

# VAT Grouping - Establishment, Eligibility and Registration

## Call for Evidence

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## Introduction

### The Call for Evidence

1. The purpose of this call for evidence is to gather the views of businesses that utilise VAT grouping provisions, and other interested parties, on how these affect them and the wider business environment.
2. The call for evidence will be used to gather information and views on the current UK provisions, and views on provisions that have been adopted by other countries. The views collected through the call for evidence will inform future policy direction.
3. This call for evidence will examine three distinct areas of VAT grouping:
  - The establishment provisions
  - Compulsory VAT grouping
  - Grouping eligibility criteria for businesses currently not in legislation, including limited partnerships

### Who should respond to this call for evidence?

4. The government is interested in responses directly from businesses of all sizes, whether they currently utilise the VAT grouping provisions or not, and their representative bodies. The financial services industry is likely to be particularly interested. We are asking for responses before **20 November 2020** [to HMTVATandExcisePolicy@hmtreasury.gov.uk](mailto:HMTVATandExcisePolicy@hmtreasury.gov.uk)

### VAT grouping in the UK

5. VAT grouping is a facilitation measure by which two or more eligible persons can be treated as a single taxable person for VAT purposes. Eligible persons are generally bodies corporate but can include individuals, partnerships and Scottish partnerships provided that certain conditions are satisfied. Bodies corporate includes companies of all types and limited liability partnerships.
6. Registration of the group is made in the name of a 'representative member' who is responsible for completing returns on behalf of the group, as well as paying

any VAT due and receiving repayments. All members are jointly and severally liable for VAT debts.

7. All supplies of goods and services made by one member of a VAT group to another member of the same VAT group are normally disregarded for VAT.
8. The purpose of VAT grouping is to allow administrative efficiency for companies under the same ultimate ownership. VAT savings are not the purpose of VAT grouping but are sometimes a consequence of it.
9. More information on VAT grouping can be found in VAT Notice 700/2 (Group and divisional registration).<sup>1</sup>

## Recent history of VAT grouping in the UK and EU

10. A previous consultation on possible changes to VAT grouping following the decisions of the Court of Justice of the European Union (CJEU) in *Larentia + Minerva and Marenave* (C-108/14 and C-109/14) and *Skandia America Corporation* (C-7/13) ran from December 2016 to February 2017.
11. The consultation covered the eligibility requirements for group registration as well as the impact of policy changes implemented as a result of the *Skandia* decision. The responses to this consultation can be found online.<sup>2</sup>
12. From 1 November 2019 the eligibility criteria to join a VAT group was extended to include individuals, partnerships and Scottish partnerships, provided they control all other members of the VAT group. Although grouping eligibility criteria will be examined in this call for evidence, evidence is only being sought on the eligibility of particular bodies rather than eligibility in general. Commentary on the status of these bodies in VAT groups can be found in chapter 3.

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<sup>1</sup> VAT Notice 700/2 can be found at the following address: <https://www.gov.uk/guidance/group-and-divisional-registration-vat-notice-7002>

<sup>2</sup> The response the 2017 consultation can be found at the following address: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663933/Scope\\_of\\_VAT\\_Grouping\\_-\\_summary\\_of\\_responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663933/Scope_of_VAT_Grouping_-_summary_of_responses.pdf)

# Chapter 1

## VAT grouping and establishment provisions

13. One of the conditions that must be met for two or more eligible persons to form a VAT group is that those persons must either be *established* or have a *fixed establishment* in the UK.

### *Establishment*

14. A business is established where the main functions of the business' central administration are carried out. This will usually be the head office, headquarters or 'seat' from which the business is run. This is where essential day-to-day decisions concerning the general management of the business are taken. A registered office alone is not sufficient for a person to create an establishment. A company or partnership will, generally speaking, be established in only one country. An individual is established where they are resident for income tax purposes.

### *Fixed establishment*

15. A company or partnership has a fixed establishment in the UK if it has a real and permanent trading presence in the UK. For example, if it has either a:

- permanent place of business which has sufficient permanent human and technical resources to carry on one or more of the business activities of the company as a whole and makes supplies directly from the UK establishment; or
- branch or office in the UK, which has sufficient permanent human and technical resources to carry on one or more of the business activities of the company as a whole and makes supplies directly from the UK establishment.

16. A company does not have a fixed establishment in the UK by only having a simple "brass plate" presence in the UK, or a UK based agent.

