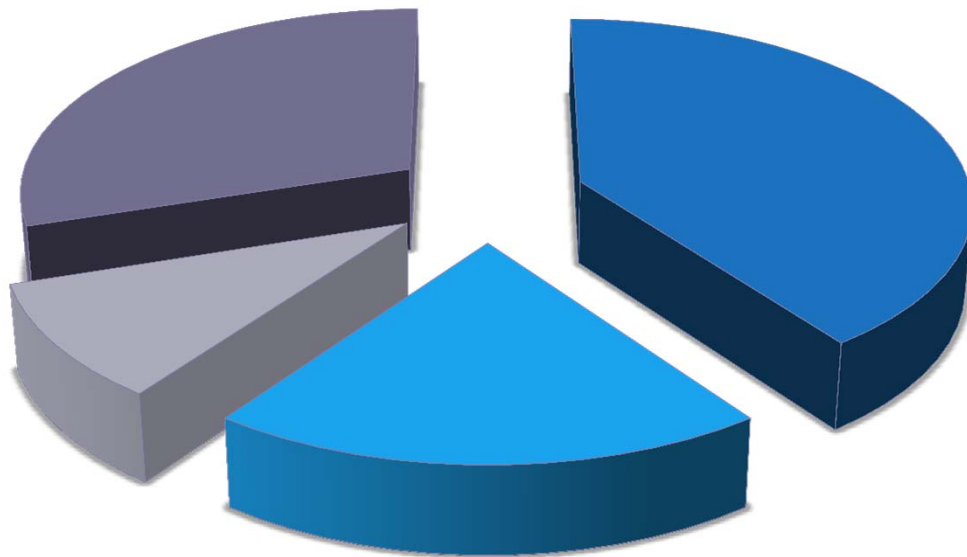


European VAT & Associations & Bird & Bird

UIA Roundtable

12 November 2013



- Membership fees
- Contributions from the members
- Contributions from third parties
- Subsidies



Financial risks for the association and its members

Administrative sanctions

Criminal sanctions



Example of **financial risks** (in Belgium)

Liability to pay the **unduly deducted / unpaid VAT** and **interests for late payment**



Examples of **administrative sanctions** (in Belgium)

Absence of payment of VAT or abusive deduction of VAT: administrative fine = 2 times the VAT due



Examples of **criminal sanctions** (in Belgium)

VAT fraud: criminal fine 250-125.000 EUR and/or **8 days to 2 years imprisonment**

VAT forgery: criminal fine 250-125.000 EUR and/or **1 month to 5 years imprisonment**



How to avoid these risks?

Properly fulfil your association's VAT obligations, i.e.,

- **invoice**
- **pay** and
- **get VAT refunds**

as required by law

KEY

Analysis of:

- ACTIVITY OF ASSOCIATION (=> VAT STATUS OF ASSOC.)
- VAT STATUS OF MEMBERS
- MEANS OF FINANCE

To determine:

