



HM Revenue
& Customs

Scope of VAT Grouping

Consultation document

Publication date: 5 December 2016

Closing date for comments: 27 February 2017

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| Subject of this consultation: | Whether to make changes to UK VAT grouping following the decisions of the Court of Justice of the European Union (CJEU) in <i>Larentia + Minerva</i> and <i>Marenave</i> (C-108/14 and C-109/14) and <i>Skandia America Corporation</i> (C-7/13). |
| Scope of this consultation: | The main focus of the consultation will be to review: (1) options around eligibility requirements for VAT group registration; and (2) the impact of policy changes following the CJEU decision in <i>Skandia</i> . We are also interested in views about the interaction between VAT grouping and cost sharing provisions. |
| Who should read this: | We would like to hear from UK businesses, legal firms, accountants and other interested parties. |
| Duration: | 12 weeks. The consultation will start on 5 December 2016 and close on 27 February 2017. |
| Lead official: | Alison Evans: HMRC, VAT Grouping Policy. |
| How to respond or enquire about this consultation: | <p>Please send responses to: itpt.vatregistration&accountingpolicy@hmrc.gsi.gov.uk</p> <p>Alternatively you can write to: VAT Grouping Consultation Alison Evans HM Revenue & Customs VAT Registration & Accounting Policy Team 1st Floor, Regian House James Street Liverpool, L75 1AD</p> <p>Enquiries about the content or scope of the consultation, or requests for hard copies can be made to the email and postal address above.</p> |
| Additional ways to be involved: | This is a technical issue with specialist interests and will largely be a written exercise. However, in order to engage directly with interested parties, HMRC is happy to meet and discuss the proposed changes. If you would like to arrange a meeting please email: john.quayle@hmrc.gsi.gov.uk |
| After the consultation: | The consultation responses will inform the government's thinking on changes that could be made to UK VAT grouping. Responses to the consultation will be summarised and published and, if the government decides to make legislative changes, there will be a further consultation on draft legislation. |
| Getting to this stage: | In light of the CJEU judgments the UK government is reviewing VAT grouping arrangements. |
| Previous | HMRC has met informally with interested representative bodies. |

engagement:

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1. Introduction

What is VAT grouping?

1.1. Article 11 of the Principal VAT Directive (PVD) allows Member States to treat two or more businesses, established in the territory of that Member State, as a single taxable person if the businesses have close economic, financial and organisational links.

1.2. UK VAT grouping legislation (VAT Act 1994 s43-43D) currently allows two or more 'bodies corporate' (such as limited companies or limited liability partnerships) - to register as a VAT group if:

- Each body is established in the UK; and
- They are under common control, for example a parent company and its subsidiaries.

[VAT Notice 700/2](#) provides further information.

1.3. Grouping provides administrative savings for business and creates an intrinsic advantage for businesses that make exempt supplies. This is because, without VAT grouping, which allows them to disregard intra-group supplies, they would incur VAT on all purchases from closely-linked entities but may be unable to recover all of this VAT, due to the partly exempt nature of their business.

1.4. There are approximately 29,010 VAT groups in the UK, each with an average of four members. VAT grouping can be found in the majority of trade sectors but is particularly prevalent in the banking and finance sectors.

Why are we considering changes to VAT grouping?

1.5. Following two judgements from the Court of Justice of the European Union (CJEU), raised by two other Member States, the UK government is reviewing VAT grouping arrangements.

1.6. We met business representative bodies in February 2016 to explore and develop new ideas on VAT grouping. Then, at the beginning of September 2016, we took part in a major EU conference that looked at the future of VAT grouping in the EU and identified areas where further work is needed.

1.7. These discussions have helped inform the scope of this consultation.

1.8. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these

negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

1.9. The purpose of this consultation is to help the government identify areas where change would be beneficial to business and government, and to develop a framework for implementation, including detailed policy design.

