenue, which means that probably, you will be able to deduct expenses connected with your business, including salaries and sponsorships.

## Sec. II - I'M A PROMOTER and I'M A SME

### 26) IS VAT CHARGEABLE TO MY OPERATIONS IF I CARRY OUT A REWARD-BASED CROWDFUNDING CAMPAIGN?

Generally speaking yes, it is.

We have reward-based crowdfunding, when the person gives funds to a crowdfunding campaign ("the contributor") and he or she receives in exchange for such contribution a non-financial reward in the form of goods or services from the person receiving funds from contributors through a crowdfunding campaign ("the entrepreneur"). This shall constitute a taxable transaction for VAT purposes, provided that there is a direct link between the supply of goods or services and its corresponding consideration collected by way of crowdfunding, and that the entrepreneur is a taxable person acting as such.

### 27) WHEN THE VAT ON SUCH OPERATION SHALL BECOME CHARGEABLE?

Where reward-based crowdfunding constitutes a taxable transaction and accounting for the fact that a contribution is typically given by the contributor before any goods or services are supplied in exchange, the contribution may be regarded as a payment made on account of those goods or services on which VAT shall become chargeable upon receipt of the payment pursuant to Article 65 of the VAT Directive, provided that the goods or services to be supplied are precisely identified when the payment on account is made. Although the open market value of the goods or services supplied by the entrepreneur to the contributor may be lower than the amount of the contribution received, such transactions shall in principle fall within the scope of VAT.

### 28) DO I HAVE RIGHT OF DEDUCTION OF VAT?

You do. As VAT taxable person you have the right of deduction of the VAT paid to all of your suppliers (both of goods and services). In crowdfunding, like in any other commercial activity affected by VAT, taxation must be neutral for taxpayers, so you are able to exercise your right of deduction of any VAT that you have paid for goods or services that you have bought within the scope of your business.

### 29) HOW VAT IS APPLICABLE FOR CROSS-BORDER, INTRA-EU, REWARD-BASED CROWDFUNDING PROJECTS?

If the supporter is another enterprise or, in general, a taxable person for the VAT in his Country, you must apply the reverse charge mechanism.

If the supporter is a consumer, you'll charge regularly the VAT, like in any other "national" operation.



**30) IS VAT CHARGEABLE TO MY OPERATIONS IF I CARRY OUT A EQUITY-BASED CROWDFUNDING CAMPAIGN?**

Not for you. Promoter offers bond or securities and, as far as the shareholder is concerned, payment of the sums necessary for the increase of capital is not a payment of consideration but an investment or an employment of capital.

In respect of intellectual property rights the transfer of such intellectual property rights shall constitute a taxable supply, which is chargeable when you'll pay such interest to the investors.

**31) DO I HAVE RIGHT OF DEDUCTION OF VAT?**

Yes, you do. Instead the operation itself does not fall within the scope of VAT there is a ECJ case law according to with, despite the fact that the issuing of shares does not qualify as an economic activity, you could deduct the VAT on the costs made in relation to issuing of the shares.

**32) IS VAT CHARGEABLE TO MY OPERATIONS IF I CARRY OUT A CROWDLENDING CAMPAIGN?**

No. There are no VAT consequences from the mere fact of receiving money as a loan.

**33) DO I HAVE RIGHT OF DEDUCTION OF VAT?**

Yes you can, if you act carrying out your business. If any costs are paid to receive the loan, e.g. a fee paid to the platform, the ability to deduct input VAT will depend on the activities of the person borrowing the money. Most likely these costs will be general cost of his business as a whole.

**34) IS VAT CHARGEABLE TO MY OPERATIONS IF I CARRY OUT A DONATION-BASED CROWDFUNDING CAMPAIGN?**

Not for you.

The money received from donation-based crowdfunding will depend on his specific situation.

The promoter might use the money to carry out projects for a good cause without performing supplies for consideration. He may also use the money to carry out a project making supplies for consideration, potentially at a lower price. In any case, the investee will not act as a taxable person in his relationship with the investor. He is not obliged to supply a good or service in return for the donation.

**35) DO I HAVE RIGHT OF DEDUCTION OF VAT?**

Probably not, if we assume that the crowdfunded activities exceed from your economic activities and laid down in an activity qualified as “non-economic” (i.e. you are not going to make profit, carrying on such activity).

**36) ARE MY PROFITS FROM REWARD-BASED CROWDFUNDING CAMPAIGN CONSIDERED AS TAXABLE INCOME FOR CORPORATE INCOME TAX?**

Yes, any time that your crowdfunding campaign is related to your business. For example, if you create a start up for the production of a new kind of sun-battery



and you try to fund your activity with a reward crowdfunding campaign, incomes that comes from such campaign will surely fall within the scope of corporate income tax. If you are an enterprises working on batteries sector and you start a reward crowdfunding campaign to fund a the production of a new product, green battery, such incomes will be fall within the scope of corporate income tax. Nothing changes whenever the profits comes from another country both European or extra-EU.

**37) ARE MY PROFITS FROM EQUITY-BASED CROWDFUNDING CAMPAIGN CONSIDERED AS TAXABLE INCOME FOR CORPORATE INCOME TAX?**

No, generally speaking, because offers bond or securities and, as far as the shareholder is concerned, payment of the sums necessary for the increase of capital is not a payment of consideration but an investment or an employment of capital. So it is not an income, but represent the investment in your capital.