- VAT ON OUTGOING INVOICES
- VAT RECOVERY ON INCOMING INVOICES

Know your association's activity

Taxable VAT taxpayers

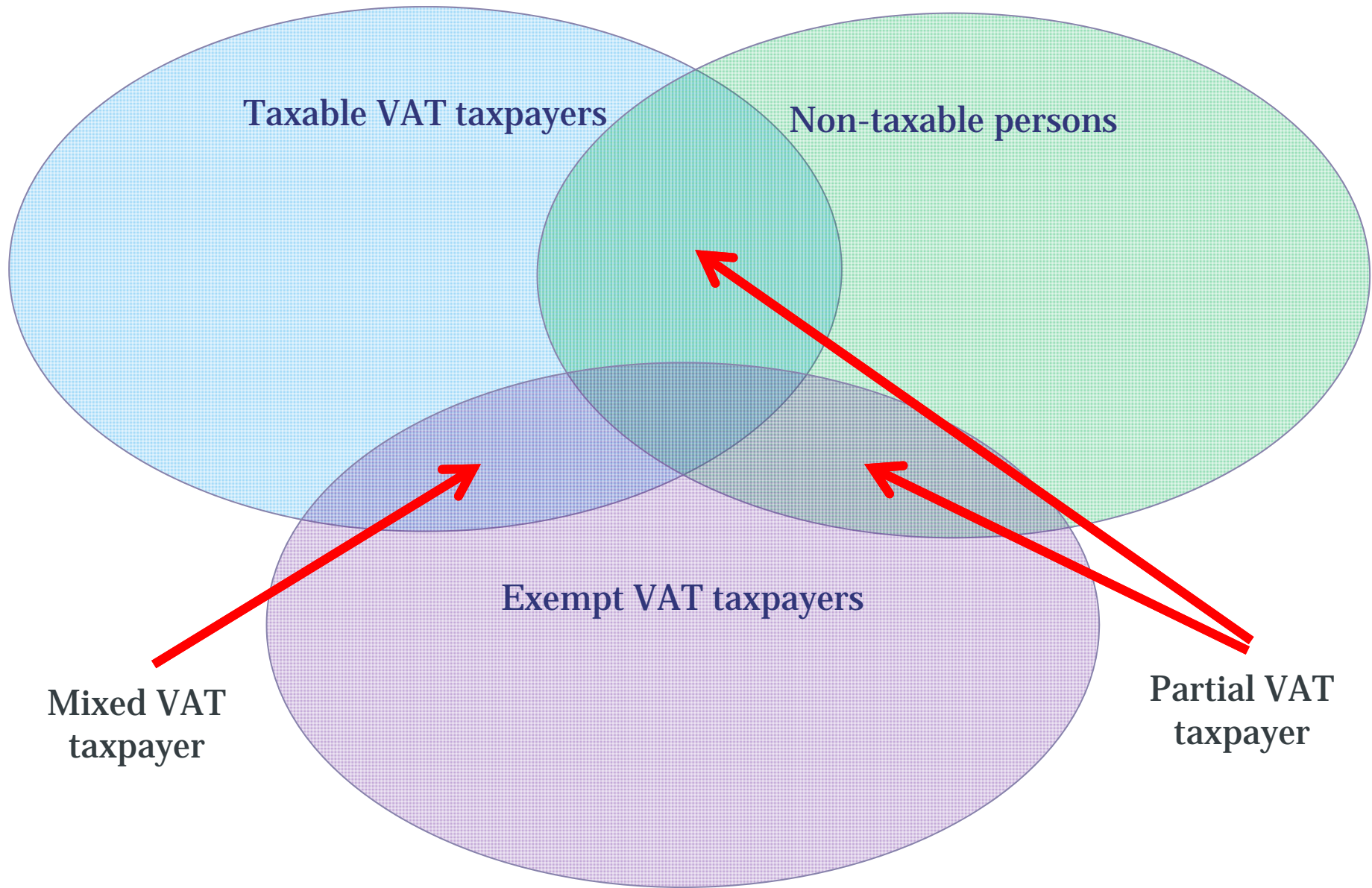


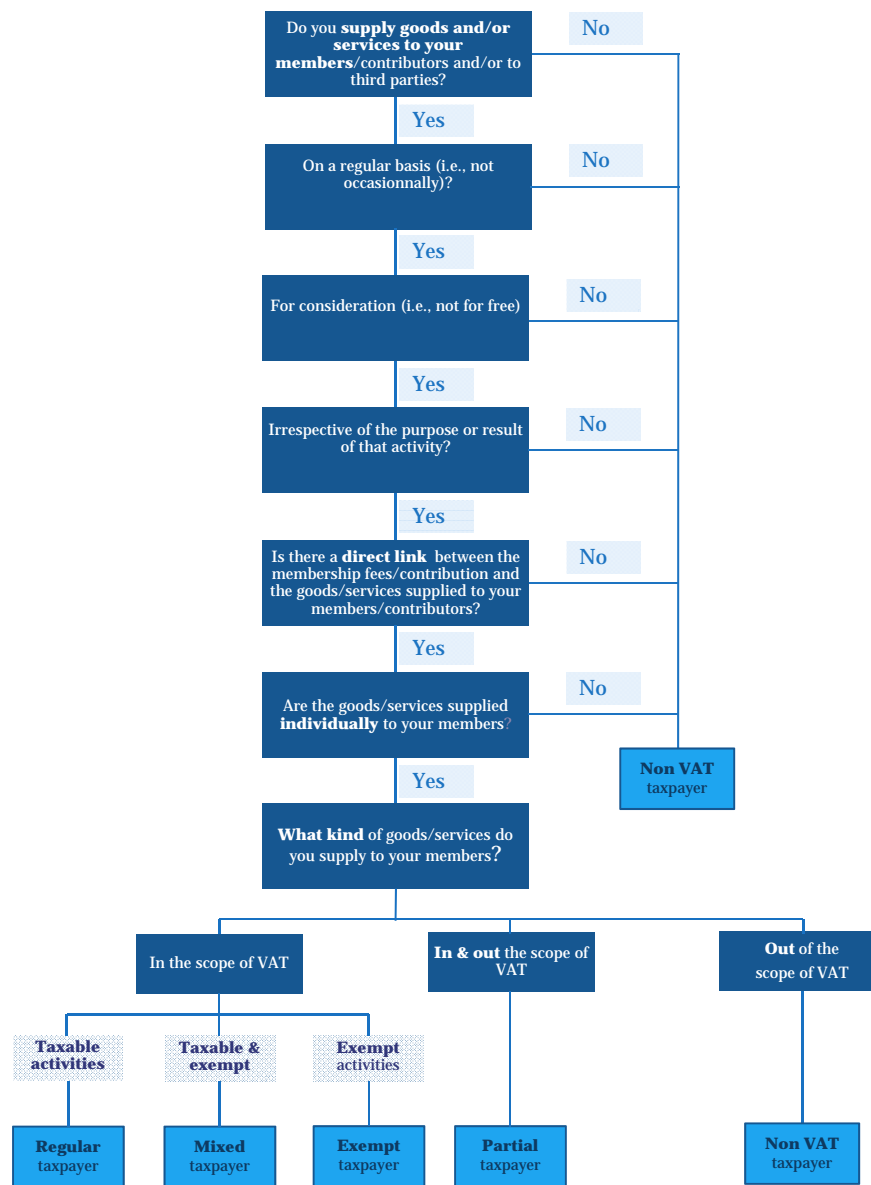
Exempt VAT taxpayers

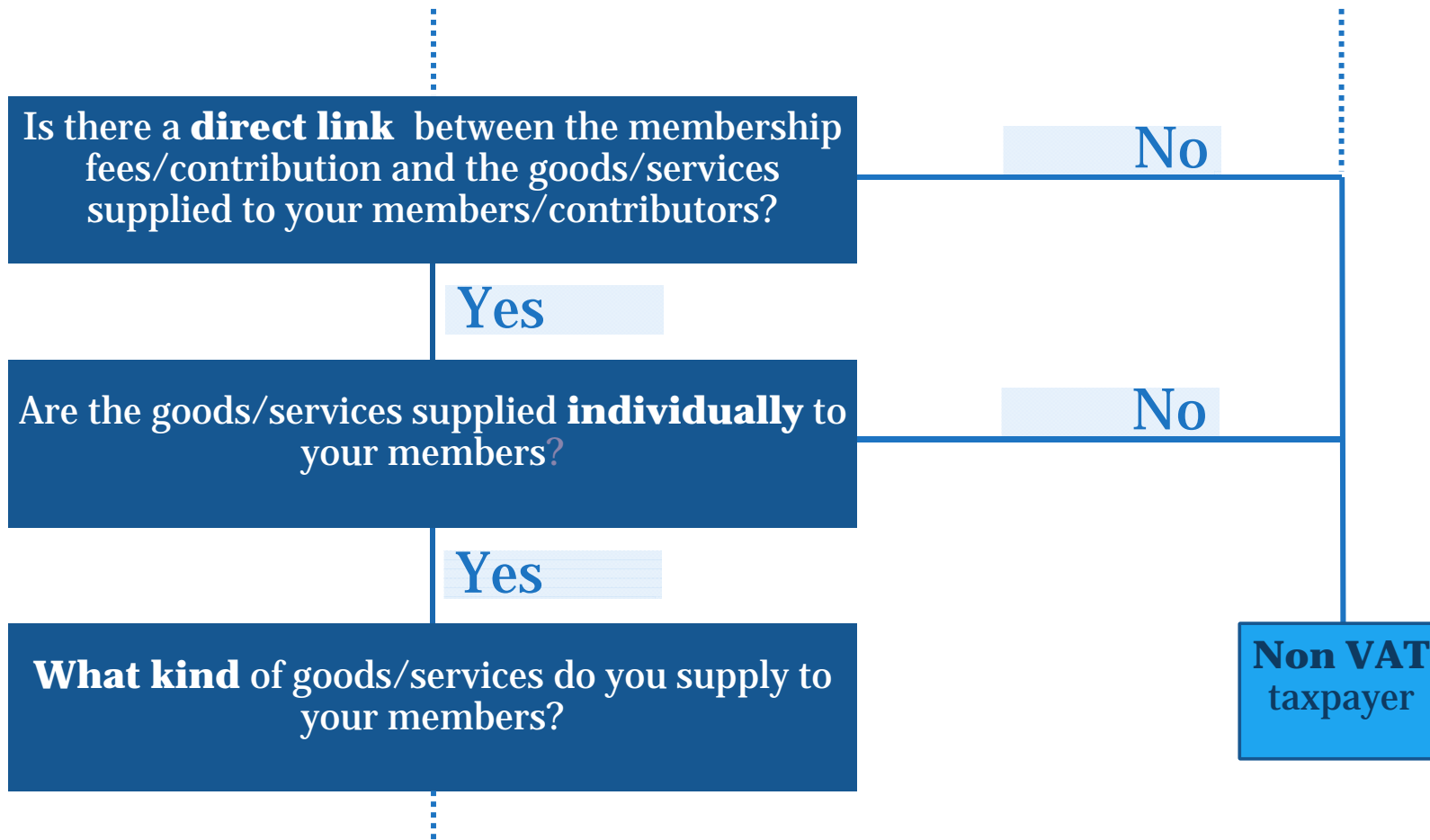


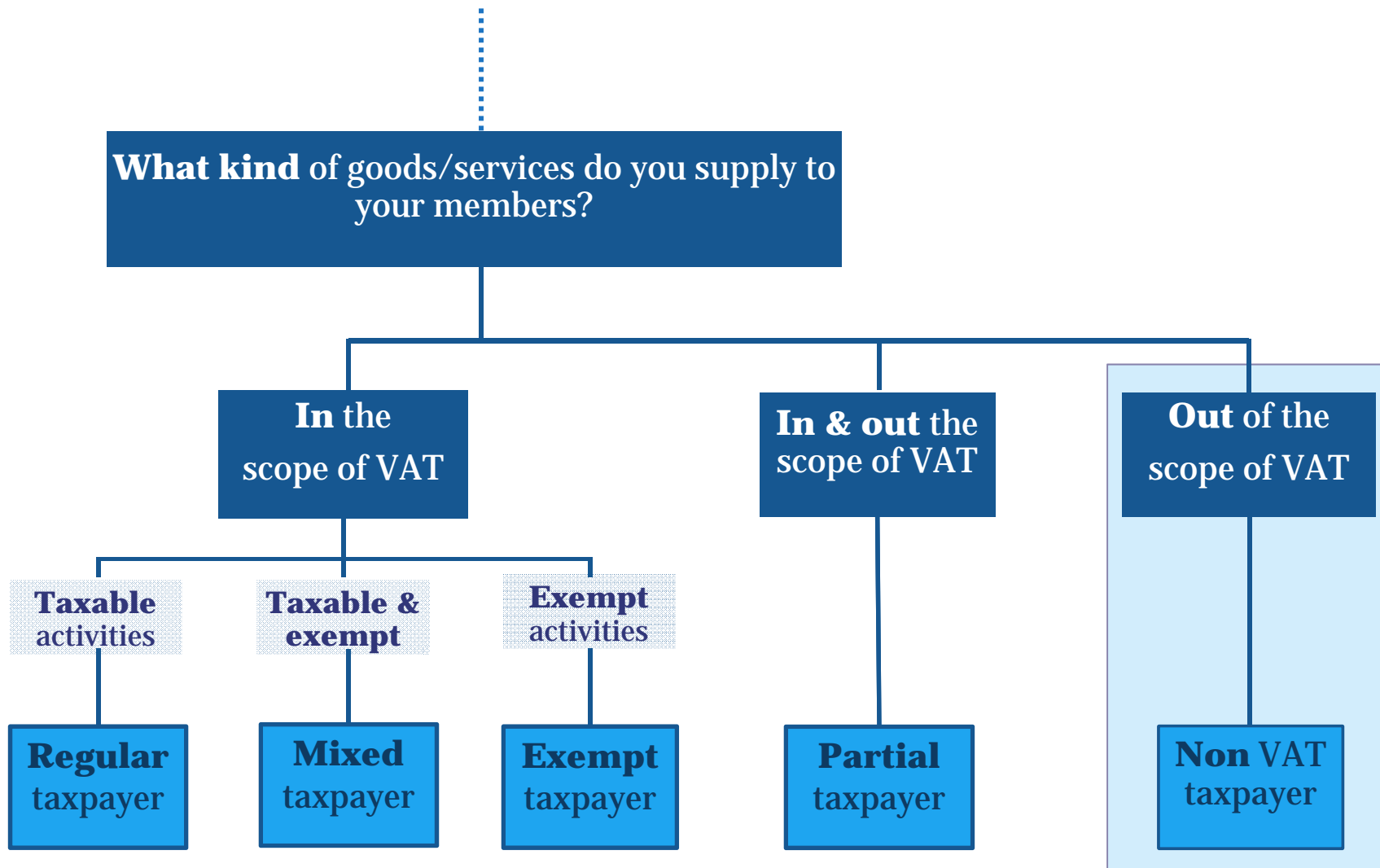
Non-taxable persons







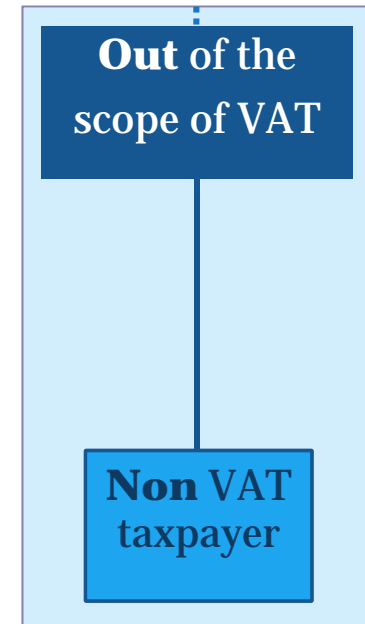


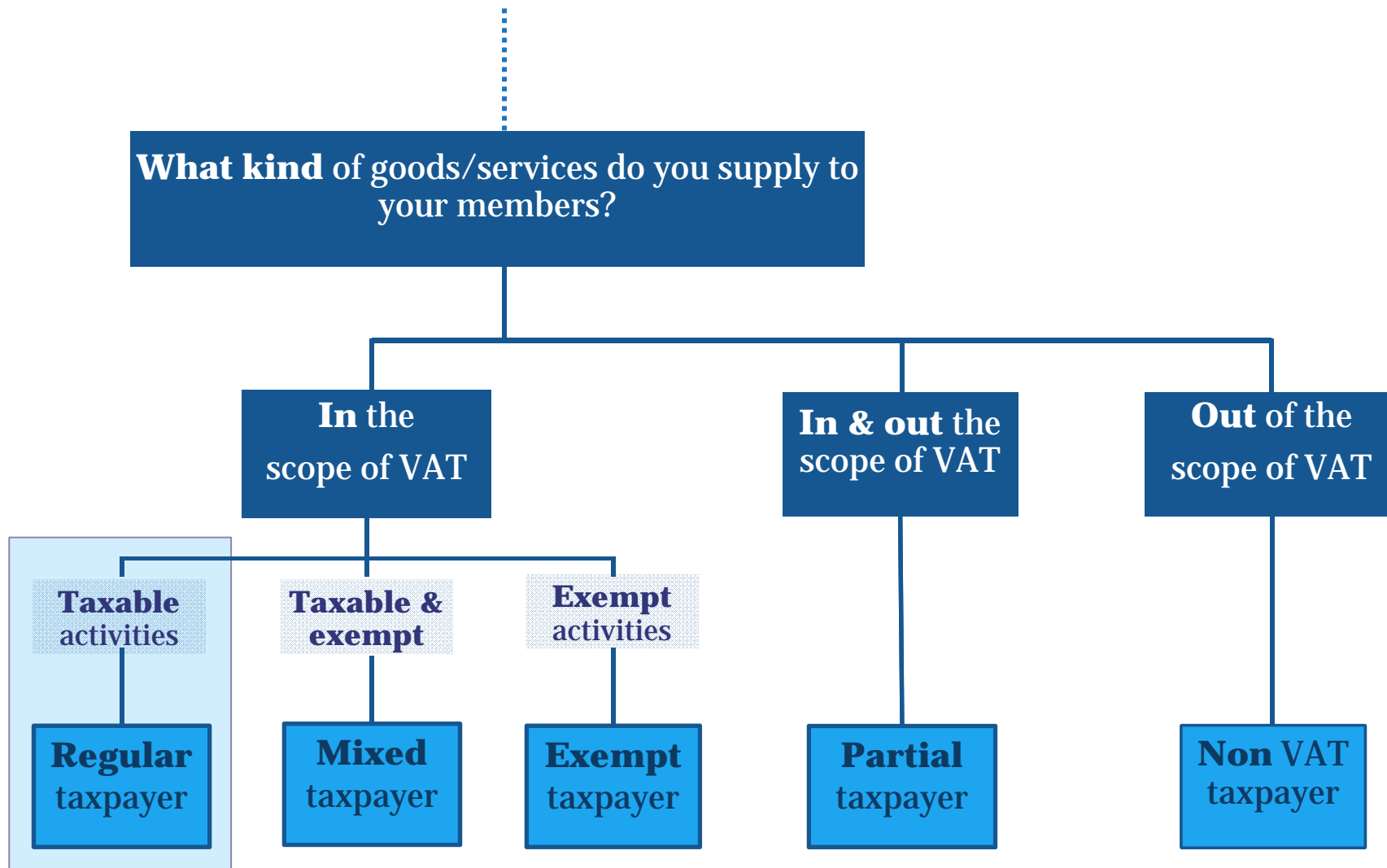


Activities **out of the scope** of VAT?

Goods & services supplied for free:

- No individualized beneficiaries (undefined/general public) **or**
- No direct link between money received (input) and supply (output) **or**
- Goods/services for free (no money or other form of consideration received in exchange for the goods/services supplied).