2. Eligibility

2.1. In the UK, we have always restricted VAT groups to ‘bodies corporate’. Simply put, a ‘body corporate’ is a form of corporation where a number of persons are united and consolidated together so as to be considered as one person in law. Examples of bodies corporate are:

- Public limited companies;
- Private companies;
- Unlimited companies;
- Limited liability partnerships; and
- Bodies incorporated by Act of Parliament, Royal Charter or company law of another country.

VAT notice 700/2, section 9, provides further information.

2.2. To ensure the entities are “closely bound by financial, economic and organisational links”¹, the UK applies a control test, which is that all members of the group are controlled either by one member of the group, or a single other ‘person’ who is not one of the members of the group. In summary, it is a “vertical grouping” with a single controlling body at the top.

2.3. You control a group member if any of the following apply:

- you are a parent company of the group member within the definition in section 1159 of and Schedule 6 to the Companies Act 2006 (see section 10 of VAT Notice 700/2);
- you would be a parent company of the group member if you were a company;
- you are empowered by statute to control that body’s activities.

2.4. The test itself relies on a Companies Act 2006 definition of parent company and subsidiary.

2.5. In July 2015, the CJEU decision in *Larentia + Minerva and Marenave* (C-108/14 and C-109/14) indicated that a Member State may not restrict VAT grouping to those entities which have legal personality, unless it is justified by the prevention of abusive practices, tax evasion or avoidance.

¹ Source: Principal VAT Directive (Dir. 2006/112)

2.6. One reading of this judgement is that Member States may have to extend VAT grouping to a wider range of entities that have close financial, economic and organisational links.

2.7. We would be interested to understand your views on the risks and opportunities for businesses if VAT grouping is widened to other entities (for example Partnerships).

Q1: Which entities should be excluded from joining a VAT group and why? Where possible please provide illustrative examples.

2.8. If VAT grouping is widened beyond corporate bodies, the existing control test might also need to change. However, during our informal consultation in February 2016, businesses said that they liked the certainty of the current test. They were concerned that if we replace the current test with something completely new, existing group members might not be able to retain their group status. They argued that this could cause significant financial and administrative implications for UK businesses. However, eligibility for VAT grouping has to be determined on the same basis for all types of entity.

Q2: How can we strike the right balance between the range of entities allowed to join a VAT group and an easily administered eligibility test?

2.9. The government's view is that all three links (financial, economic and organisational) have to be met during the entire time a VAT group exists and that in order to demonstrate these links, strict eligibility conditions must be met. Discussion in the September 2016 EU conference confirmed the need for all three links to be met and highlighted the importance of demonstrating that a sufficient level of financial control is in place.

2.10. The government would like to retain the level of certainty that UK law currently delivers and ensure that any new criteria are simple to operate. However, we are mindful that VAT grouping has the potential to create opportunities for abuse, avoidance or evasion, which in turn could result in significant revenue loss.

2.11. The scale of change required is heavily dependent upon two areas:

- the restrictions placed on which entities may join a group (see paragraph 2.7 above); and
- the level of control required within a group structure.

To help us better understand the options available, we would like to hear your views on the following:

Q3: If we move away from the current eligibility test, what could be the impact on businesses that are currently VAT grouped?

Q4: What alternative tests could be employed that demonstrate both financial control, and economic and organisational links?

3. HMRC response to *Skandia* judgment

3.1. Where an entity eligible for VAT grouping has establishments in different countries, some Member States restrict VAT grouping to the establishment in their Member State. HMRC recognise this as 'establishment only' VAT grouping. Often a result of this is that the Member State treats intra-entity services between the body's establishment in the Member State and its overseas branches or parent companies as subject to VAT.

3.2. Other Member States, including the UK, recognise the whole corporate entity as eligible to join a VAT group, including establishments overseas. As a result, supplies between all branches are disregarded for VAT purposes, as is the case with an entity which is not VAT grouped at all.