17. An individual has a fixed establishment where they have sufficient permanent human and technical resources to carry on one or more of their business activities and make supplies directly from the UK establishment. Consider the example of an individual who is resident in France and runs a nursing home in the UK; the individual employs the staff directly and owns (or leases) the property. In this instance, although the individual is resident in France, they have a fixed establishment in the UK as they are making supplies to the residents of the nursing home using the human and technical resources they control in the UK.

18. Two different models of establishment provisions for the purposes of VAT grouping are described below: the 'whole establishment' provisions and the 'establishment only' provisions.

## 'Whole establishment' provisions

19. The UK currently uses 'whole establishment' provisions.

20. Under 'whole establishment' provisions, all 'fixed establishments' (or 'branches') of the eligible person, whether in the UK or abroad, are considered to be part of a single eligible person.

21. Provided all relevant conditions for VAT grouping are met, the entire eligible person, including all branches or fixed establishments and their head office, will be considered to be part of a single eligible person, irrespective of whether the head office or some of those branches are located in the UK. However, at least one branch or the head office must be located in the UK for the person to be eligible for VAT grouping.

22. The existing 'whole establishment' provisions are thought to encourage businesses that are established overseas to set up UK trading branches, and give them comprehensive access to the UK market, with administrative and, frequently, VAT savings. Some companies might consider this one of the many strengths that make the UK an attractive place to do business.

23. The government is aware that 'whole establishment' provisions may also encourage companies to organise their internal structures to benefit from the place of supply rules in different countries. It is possible for supplies of legal, IT or administrative services supplied to a fixed establishment in another country to be channelled to the same entity's UK fixed establishment. That supply could then be realised in the UK without incurring VAT as the place of supply to the foreign establishment was outside of the UK.

24. Whilst services purchased overseas are brought into the scope of VAT where they are used in supplies made to other VAT group companies, supplies of staff are not. Consequently, some groups benefit significantly from services provided by staff in overseas locations to the detriment of UK head quartered competitors.

### Questions

- 1 What are the advantages of 'whole establishment' provisions; how do they facilitate business activity in the UK?
- 2 Do the 'whole establishment' provisions make the UK a more attractive business destination than countries that utilise 'establishment only' provisions, both across all industries and within specific sectors?
- 3 Are the advantages of the whole establishment provisions equally accessible to all companies? Does the size or location of the VAT group head office impact this?

- 4 What additional benefits do 'whole establishment' provisions bring to businesses and sectors, including those unrelated to tax?
- 5 What disadvantages arise as a result of the 'whole establishment' provisions?

## 'Establishment only' provisions

25. A common arrangement for VAT grouping in other countries are the 'establishment only' provisions. These are distinct from the 'whole establishment' provisions. **The UK does not currently utilise 'establishment only' provisions.**

26. Under 'establishment only' provisions, where an entity has fixed establishments in multiple jurisdictions, it is only the establishment in the country in which the VAT group is based that can be part of that VAT group.

27. For example, if the UK implemented 'establishment only' provisions, only UK fixed establishments of foreign companies could be within a UK VAT group: the overseas headquarters of that foreign company would be ineligible to be in the UK VAT group (contrary to 'whole establishment' provisions), and supplies (whether deemed or actual) from headquarters to branch or branch to headquarters would be subject to VAT.

28. Most European countries (other than Ireland and the Netherlands) have adopted 'establishment only' provisions.

29. Adopting "establishment only" provisions could increase the costs for some VAT groups, including for foreign companies whose UK branches and companies receive considerable supplies from abroad, but could also remove a competitive barrier to VAT groups based entirely in the UK.

30. Likewise, adopting 'establishment only' provisions may reduce the administrative burden where supplies purchased abroad are used to make supplies to other VAT group members, as they will only have to account for a 'reverse charge' for VAT, rather than a more complicated calculation in line with current VAT anti-avoidance legislation.

## Questions

- 6 How would a change to 'establishment only' provisions affect UK businesses that utilise VAT grouping? Please outline both positive and negative changes.
- 7 Which sectors would likely be affected if the UK were to adopt 'establishment only' provisions?

- 8 Would adopting the 'establishment only' provisions result in a reduced administrative burden for businesses?
- 9 Would adopting the 'establishment only' provisions result in any increased administrative burden from applying the reverse charge to all supplies from overseas? Would this be offset by the reduction of administration in applying the current anti-avoidance legislation, S43(2A)?
- 10 Would adopting the 'establishment only' provisions have a financial impact upon affected businesses?
- 11 Would adopting the 'establishment only' provisions have an impact on the geographical allocation of jobs (both within and outside of the UK) in affected businesses?
- 12 Would adopting 'establishment only' provisions impact on business competitiveness, both for those VAT groups that are headquartered in the UK and those based overseas?