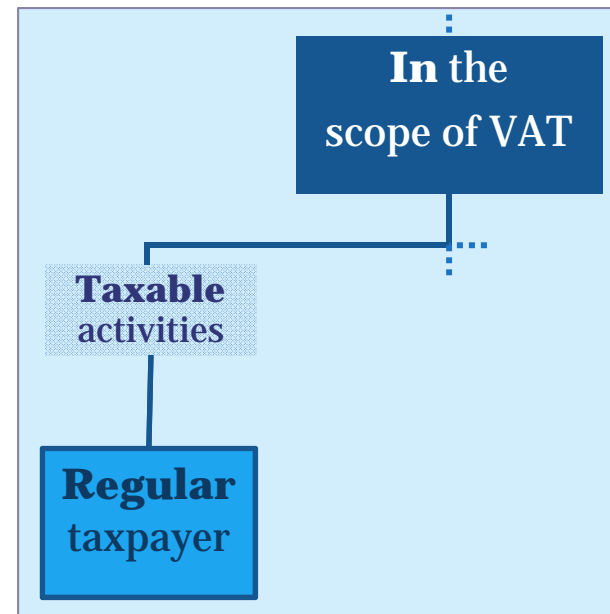


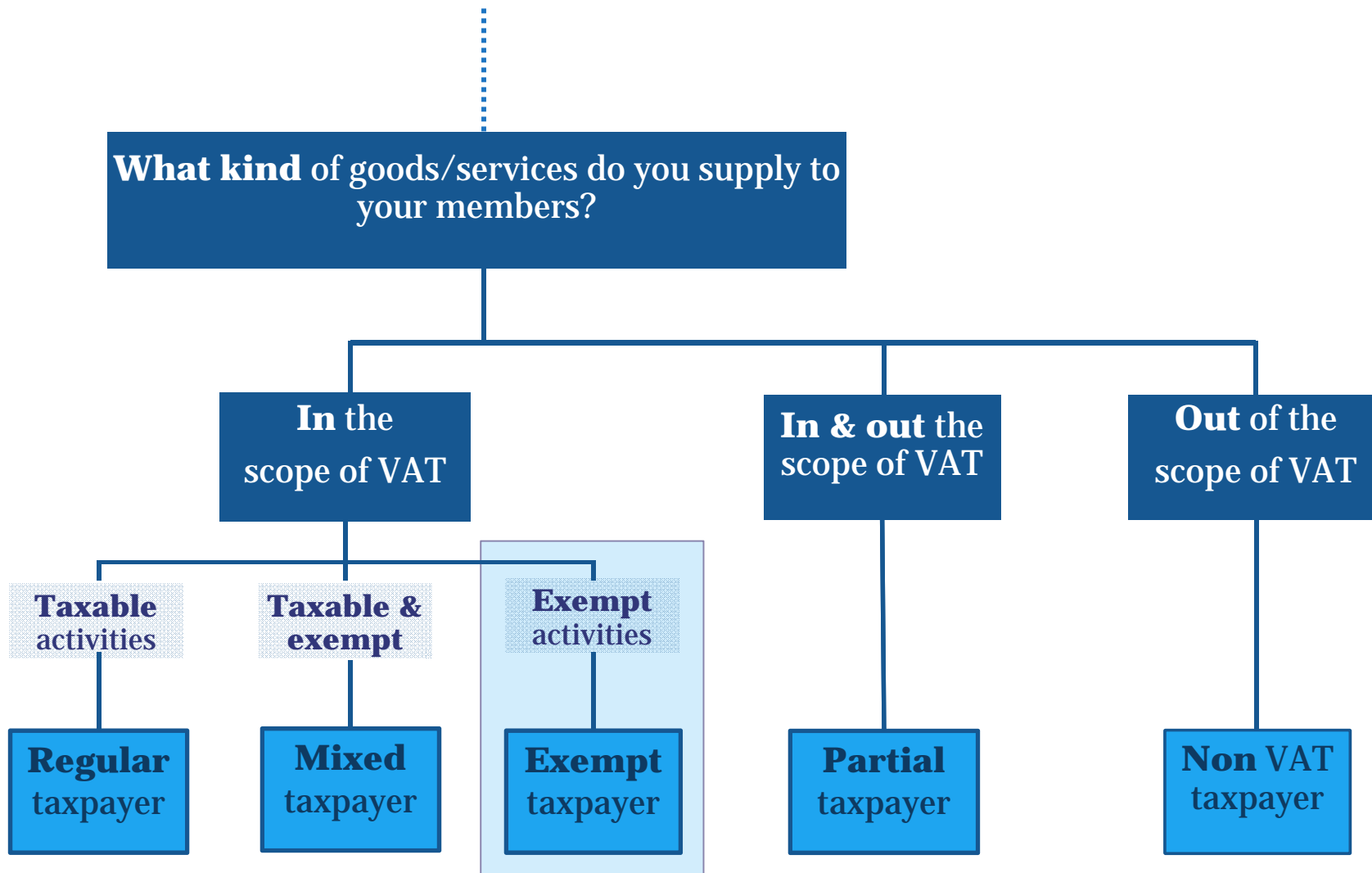


Taxable activities?

Supplies of goods/services which are:

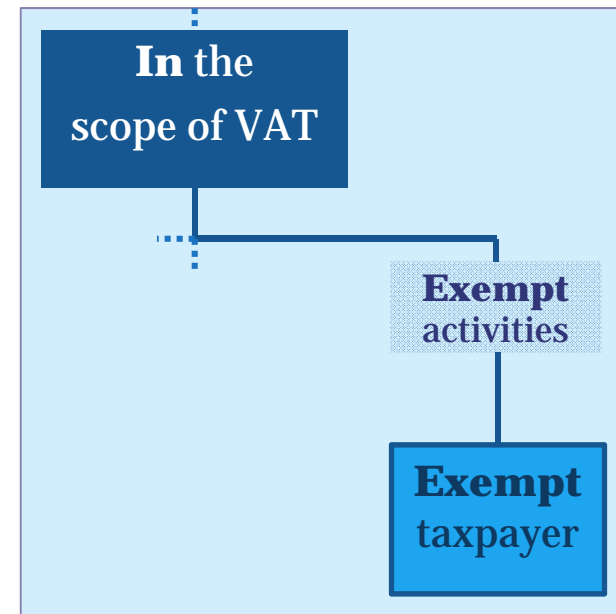
- **in the scope of VAT and**
- **not exempt**





VAT exempt activities?

- Lobbying activities, trade associations and unions;
- Healthcare;
- Cultural activities;
- Education;
- Sports;
- Social security, welfare assistance, child protection;
- Organisation of conferences, concerts, shows;
- Goods/services supplied in order to get financial support.



→ Focus on **lobbying** activities :



"the supply of services to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition"

"supply of services"

"to their members"

"in their common interest"

"in return for a subscription"

"in accordance with their rules"

"by non-profit-making organisations"

"aims of a [...] trade-union (philanthropic or civic nature)"



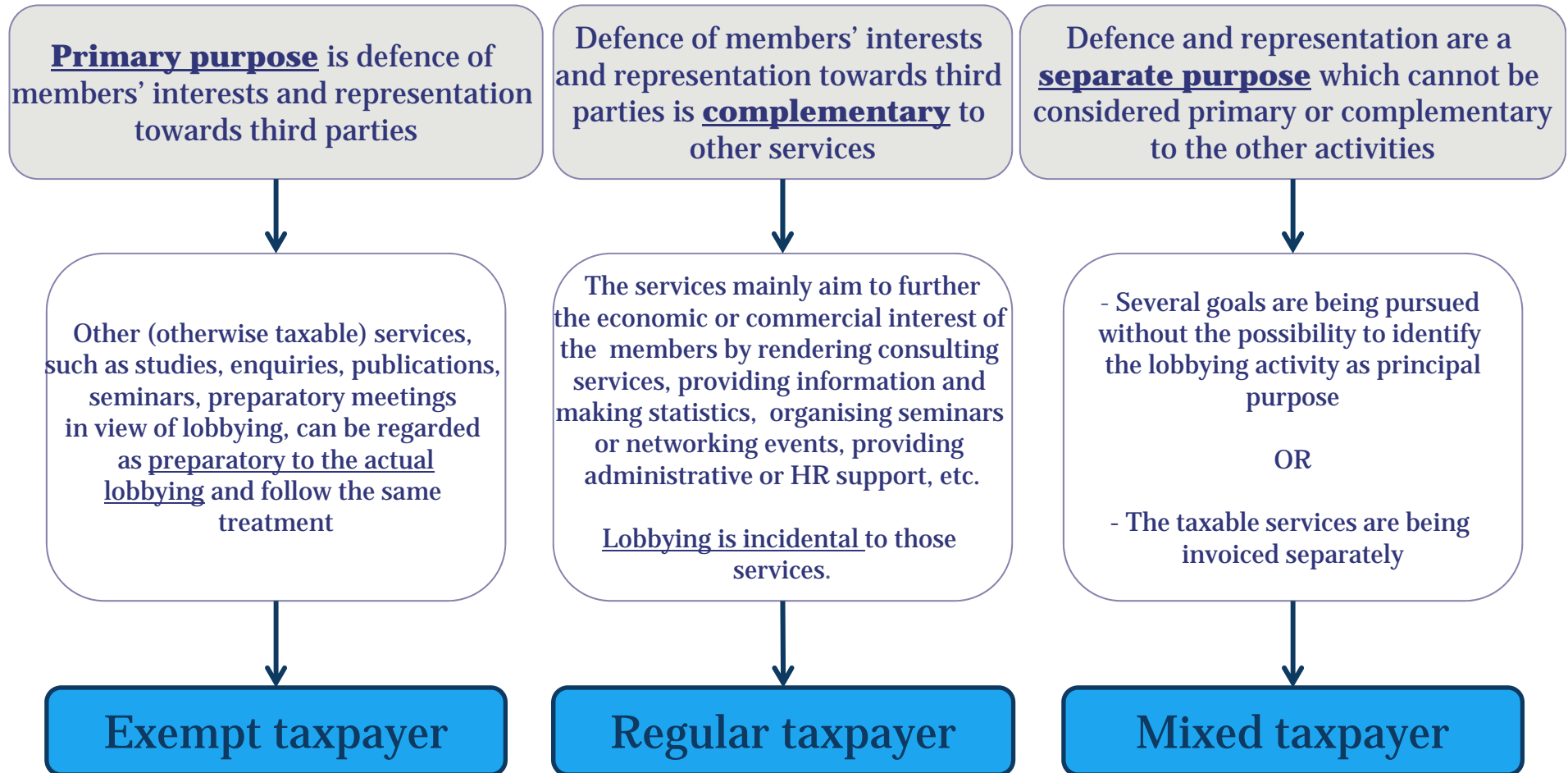
"aims of a [...] trade-union" ?



*“defending and representing the collective interests of [the members of the association] vis-à-vis third parties (decision-makers, public authorities,...), in so far as one avails of a representative voice and strength in negotiation with third parties” = **lobbying activities***

(ECJ, Institute of the Motor Industry case, 12 November 1998, no. C-149/97)

→ Focus on lobbying associations **established in Brussels**



→ Focus on **education and sports** :