**38) ARE MY PROFITS FROM CROWDLENDING CONSIDERED AS TAXABLE INCOME FOR CORPORATE INCOME TAX?**

No, because lending does not represent an income.

**39) ARE MY PROFITS FROM DONATION-BASED CROWDFUNDING CAMPAIGN CONSIDERED AS TAXABLE INCOME FOR CORPORATE INCOME TAX?**

No, generally speaking, because donation is not a revenue, but you must check if in your tax system there is a provision according to whom for the enterprises any kind of enrichment shall represent a taxable income for direct tax purposes (i.e. windfall profits).

### **Sec. III - I'm a supporter and I'm SME**

**40) DO I HAVE THE RIGHT OF DEDUCTION OF VAT IF I PARTICIPATE TO A REWARD-BASED CROWDFUNDING CAMPAIGN?**

Yes, if you act in the interest of your business. In the VAT system, a taxable person (and an enterprise should be a VAT taxable person, according to the Directive) has the right of deduction of the VAT already paid to his supplier anytime that such supply took place in the framework of the enterprise's business activities.

So, if you participate to a crowdfunding campaign, buying something connected with your business, you'll have the right of deduction like for any other supply.

Pay attention that, to exercise your right of deduction, you must have a copy of the supplier's invoice, according to the general VAT law.

**41) DO I HAVE THE RIGHT OF DEDUCTION FROM MY CORPORATE TAXABLE INCOME OF THE SUMS PAID AS REWARD IN THE CROWDFUNFING CAMPAIGN?**

Generally speaking, yes. Of course you should check which is the specific regulation in your country, but we can say that EU member States have a common legal tradition, according to which if an enterprise make a purchase of goods or services



within the scope of its business, the sum spent for such purchase can be deducted from taxable base of corporate income tax.

**42) IS VAT CHARGEABLE TO MY OPERATION IF I PARTICIPATE TO A EQUITY-BASED CROWDFUNDING CAMPAIGN?**

Your operation falls within the scope of VAT but, considering that it may be qualified as a “financial operation” it is exempted, which means that you cannot charge VAT but you haven’t the right of deduction of the VAT already paid for the connected purchase.

It is possible that, for such exempted operation, a system of *pro-rata* works in our country, please pay attention to that and ask for more information to your tax advisor.

**43) DIVIDENDS PAID TO ME AS REWARD FOR PARTICIPATION IN EQUITY BASED CROWDFUNDING CAMPAIGN SHALL BE CONSIDERED INCOME FOR ME?**

Probably yes. If you have invested your capital in securities of the promoter, the reward paid to you is going to be a dividend; consequently, unless in your Country there is a regulation according to whom dividend must be exempted, such sums shall be part of the taxable base of corporate income tax.

**44) DIVIDENDS PAID TO ME AS REWARD FOR PARTICIPATION IN A CROSSBORDER, EQUITY BASED CROWDFUNDING CAMPAIGN SHALL BE CONSIDERED INCOME FOR ME?**

You must check if your Country signed a Convention Against Double Taxation with the Country of the promoter. When such convention is signed you have to look at it to check if dividends may be taxed in your Country or must be considered exempted according with the Convention.

If there isn’t any convention dividends will be considered as part of taxable income.

**45) IS VAT CHARGEABLE TO MY OPERATION IF I PARTICIPATE TO A CROWDLENDING CAMPAIGN?**

Your operation falls within the scope of VAT but, considering that it may be qualified as a “financial operation” it is exempted, which means that you cannot charge VAT but you haven’t the right of deduction of the VAT already paid for the connected purchase.

It is possible that, for such exempted operation, a system of *pro-rata* works in our country, please pay attention to that and ask for more information to your tax advisor.

**46) INTERESTS PAID TO ME AS REWARD FOR PARTICIPATION IN CROWDLENDING CAMPAIGN SHALL BE CONSIDERED INCOME FOR ME?**

Generally speaking, yes. As usual, in the matter of corporate income tax, you better control what the national law says, but in general terms we can say that each State considers interest income as taxable income.



### 3.6. CRIMINAL LIABILITY

#### 47) IS CRIMINAL LIABILITY FOR SMEs REGULATED THE SAME WAY IN ALL THE EU MEMBER STATES?

No.

Criminal liability regime is highly varying in the EU Member States.

That is particularly true when it comes to the criminal liability of legal entities (such as SMEs): While in some countries corporations may be held criminally liable, in others they may be only subject to administrative sanctions.

In any case, in all EU Member States both natural persons, and the corporation may be held liable in case an offence is committed.

It is therefore advisable to check the legal framework applicable to your own case, to be sure of the applicable legal regime.

#### 48) ARE THERE SPECIFIC PROFILES OF CRIMINAL LIABILITY IN CROWDFUNDING ACTIVITIES FOR SMEs LAUNCHING A CAMPAIGN?

No. For the time being, in the EU there are no specific provisions concerning criminal liability of promoters in crowdfunding.

Therefore, criminal liability for SMEs promoters depends on the criminal law provisions applicable in any other context (e.g. in case of fraud, money laundering, terrorist financing).