3.3. A recent CJEU case *Skandia America Corporation* (C-7/13) found Sweden's establishment only VAT grouping was consistent with Article 11 of the Principal VAT Directive (PVD), and resulted in taxable supplies from the corporation's overseas head office to its Swedish branch in the VAT group. This decision was an exception to the earlier CJEU judgment in *FCE Bank* (C-210/04), which ruled that services between a fixed establishment and its head office fall outside the scope of VAT.

3.4. Following the *Skandia* case, HMRC put steps in place to recognise separate taxable persons created by establishment only VAT groups in other member states. These are intended to address the risk of double and non-taxation and are outlined in Revenue and Customs Briefs 2 (2015), 18 (2015) and 23 (2015).

3.5. We would be interested to understand:

Q5: How have the changes the UK introduced, following the *Skandia* CJEU decision, impacted business, both financially and operationally? Where possible please provide illustrative examples.

Q6: Are there any other CJEU decisions that have impacted business in terms of UK VAT grouping, both financially and operationally?

4. VAT cost sharing

4.1. The VAT cost sharing exemption (CSE) is contained in Article 132(1)(f) of the Principal VAT Directive (PVD). The CSE enables a special structure called a cost sharing group to be used by persons making exempt supplies or carrying out non-business activities.

4.2. While this is different from VAT grouping, both arrangements result in supplies that would normally be taxable not being taxed.

4.3. Our informal consultation exercise, in February 2016, started to examine the interaction between cost sharing and VAT grouping and the implications of changing current VAT grouping provisions.

4.4. Respondents recognised that there are considerable differences in the way the rules for CSE are enacted across the EU. Ways in which these can be corrected include by amendment of EU law. There were views that the UK should adopt a liberal interpretation of the exemption as is compatible with existing law to allow the benefits of cost sharing to be more widely enjoyed.

4.5. Most stakeholders agreed that the availability, or not, of the cost sharing exemption to relevant supplies of services should not be affected by any proposal to widen eligibility for VAT grouping. The exemption is of much narrower potential application than VAT grouping, and most stakeholders consulted did not consider that the availability of one should impact on the availability of the other.

4.6. Two cases (*DNB Banka (C-326/15)* and *Arriva (C-605/15)*) were referred to the CJEU on the interpretation of the CSE exemption in 2015, for which a decision is awaited.

4.7. The Advocate General recently delivered an opinion on CJEU case *Commission v Luxembourg (C-274/15)* regarding the Luxembourg VAT rules applicable to CSE. The Advocate General confirms the position of the European Commission and considers that the rules implemented by Luxembourg are not in line with the PVD. We now await the CJEU decision in this case.

Q7: Do you have any views on the interaction between VAT grouping and CSE? In particular, what would be the impact on the CSE of widening eligibility for grouping?

5. Tax Impact Assessment

Tax impact assessment

5.1. The purpose of this consultation is to help the government identify areas where change would be beneficial to business and to inform the development of options for the future. We would be interested in your views on the current financial advantages that VAT grouping provides and it would be helpful if you could provide as much information as possible about the financial impact of any changes you are suggesting as part of this exercise.

5.2. We have also considered other impacts of changes to VAT grouping legislation, these are detailed below.

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| Exchequer impact | The final costing of any future measure will be subject to scrutiny by the Office for Budget Responsibility. |
| Economic impact | This measure is not expected to have any significant macroeconomic impacts, but this may change following further development of the policy. |
| Impact on individuals, households and families | As VAT is a business tax, it only impacts on those individuals who are registered for VAT and those impacts are set out in the 'Impacts on businesses' section below. Aside from this consideration, this measure is not expected to have an impact on individuals, households and families; neither is it expected to impact on family formation, stability or breakdown. |
| Equalities impacts | It is not anticipated that there will be an adverse impact on any specific group with protected characteristics. |
| Impact on businesses and Civil Society Organisations | We expect widening access to VAT groupings will generate admin burden savings to businesses. However we acknowledge that there may be one-off costs related to the formation of groups. |
| Impact on HMRC or other public sector delivery organisations | Depending on what the government decides about changes to VAT grouping following the consultation, there will be an impact on HMRC. Work will then be undertaken to quantify the impact. |
| Other impacts | N/A |