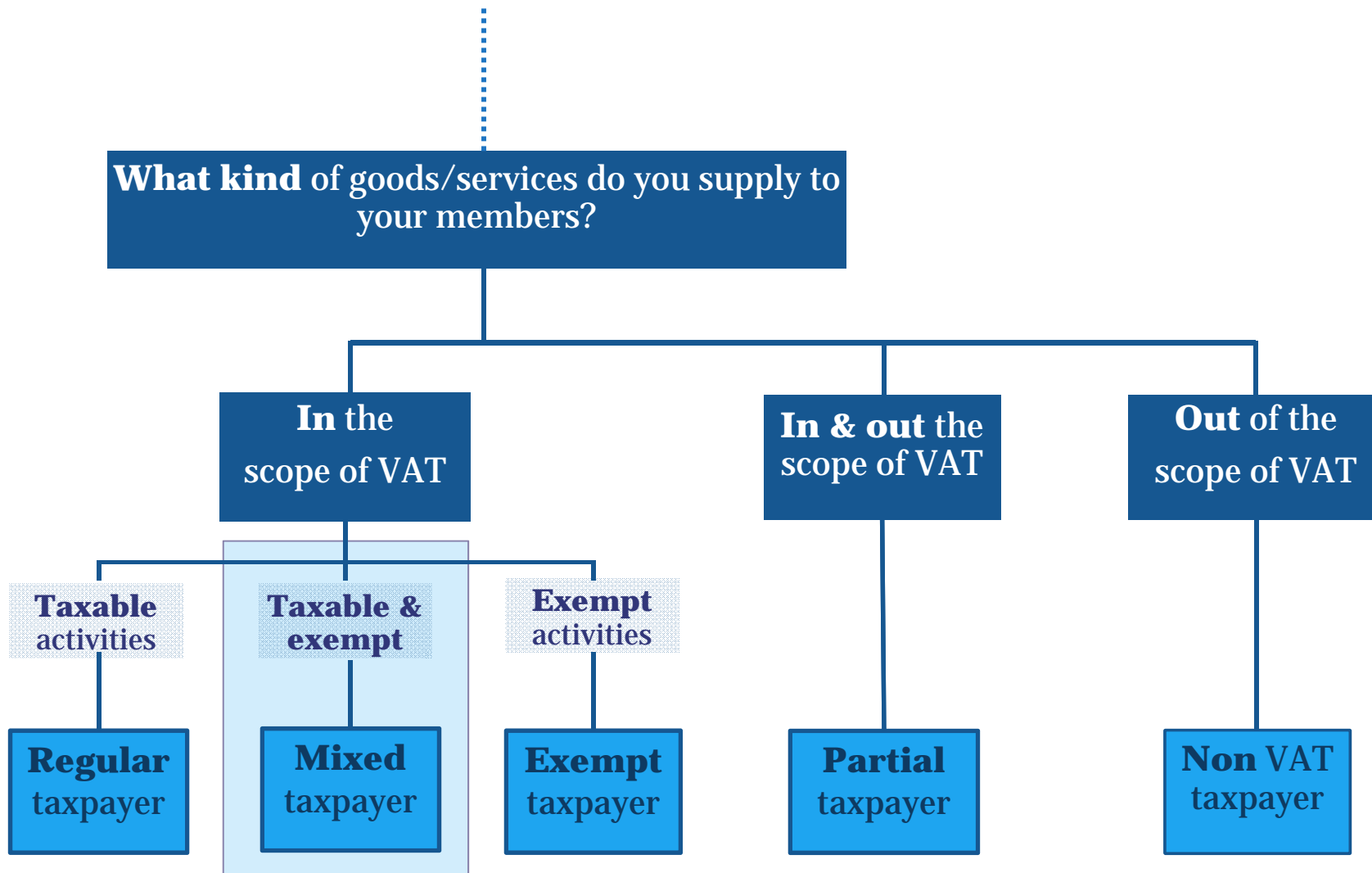
*"the provision of children's or young people's **education**, school or university education, vocational **training** or retraining, including the supply of services and of goods closely related thereto, **by bodies governed by public law** having such as their aim or by other organisations **recognised by the Member State concerned** as having similar objects"*

*"the supply of certain services closely linked **to sport or physical education by non-profit-making** organisations to persons taking part in sport or physical education"*

→ Focus on **culture** :

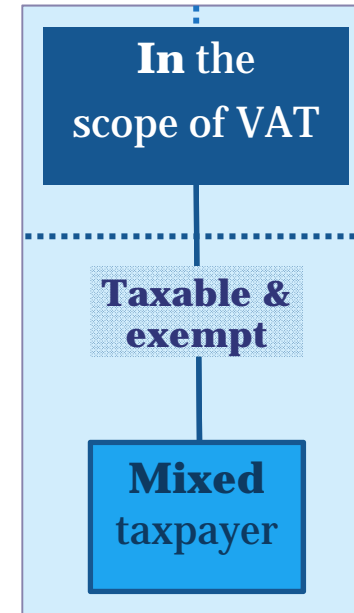


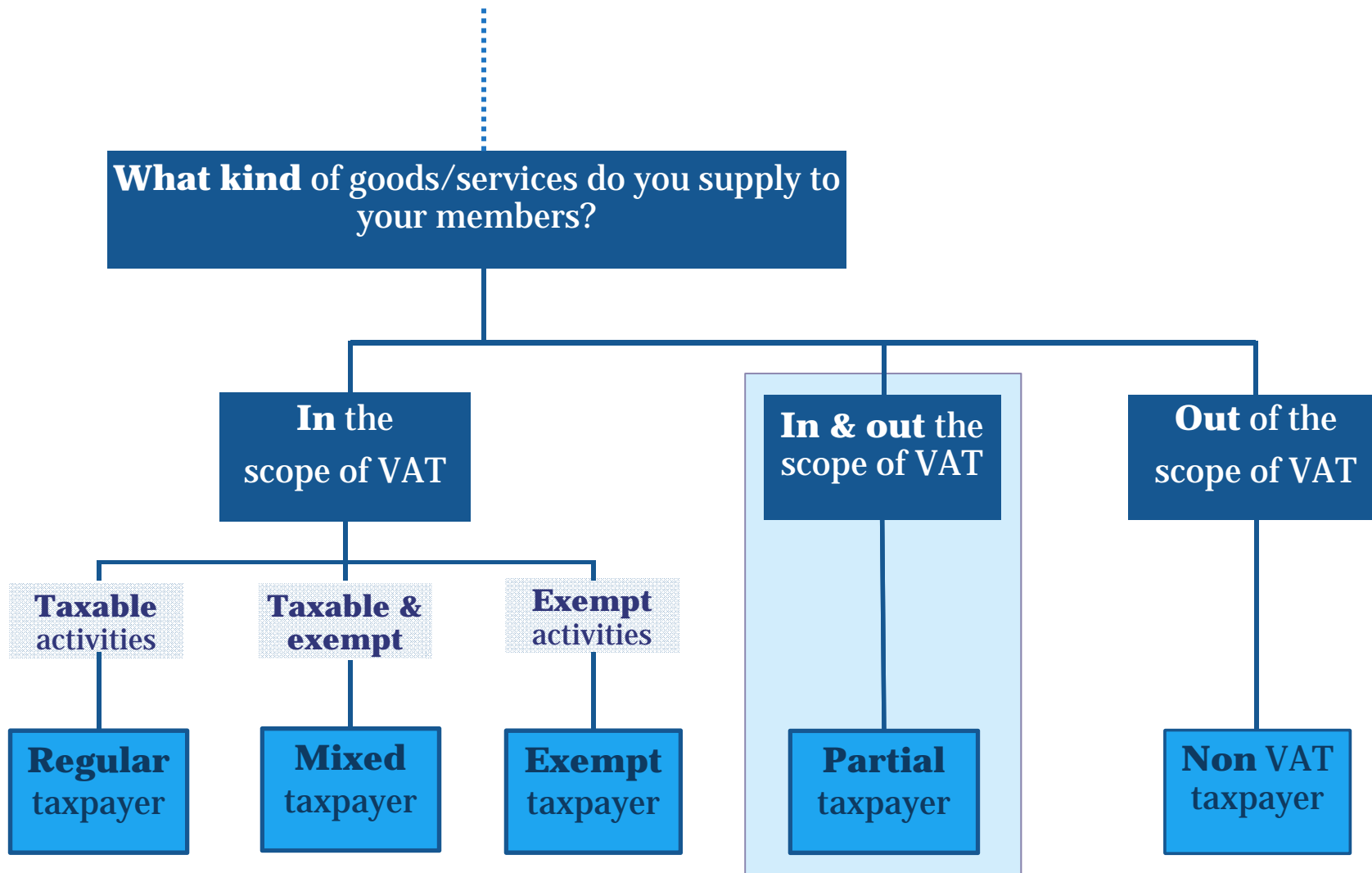
*"the supply of certain cultural services [...] by bodies governed by public law or by **other cultural bodies recognised by the Member State concerned**"*



Mixed taxpayers

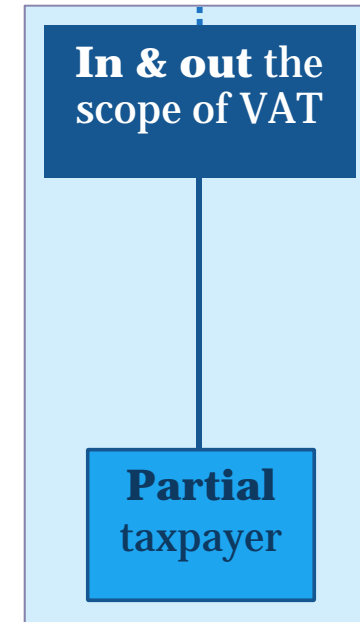
- **Taxable activities and**
- **exempt activities**

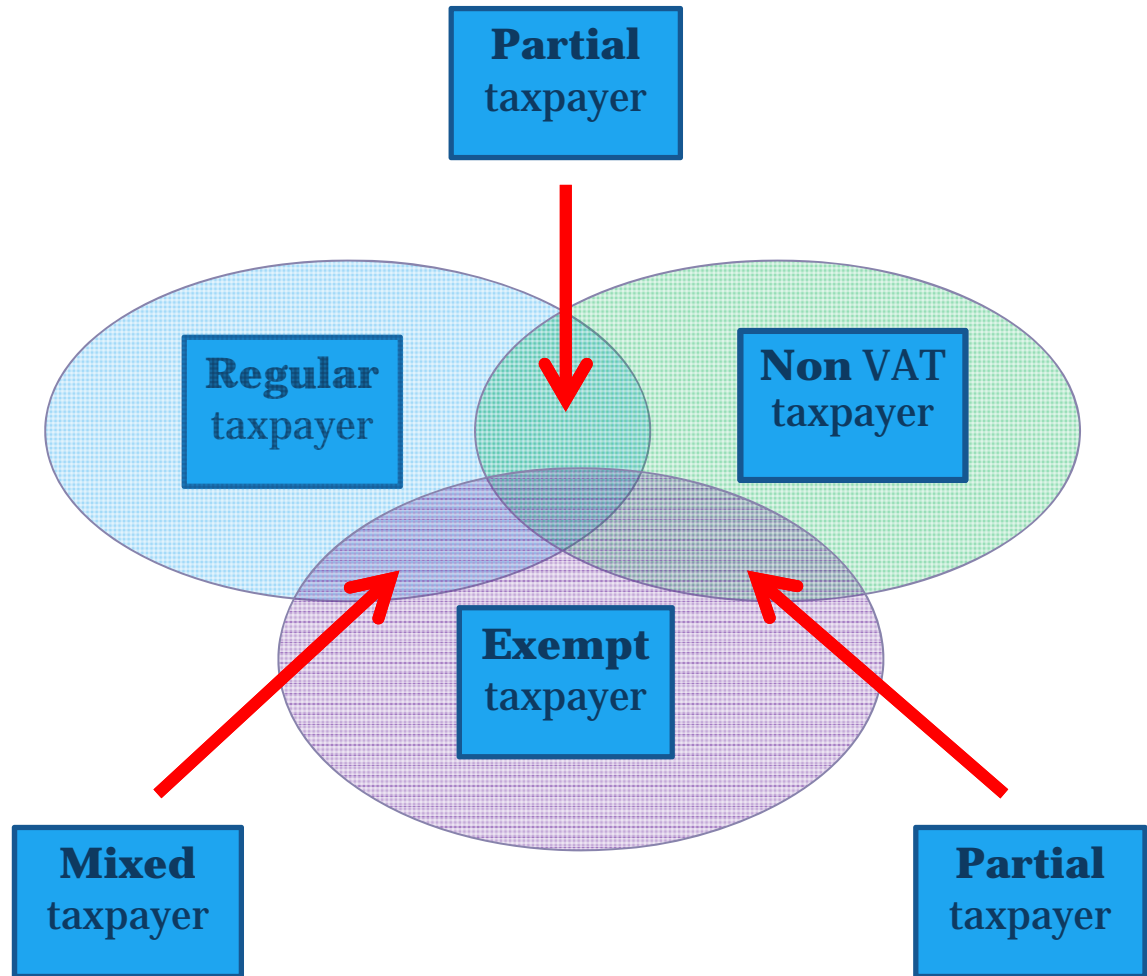




Activities in & out of the scope of VAT

- **Taxable** and/or **exempt** activities and
- Activities **out of the scope of VAT**









Most divergent regime:

Activities as listed in the articles of association and within the association's object are not deemed services

⇒ NON-TAXABLE PERSON



Some divergence:

"Non-business activities"
(political, religious, cultural)
within the context of the articles
of association are not deemed
services for VAT purposes