## The *Skandia* judgement

31. As previously noted, the UK utilises 'whole establishment' provisions. However, EU case law means there are exceptions to the UK's use of whole establishment provisions that apply in certain circumstances.

32. The *Skandia* case was heard by the CJEU in 2014. The judgment implied that an overseas establishment of a UK-established entity would be part of a separate taxable person if the overseas establishment was VAT-grouped in an EU member state that operated 'establishment only' VAT grouping provisions. This would be the case whether or not the entity in the UK is part of a UK VAT group.

33. From 1 January 2016, HMRC implemented changes to VAT grouping rules following the outcome of the case. Those rules at present are that if a UK established company, regardless of whether or not it is a member of a UK VAT group, is a member of a VAT group in an EU member state that operates establishment only VAT grouping, then supplies by that company from the overseas establishment are treated as made by the overseas VAT group (i.e. a separate taxable person). The same rules would apply to supplies made by the UK established company to the overseas establishment. *This paragraph was amended for clarity on 23 September 2020.*

34. Services provided by the UK establishment to the overseas VAT-grouped establishment located in an EU member state with 'establishment only' VAT grouping provisions will normally be treated as supplies made outside the UK under place of supply rules. Input tax may be recoverable on such a supply if it is specified

under the UK's Specified Supplies Order<sup>3</sup> or would have been taxable if made in the UK.

35. Further details of the current treatment can be found in VAT Notice 700/2.<sup>4</sup>

36. It was noted in the responses to the 2017 VAT grouping consultation that many businesses had encountered an administrative burden in implementing the new rules made as a result of the *Skandia* decision.

### Questions

13 What impacts have the revised arrangements introduced in response to the *Skandia* ruling had on your business?

14 Would any further changes to the current arrangements materially impact your business or sector?

15 Do you want to maintain the current arrangements that were implemented in response to *Skandia*, or reverse them?

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<sup>3</sup> Further information on the Specified Supplies order can be found here: <https://www.gov.uk/hmrc-internal-manuals/vat-place-of-supply-services/vatposs03200>

<sup>4</sup> VAT Notice 700/2 can be found at the following address: <https://www.gov.uk/guidance/group-and-divisional-registration-vat-notice-7002>

# Chapter 2

## Compulsory VAT grouping

37. At present, UK entities have the option of entering into VAT grouping arrangements if the relevant control and establishment conditions are met. This gives businesses under common control the option to form a VAT group if it would be commercially advantageous for them to do so. There is no obligation to enter a VAT grouping arrangement where the relevant conditions are met, or include all members of the corporate group that are eligible.

38. However, in certain jurisdictions outside of the UK, where the relevant conditions are met VAT grouping is compulsory for specific sectors.

39. Compulsory VAT grouping can offer administrative easements, and level the playing field for businesses who would then all operate under the same VAT treatment.

40. In some jurisdictions, an 'all in or all out' model operates where VAT grouping is optional, but if it is adopted for one entity, all related entities who meet the relevant conditions must also be part of the same VAT group.

41. Compulsory VAT grouping provisions could be utilised alongside 'establishment only' VAT grouping provisions to prevent manipulation of structures to obtain the optimum VAT position.

### Questions

- 16 What benefits or disadvantages could a system of compulsory VAT grouping deliver for businesses? Would this vary between different sectors?
- 17 How would compulsory VAT grouping impact the administrative processes for businesses?
- 18 How would compulsory VAT grouping interact with 'establishment only' VAT grouping provisions, if they were to be implemented?
- 19 How would compulsory VAT grouping impact businesses of different sizes, and would the minimised risk of errors be of benefit?
- 20 Are there any instances where businesses are not VAT grouped for specific commercial or regulatory reasons? Please provide examples.

# Chapter 3

## Eligibility criteria: partnerships

42. At present, legislation does not allow entities such as limited partnerships (LPs), and Scottish limited partnerships (SLPs) to join a VAT group. However, HMRC offers an extra-statutory concession whereby these entities can join a VAT group.

43. Although this concession is longstanding, whether a non-statutory basis for allowing such entities to join a VAT group is appropriate going forward is currently under consideration.

### Limited partnerships (LPs)

44. A LP is allowed to join a VAT group where the sole general partner of that LP is a body corporate and its role is to manage the limited partnership as a whole. Given the structure of LPs, it is the general partner that is 'active' within the partnership, and they have management control of the partnership.