Q8: Do you have any comments on the assessment of equality and other impacts in the Tax impact assessment? For example:

a) What one-off and on-going costs and savings do you anticipate as a result of potential changes to UK VAT grouping?

b) Do you anticipate any other impacts on small and micro businesses that are not covered here? If so, please provide details of any anticipated one-off and on-going costs and burdens.

c) How might any negative impacts be alleviated?

6. Summary of Consultation questions

| Section | Question Ref | Question |
|---------|--------------|---|
| 2 | Q1 | Which entities should be excluded from joining a VAT group and why? Where possible please provide illustrative examples. |
| 2 | Q2 | How can we strike the right balance between the range of entities allowed to join a VAT group and an easily administered eligibility test? |
| 2 | Q3 | If we move away from the current eligibility test, what could be the impact on businesses that are currently VAT grouped? |
| 2 | Q4 | What alternative tests could be employed that demonstrate both financial control, and economic and organisational links? |
| 3 | Q5 | How have the changes the UK introduced, following the <i>Skandia</i> CJEU decision, impacted business, both financially and operationally? Where possible please provide illustrative examples. |
| 4 | Q6 | Are there any other CJEU decisions that have impacted business in terms of UK VAT grouping, both financially and operationally? |
| 4 | Q7 | Do you have any views on the interaction between VAT grouping and CSE? In particular, what would be the impact on the CSE of widening eligibility for grouping? |
| 5 | Q8 | <p>Do you have any comments on the assessment of equality and other impacts in the Tax impact assessment? For example:</p> <p>a) What one-off and on-going costs and savings do you anticipate as a result of potential changes to UK VAT grouping?</p> <p>b) Do you anticipate any other impacts on small and micro businesses that are not covered here? If so, please provide details of any anticipated one-off and on-going costs and burdens.</p> <p>c) How might any negative impacts be alleviated?</p> |

7. The Consultation process: How to respond

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 27 February 2017, by e-mail to:

itpt.vatregistration&accountingpolicy@hmrc.gsi.gov.uk

or by post to:

VAT Grouping Consultation
Alison Evans
HM Revenue & Customs
VAT Registration & Accounting Policy Team
1st Floor, Regian House
James Street
Liverpool
L75 1AD

Telephone enquiries 03000 540836 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: List of stakeholders consulted

This formal consultation follows a period of informal meetings that were held during February 2016. Stakeholders consulted were:

Association of Accounting Technicians (AAT)

Association of British Insurers (ABI)

Association of Financial Managers in Europe (AFME)

Association of Tax Technicians (ATT)

British Bankers Association (BBA)

British Insurance Brokers Association (BIBA)

British University Finance Directors Group (BUFDG)

Charity Tax Group (CTG)

Chartered Institute of Taxation (CIOT)

Deloitte

EY

Institute of Chartered Accountants in England & Wales (ICAEW)

Institute of Chartered Accountants of Scotland (ICAS)

KPMG

Law Society of England & Wales

London & International Insurance Brokers' Association (LIIBA)

National Care Forum (NCF)

PwC

VAT in Industry Group

Annex B: Relevant (current) Government Legislation

VAT Grouping Legislation

European Law

- Principle VAT Directive – Article 11.

UK Law

- Section 43 of the VAT Act 1994
- Finance Act 2004, s20
- Finance Act 1999, Schedule 2
- VAT (Groups: Eligibility) Order 2004 SI 2004/1931
- Public Notice 700/2
- Companies Act 2006, s 1159 and Schedule 6

VAT Cost Share Legislation

European Law

- Article 132(1)(f) Principal VAT Directive

UK Law

- Group 16 to Schedule 9 of the VAT Act 1994
- Finance Act 2012