⇒ NON-TAXABLE PERSON



Legally in line, but factually... :

"Welfare" activities (recognized as such for income tax exemption purposes, like healthcare or education) do not render services
⇒ NON-TAXABLE PERSON

"Professional" activities (e.g. from trade associations) considered as services
⇒ VAT TAXPAYER

Exemption rules implemented, but factually seldom applied if also taxable activities are being rendered
⇒ (mostly) always regular VAT TAXPAYER



Not in line with EU principles:

turn-over < CHF 150,000

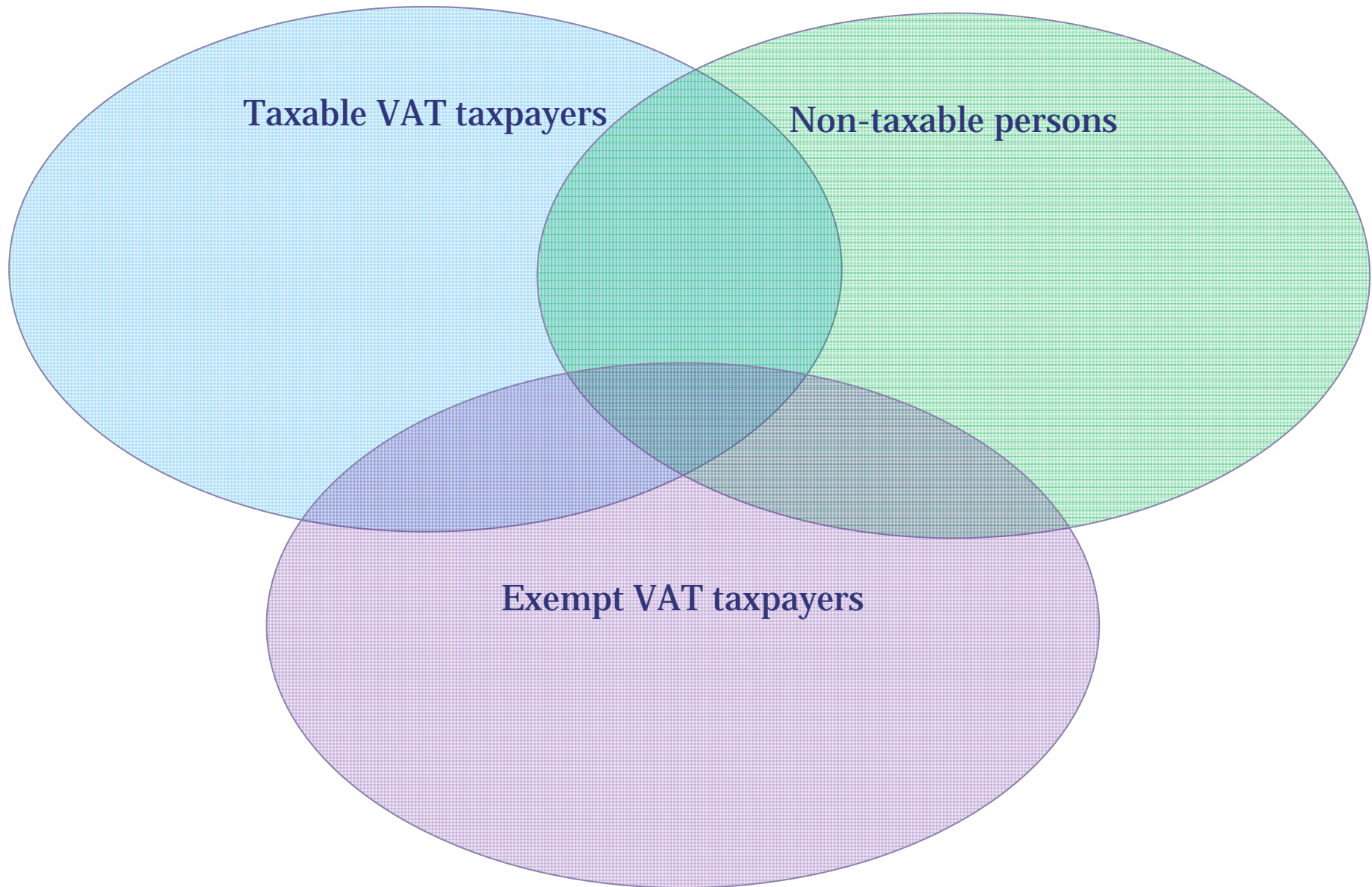
⇒ NON-TAXABLE PERSON

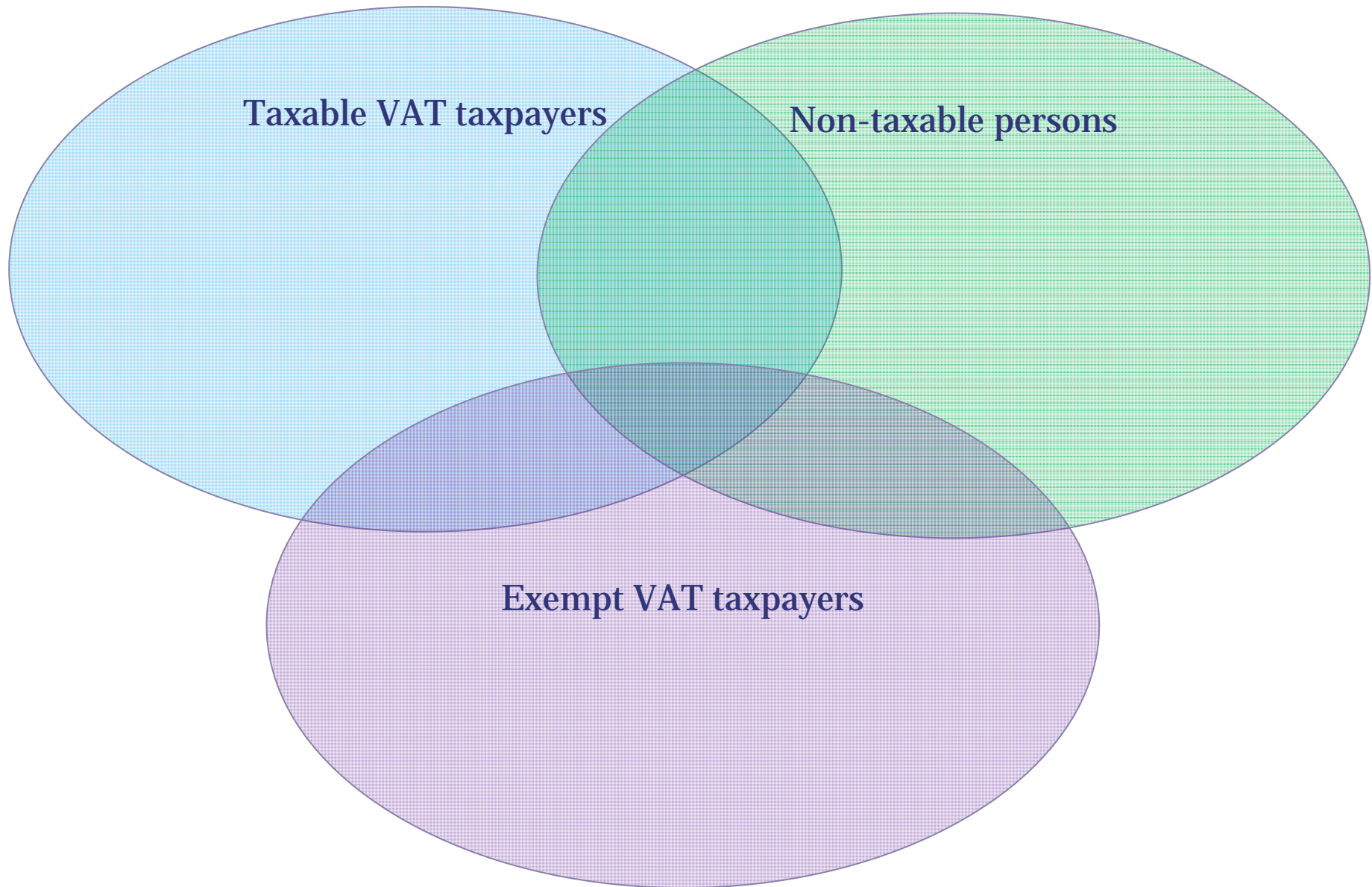
"passive members" – limited services not considered as services (membership fee is donation)

⇒ PARTIAL VAT TAXPAYER

Know your members/customers...

VAT STATUS





How to obtain the relevant information regarding your members?



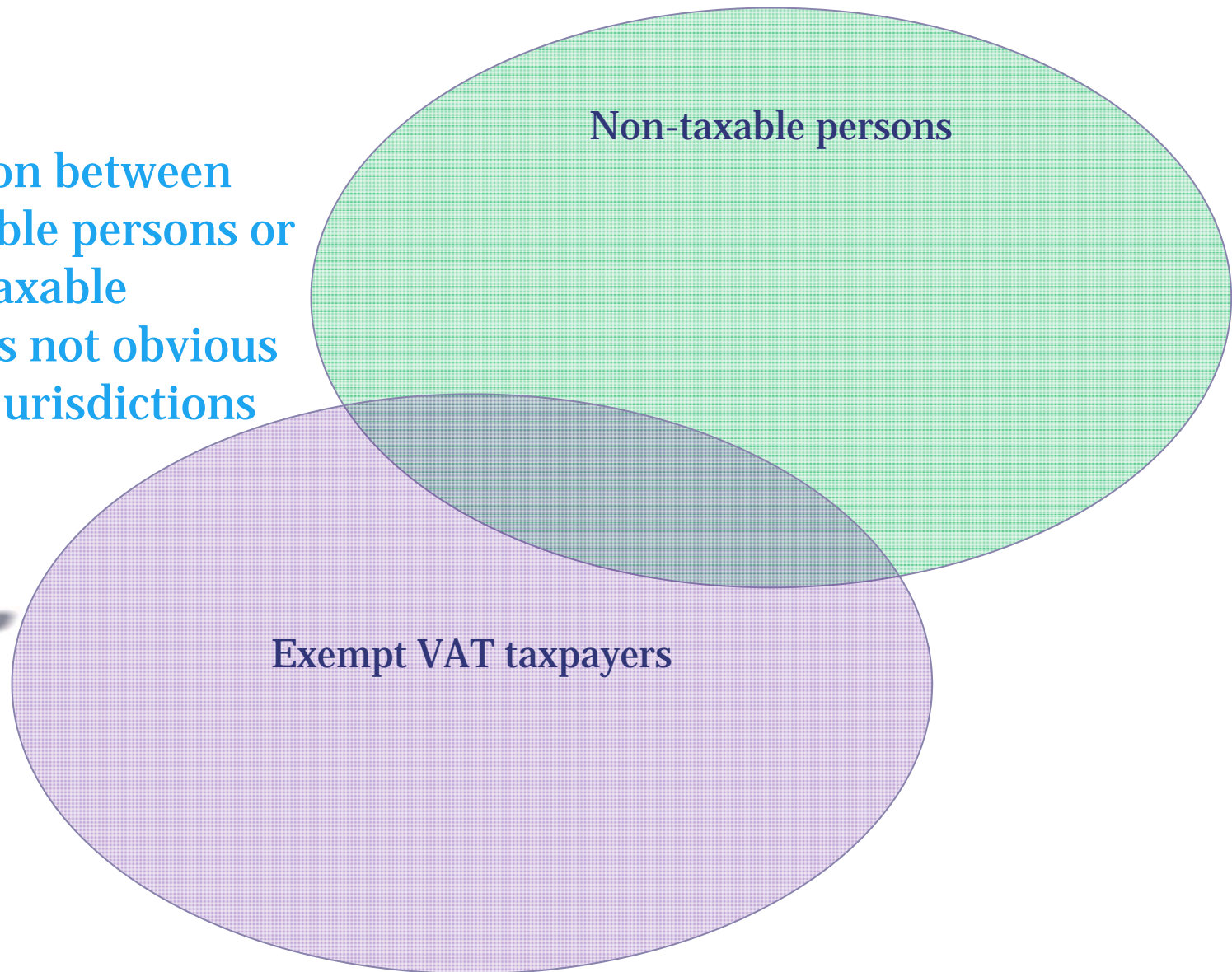
Send a questionnaire to your members :

- VAT status
- VAT number
- VAT treatment of membership fee in their jurisdiction



Impact on reporting obligations
(exempt in member jurisdiction or not?)