45. It is not uncommon for a general partner to have limited rights to the profits/assets of the partnership, with other 'limited' partners having the majority of the beneficial ownership of the LP without managerial responsibilities. Where a general partner is within a VAT group, whose other entities would be outside of the LP of which that general partner were responsible for the management, supplies can be received by the LP free of VAT. This status is irrespective of the apportionment of the beneficial ownership of the LP, much of which could be held outside of the VAT group.

46. Whilst this solution takes account of the unique characteristics of an LP, the current concession is however a departure from the principles underpinning VAT grouping provisions. It also does not address situations where there is more than one general partner, and we would be interested to hear views on situations where this occurs.

### Scottish limited partnerships (SLPs)

47. In contrast to a limited partnership under English and Welsh law, a Scottish limited partnership (SLP) is a legal person distinct from its constituent (general and limited) partners. In order to avoid regional disparities, HMRC has operated a concession where, provided that the sole general partner of an SLP is a corporate body, the SLP can join a VAT group. This concession has ensured equal treatment in all parts of the UK.

## Scottish partnerships

48. Following legislative changes that came into effect from 1 November 2019, Scottish partnerships can now join a VAT group where they control all other members of the VAT group. General partnerships can also join a VAT group subject to the same criteria, although there may be further considerations for Scottish partnerships given their separate legal personality. For an explanation of what control means in this context, please see VAT Notice 700/2.<sup>5</sup>

### Questions

- 21 How do limited partnerships (LPs) and Scottish limited partnerships (SLPs) currently participate in VAT groups?
- 22 How do LPs and SLPs tend to be used within the structure of corporate groups and what is the commercial rationale for inserting them into VAT groups?
- 23 What, if any, commercial reasons are there for having more than one general partner in a LP that may affect VAT grouping arrangements?
- 24 In cases where a LP has more than one general partner, what commercial reasons are there to add more than one general partner to the same VAT group?
- 25 If the test for VAT grouping LPs/SLPs changed to a control and beneficial ownership test, how would this affect current VAT groups and the LPs/SLPs in question, including those that would be able to VAT group, and those that would have to be removed from existing VAT groups?
- 26 When considering the normal eligibility tests for VAT grouping, what would the impact be on VAT groups if those tests were applied to LPs and Scottish partnerships as a whole rather than just general partners?
- 27 Would it be beneficial to allow Scottish partnerships to join a VAT group subject to the same rules as other entities (i.e. where they are controlled, rather than controlling all other members of the VAT group)? Should the same treatment also apply to general partnerships?
- 28 Were any changes discussed in chapters one and two to be implemented, how could they impact on the inclusion of partnerships within VAT groups?

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<sup>5</sup> VAT Notice 700/2 can be found at the following address: <https://www.gov.uk/guidance/group-and-divisional-registration-vat-notice-7002>

# Summary of Questions

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- 1 What are the advantages of 'whole establishment' provisions; how do they facilitate business activity in the UK?
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- 5 What disadvantages arise as a result of the 'whole establishment' provisions?
- 6 How would a change to 'establishment only' provisions affect UK businesses that utilise VAT grouping? Please outline both positive and negative changes.
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- 11 Would adopting the 'establishment only' provisions have an impact on the geographical allocation of jobs (both within and outside of the UK) in affected businesses?
- 12 Would adopting 'establishment only' provisions impact on business competitiveness, both for those VAT groups that are headquartered in the UK and those based overseas?
- 13 What impacts have the revised arrangements introduced in response to the *Skandia ruling* had on your business?

- 14 Would any further changes to the current arrangements materially impact your business or sector?
- 15 Do you want to maintain the current arrangements that were implemented in response to *Skandia*, or reverse them?

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- 16 What benefits or disadvantages could a system of compulsory VAT grouping deliver for businesses? Would this vary between different sectors?
- 17 How would compulsory VAT grouping impact the administrative processes for businesses?
- 18 How would compulsory VAT grouping interact with 'establishment only' VAT grouping provisions, if they were to be implemented?
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- 26 When considering the normal eligibility tests for VAT grouping, what would the impact be on VAT groups if those tests were applied to LPs and Scottish partnerships as a whole rather than just general partners?
- 27 Would it be beneficial to allow Scottish partnerships to join a VAT group subject to the same rules as other entities (i.e. where they are controlled, rather than controlling all other members of the VAT group)? Should the same treatment also apply to general partnerships?

28 Were any changes discussed in chapters one and two to be implemented, how could they impact on the inclusion of partnerships within VAT groups?