

1 January 2021

## **EXPLANATORY NOTE ON VAT APPLICABLE ON ICC ADMINISTRATIVE EXPENSES**

### **A - General**

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1. This Explanatory Note sets out invoicing and charging principles with respect to French Value-Added Tax (“VAT”) applicable on ICC administrative expenses under the ICC Rules of Arbitration (“Rules”). It is effective as of 1 January 2021.
2. ICC administrative expenses do not include VAT (Article 2(14) of Appendix III to the Rules). As of 1 January 2021 and to the extent that VAT is applicable, ICC administrative expenses will be subject to VAT and may be increased by the corresponding amount at the prevailing rate as set out below. The applicable rate under French tax law is currently 20%.
3. VAT will not be charged on ICC administrative expenses in cases administered by the Secretariat of the ICC International Court of Arbitration’s North America Office (SICANA, Inc.) and Brazil Office (SCIAB Ltda).

### **B - Amounts and Services Concerned**

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4. Where applicable, VAT will be charged on the requested advance payments corresponding to the ICC administrative expenses. Indicatively, VAT will be charged and invoiced on:
  - a. The filing fee (Article 4(4)(a) of the Rules and Article 1(1) of Appendix III).
  - b. The portion of requested payments corresponding to ICC administrative expenses of:
    - (i) Advances on costs (Article 37 of the Rules and Article 1 of Appendix III);
    - (ii) Additional advances on costs (Article 36(5) of the Rules and Article 2(11) of Appendix III); and
    - (iii) Costs of the Emergency Arbitrator Proceedings (Article 7(1) of Appendix V).
  - c. Any abeyance fee (Article 2(7) of Appendix III).

ICC will not charge VAT on the portion of the advance on costs corresponding to the arbitrators' fees and expenses. The invoicing and collection of VAT due by the parties to the arbitrators, where applicable, is a matter solely between the arbitrators and the parties.

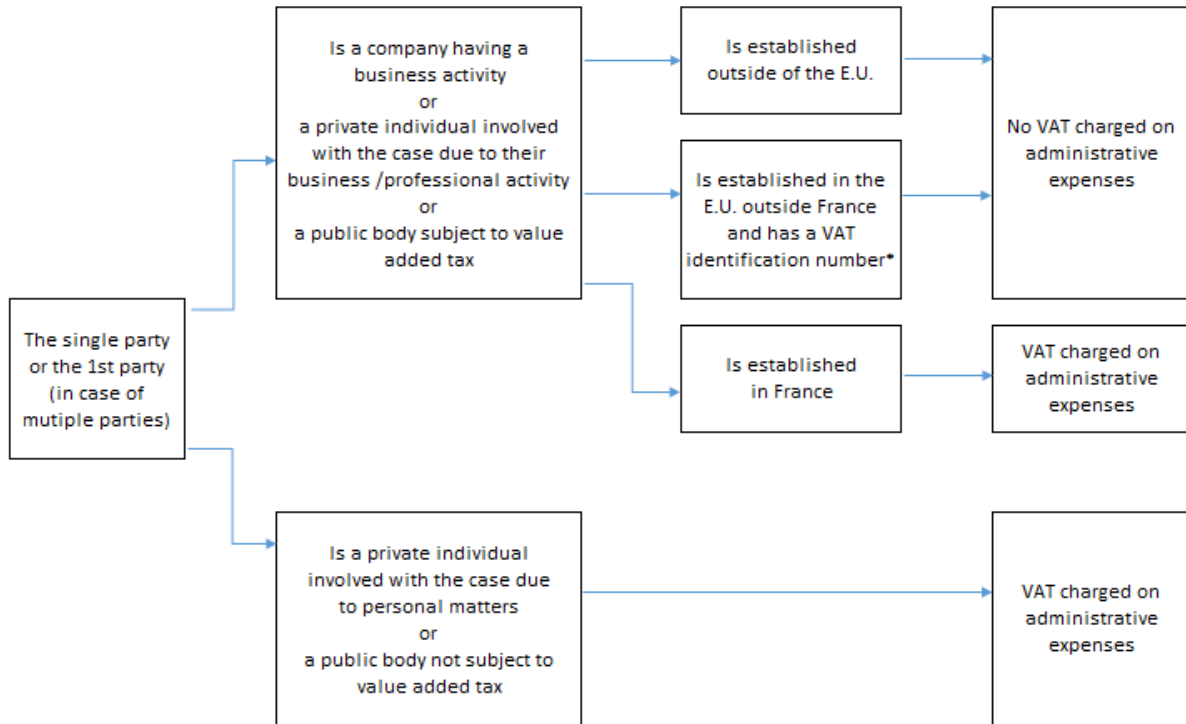
## C - Identification of Parties to be invoiced

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5. Any amount required under the Rules for the purposes of the filing fee, advances on costs, additional advances on costs, costs of Emergency Arbitrator Proceedings and abeyance fees is payable by the party or parties identified in the payment requests issued by the Secretariat. Pursuant to Article 2(iii) of the Rules, "party" or "parties" include claimants, respondents or additional parties.
6. In addition, ICC will issue invoices for the purposes of VAT on administrative expenses as follows:
  - a. In cases between a single claimant and a single respondent, ICC administrative expenses alongside the arbitrators' fees and expenses will be invoiced to each of them. As per the principles set forth in paragraph 8 below, invoices may include VAT charged on ICC administrative expenses.
  - b. In multiparty cases (i.e., cases with multiple parties as claimants and/or respondents and/or one or more additional parties), ICC administrative expenses alongside the arbitrators' fees and expenses will be invoiced to the first party of the respective groups as set out in the case caption; namely, Claimant 1, Respondent 1 and Additional Party 1. As per the principles set forth in paragraph 8 below, invoices may include VAT charged on ICC administrative expenses.
7. In application of the above:
  - a. **Companies** registered in the European Union ("EU") must provide their EU value-added tax registration number.
  - b. **Private individuals** must state (i) whether their involvement in the case should be understood as relating to business/professional activity or personal matters and (ii) whether they are considered as a taxpayer for value-added tax, goods and services tax ("GST") or a similar tax in their country of establishment/residence.
  - c. **Public bodies**, including governments and states, must clarify whether they are subject to value-added tax, GST or any similar tax in their country of establishment.

## D - VAT Charging Principles

8. Upon identification of the parties to be invoiced, ICC will proceed with charging or not charging VAT on ICC administrative expenses based on the below:



**Note:**

\* in case that a VAT identification number is not communicated, VAT will have to be charged on administrative expenses

## E - Other Provisions

9. This Explanatory Note applies *mutatis mutandis* to ICC administrative expenses payable under other ICC dispute resolution services, such as those provided (a) under the Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings and (b) by the ICC International Centre for ADR.
10. A link to the Explanatory Note is provided in the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration. Updates to this Explanatory Note will be posted on the ICC website with a changed date at the beginning of the document.
11. The contents of this Explanatory Note are subject to French tax law and are provided for information purposes only. They may be modified at any moment and without prior notice in accordance with any changes introduced to French tax law. Parties are solely responsible for their own fiscal treatment of VAT.