Distinction between non-taxable persons or exempt taxable persons is not obvious in many jurisdictions



Send a questionnaire to your members :

- VAT status
- VAT number
- VAT treatment of membership fee in their jurisdiction

Send a clarifying note on distinction between exempt taxpayer and non-taxable person to avoid misunderstanding and accurate completion of the questionnaire



What if they don't know their VAT status or if they don't answer to the questionnaire?



- Compile the information you have regarding your members in order to determine their respective VAT status
- Make the required assumptions



Which assumption can or should be made?

- If information (other than VAT number) sufficiently demonstrates that member is a taxable person acting as such for the transaction at issue
- Acting in good faith and having taken all reasonably required measures

⇒ VAT TAXPAYER



Which assumption can or should be made?

- EU resident member: no communication of VAT number

⇒ NON TAXABLE PERSON

(unless information to the contrary)

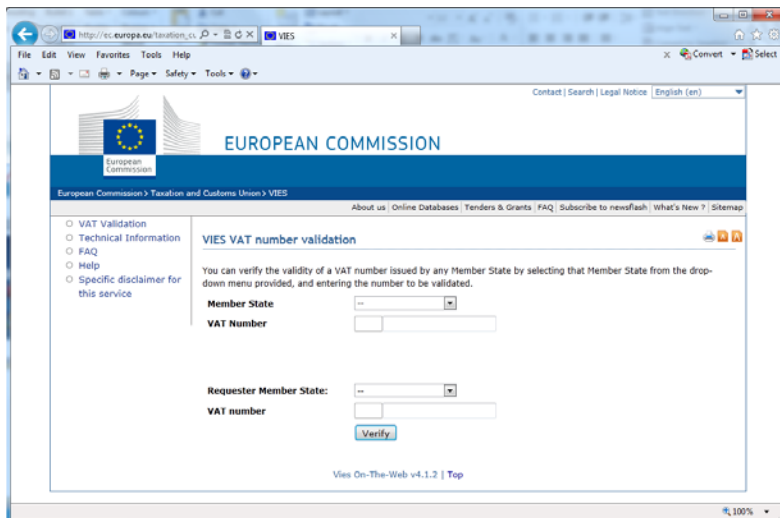


Which assumption can or should be made?

- Non-EU resident members: certificate issued by member's competent tax authorities that member is engaged in economic activities

⇒ VAT TAXPAYER

(unless information to the contrary)




Check your information!

http://ec.europa.eu/taxation_customs/vies/?locale=en

http://ec.europa.eu/taxation_cu VIES

File Edit View Favorites Tools Help

Contact | Search | Legal Notice English (en)



EUROPEAN COMMISSION

European Commission > Taxation and Customs Union > VIES

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- VAT Validation
- Technical Information
- FAQ
- Help
- Specific disclaimer for this service

VIES VAT number validation

You can verify the validity of a VAT number issued by any Member State by selecting that Member State from the drop-down menu provided, and entering the number to be validated.

Member State

VAT Number

Requester Member State:

VAT number

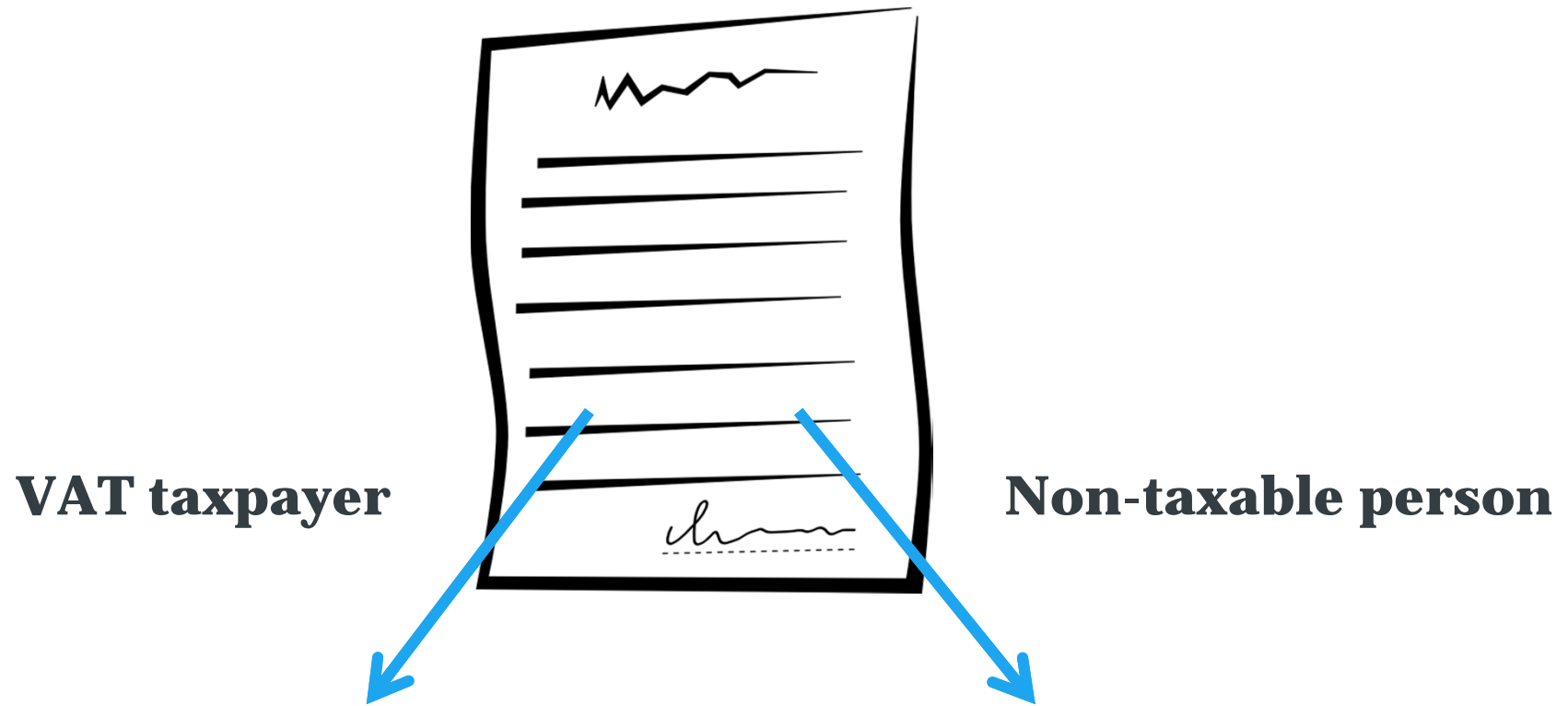
Vies On-The-Web v4.1.2 | Top

100%

RESIDENCE



How to invoice?



Invoice

Invitation to pay /
Payment request

Payment request

HOW TO INVOICE?

Depends on the VAT status and residence of your members

How to invoice your members which are VAT taxpayers?

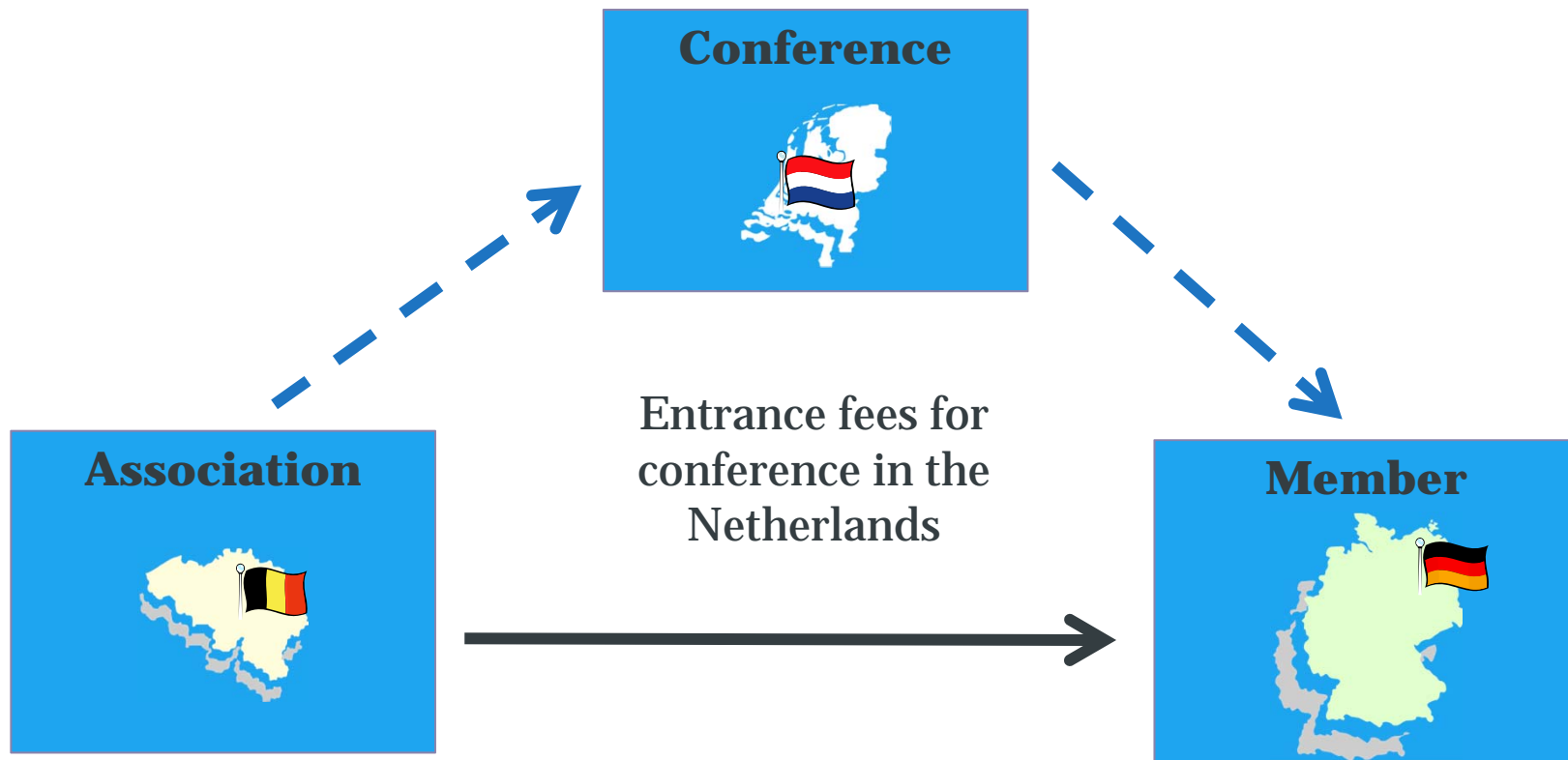
VAT taxpayers (exempt or not) – B2B	
Within EU	Outside EU
No local VAT (foreign exemption rule may apply – e.g. lobbying ex.)	No local VAT (non-EU VAT rules may apply)
<u>Note:</u> Invoice must refer to reverse charge rule (except if foreign exemption applies)	<u>Note:</u> Invoice must not refer to reverse charge rule
<u>Exception:</u> <ul style="list-style-type: none"> - Conferences & exhibitions: place of event (only with respect to entrance fees) - Exception: annual congress 	<u>Exception:</u> <ul style="list-style-type: none"> - Conferences & exhibitions: place of event (only with respect to entrance fees) - Exception: annual congress



Membership fees
(consideration for
individual research)



Invoice without VAT – « **reverse charge** »



Entrance fees for
conference in the
Netherlands

Invoice with **Dutch VAT**

Registration in NL !



Membership fees
(consideration for
individual research)



Invoice **without VAT**

How to invoice your members which are not VAT taxpayers?

Non taxable persons (B2C)	
Within EU	Outside EU
Local VAT (unless local exemption rule would apply, e.g. lobbying)	Local VAT (unless local exemption rule would apply, e.g. lobbying)
<u>Exception:</u> - Conferences & exhibitions: place of event	<u>Exception:</u> - Conferences & exhibitions: place of event - Advisory services; advertisement services; data processing and information services; electronically provided services: place of beneficiary
<u>Note:</u> Foreign VAT registration may be required if exception rule refers to EC jurisdiction	



Membership fees
(consideration for
individual research)



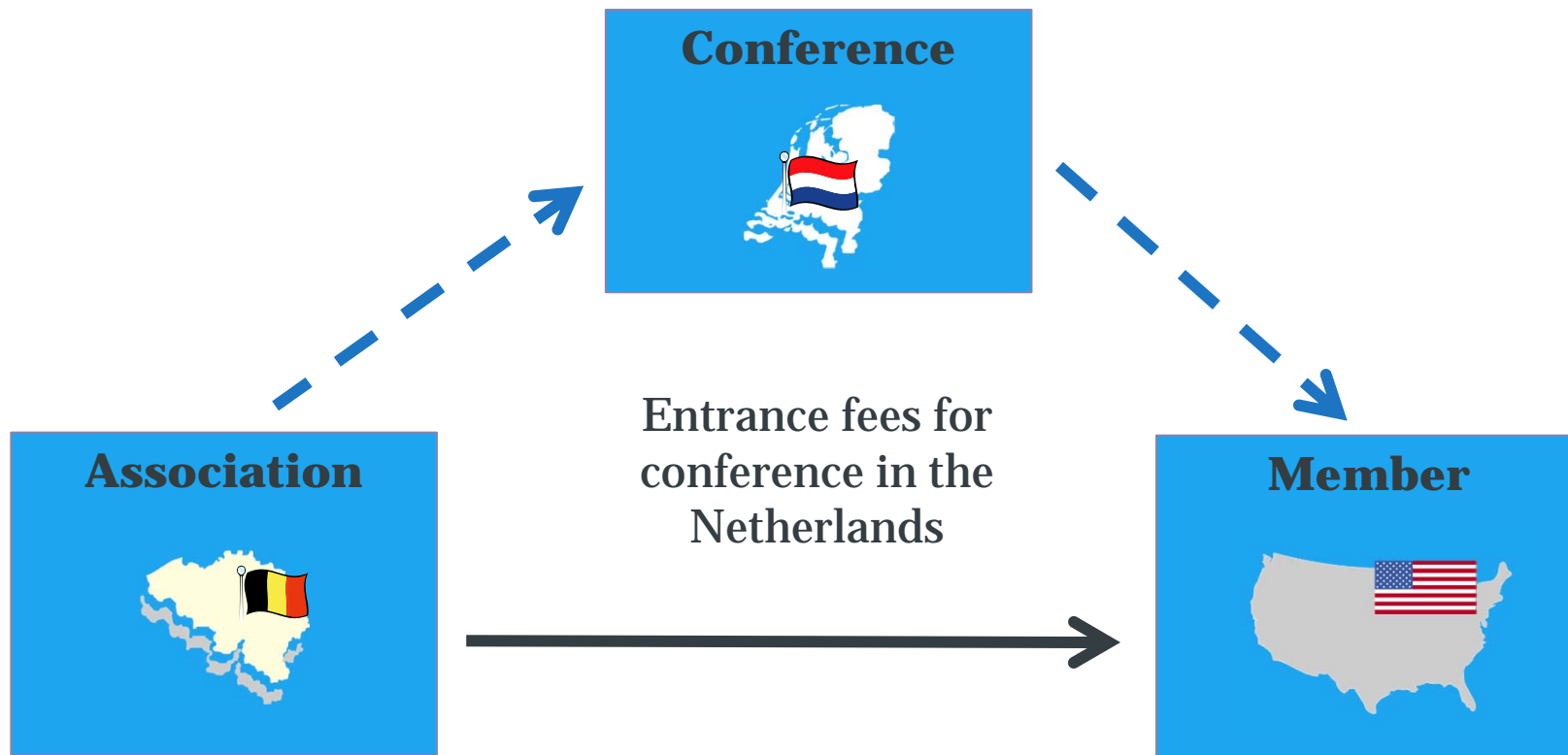
Invoice with **Belgian VAT**



Membership fees
(consideration for
individual research)



Invoice with **Belgian VAT**
(potentially exempt if exclusively for
« advisory services »)



Entrance fees for
conference in the
Netherlands

Invoice with **Dutch VAT**

Registration in NL !

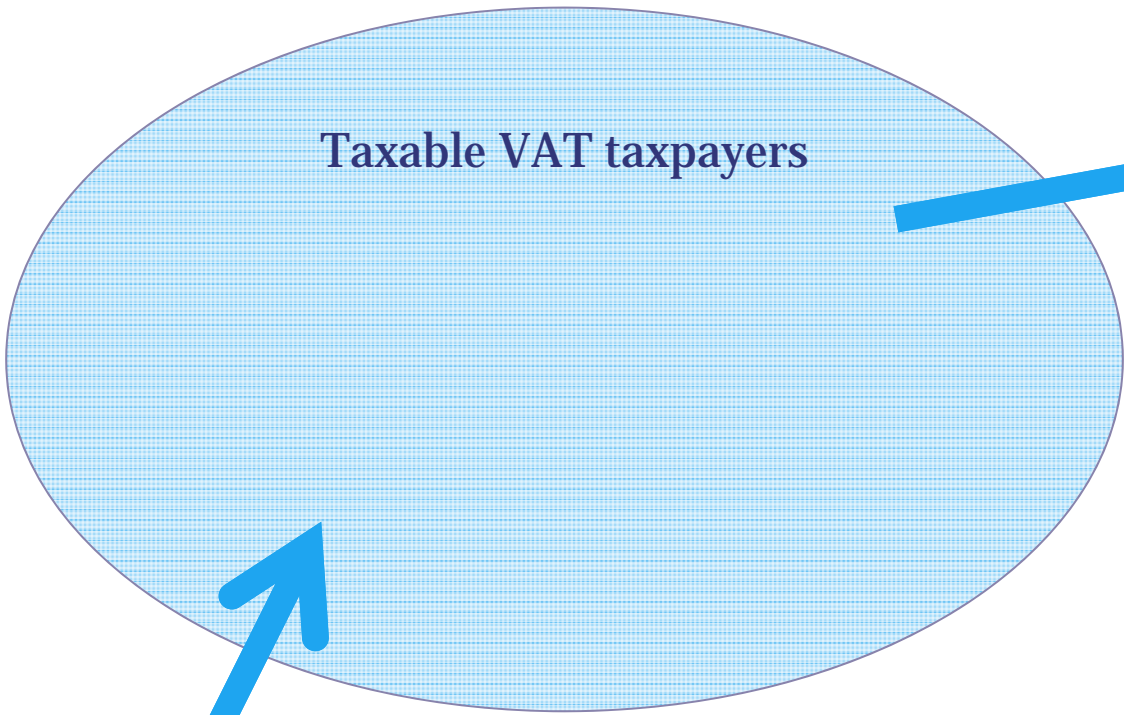




Recovering input VAT

How much of the input VAT you pay to your suppliers can you recover?

Depends on your VAT status!



100% output VAT



**Recover 100%
Input VAT**



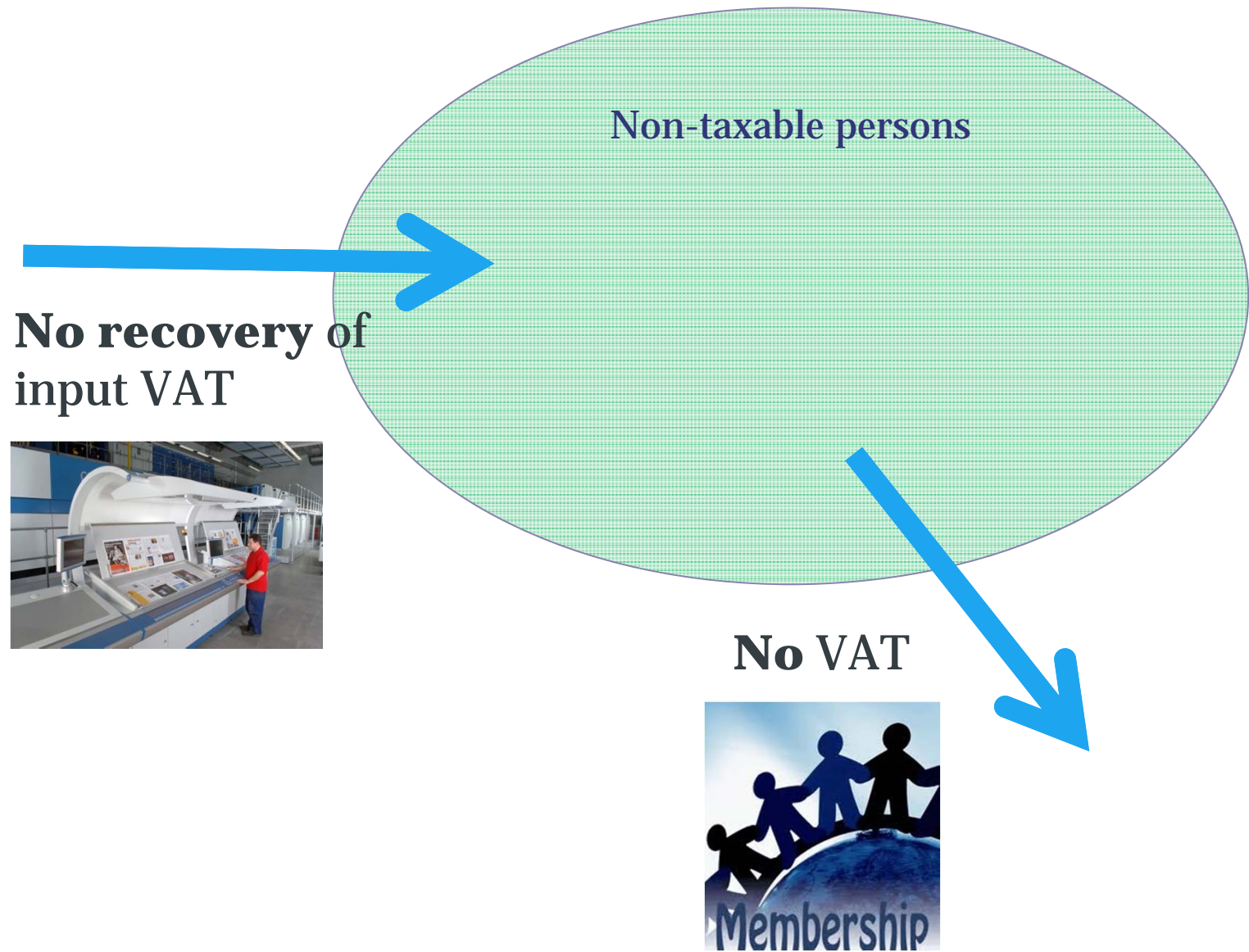
0% output VAT

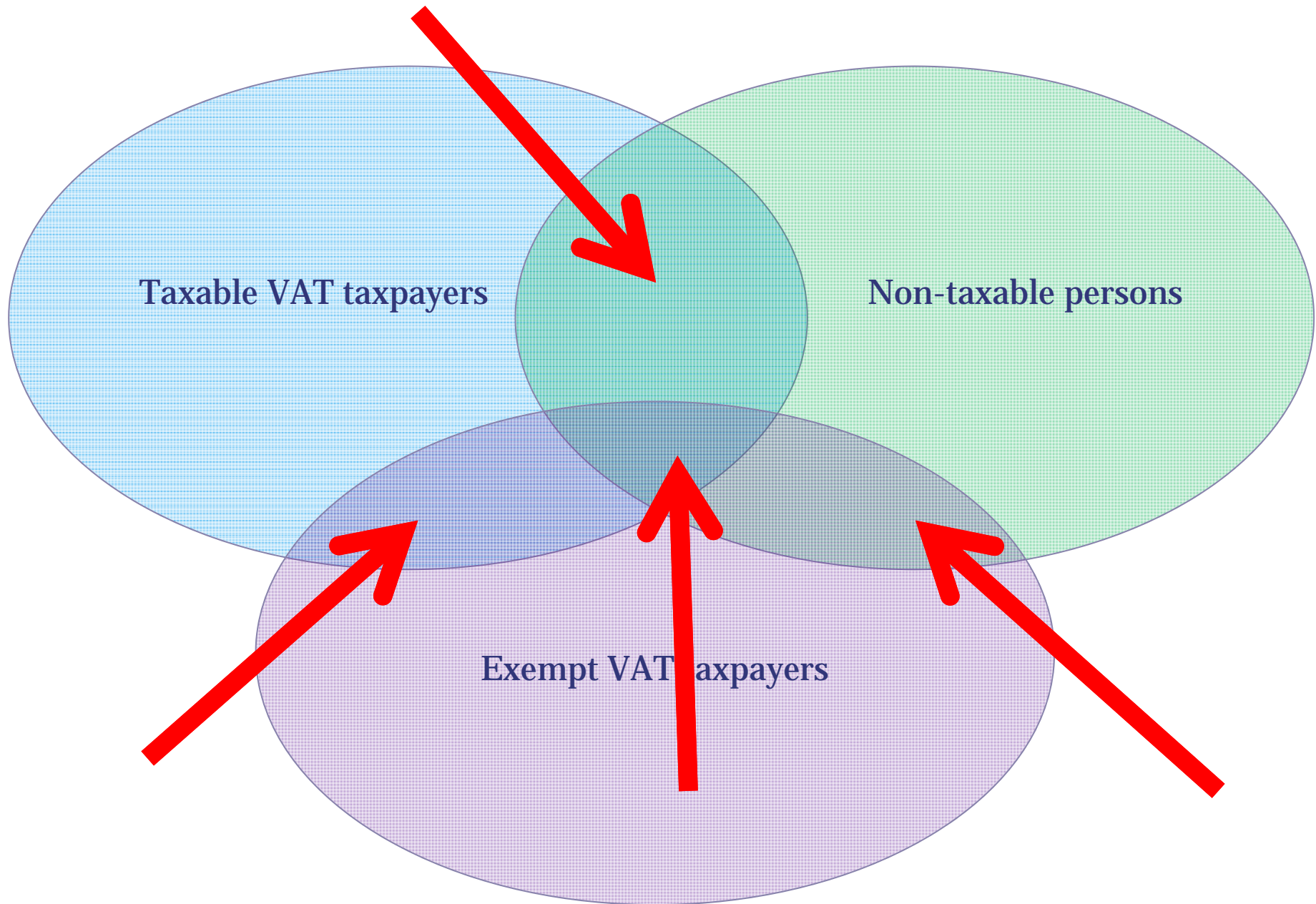


Exempt VAT taxpayers

**Recover 0%
input VAT**









Recover (75)% input VAT

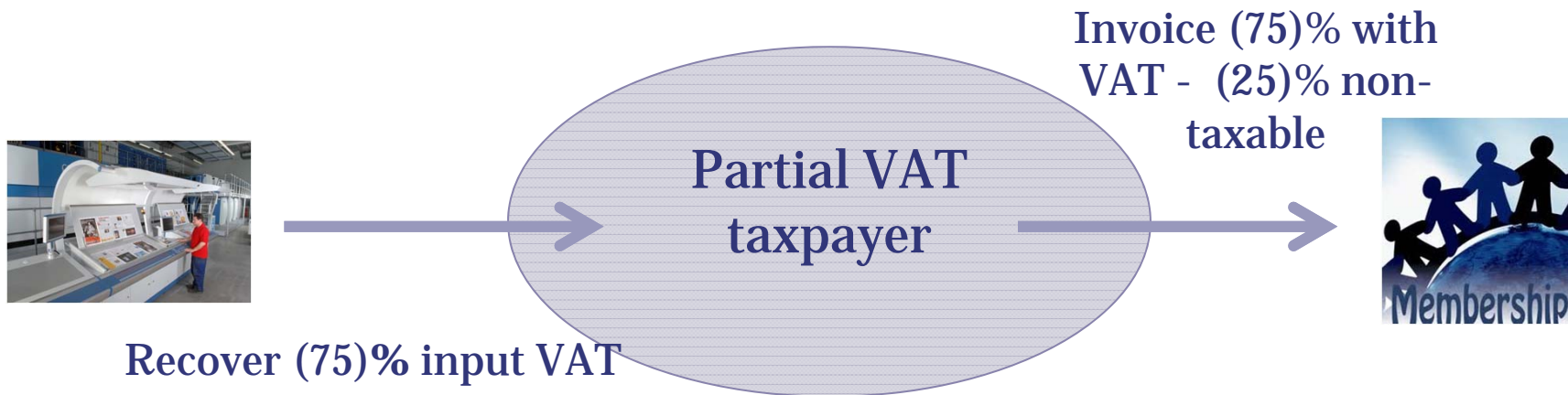
OR

Recover **100%** input VAT used for **taxable activities** and **0%** input VAT used **exempt activities**

Invoice (75)% with
VAT - (25)%
exempt



No specific rules



Recover (75)% input VAT

OR

Recover **100%** input VAT
used for **taxable activities**
and **0%** input VAT used for
non-taxable activities

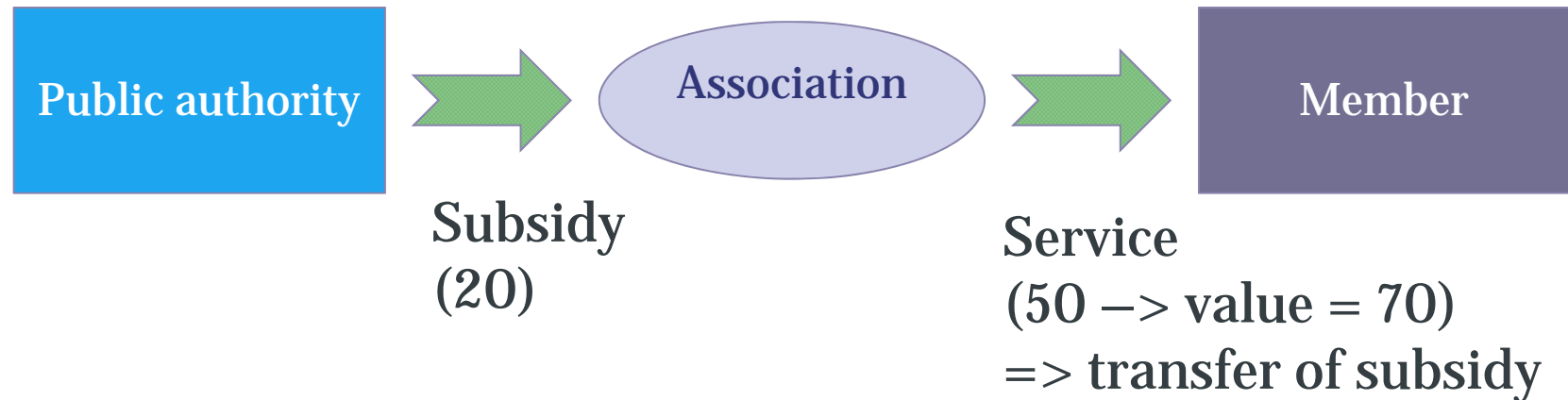
Grants, subsidies and public funding

Grants, subsidies and public funding

Three types of subsidies

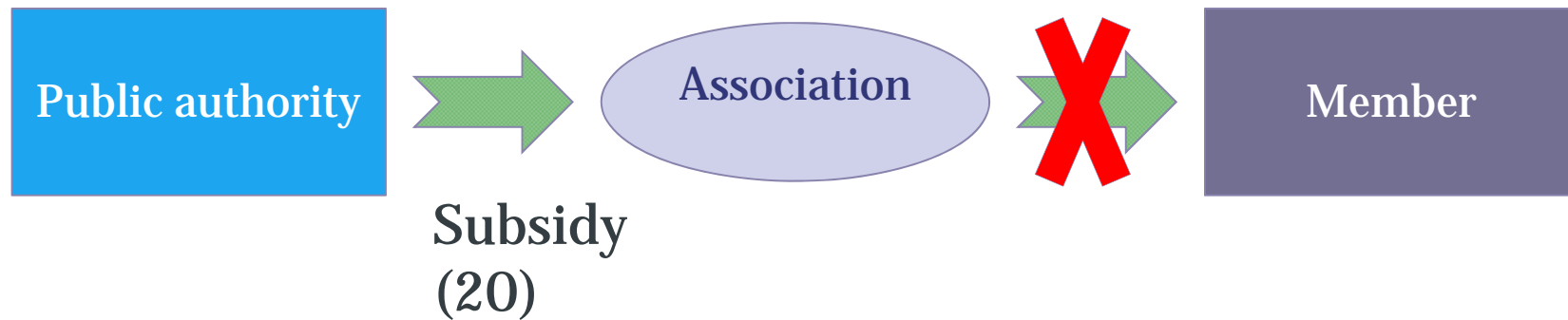
- Subsidies linked to prices
- Subsidies for the general functioning of the association
- “Fake” subsidies

Subsidies linked to prices



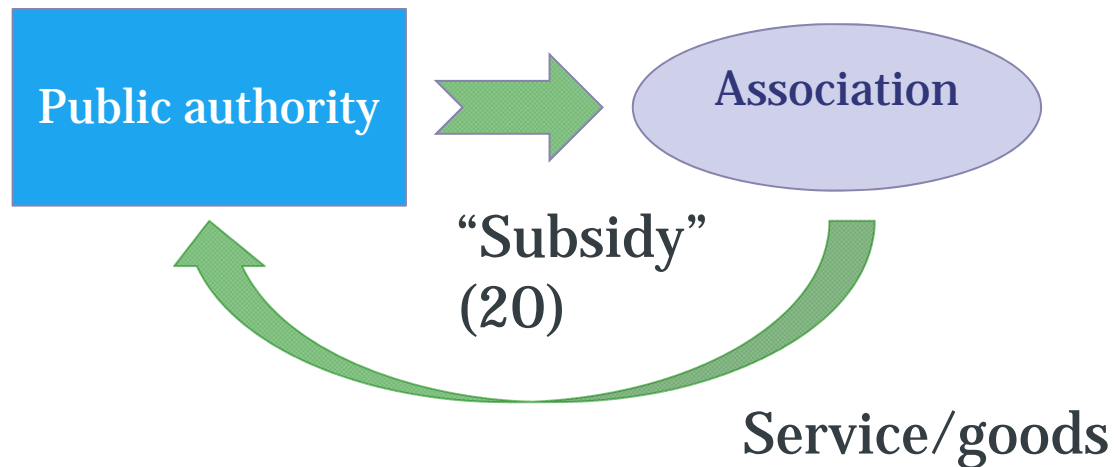
- Proportional relation between subsidy and price reduction
- Subsidy is part of purchase price
=> VAT on PRICE + SUBSIDY

Subsidies for the general functioning of the association



- Subsidy not subject to VAT
- No impact on the right to deduct input VAT

“Fake” Subsidies



- Naming of price as “subsidy” has no influence on the fact that it constitutes remuneration for a service/good
⇒ VAT on SUBSIDY

Conclusion

So now you should know whether ...

1. To invoice or not to invoice?
2. If to invoice:
 - How to properly invoice?
 - if and how much input VAT to recover?
3. How do I treat subsidies?

Thank you & Bird & Bird

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