



HM Revenue
& Customs

Scope of VAT Grouping

Summary of responses
December 2017

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1. Introduction

1.1. On 5 December 2016, HM Revenue and Customs (HMRC) published a consultation document, 'Scope of VAT Grouping,' which sought views on the future structure of UK VAT grouping. The formal consultation followed informal discussions with representative bodies which took place in early spring 2016.

1.2. The main focus of the consultation was to consider potential changes to UK 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). The consultation examined:

- Options around eligibility requirements for VAT group registration, and:
- The impact of policy changes following the CJEU decision in *Skandia*.

It also sought views on the interactions between VAT grouping and cost sharing provisions.

1.3. The consultation closed on 27 February 2017. A copy of the consultation is available at: <https://www.gov.uk/government/consultations/scope-of-vat-grouping>

1.4. HMRC is grateful to all those who responded and gave their time to provide their views and ideas, in total 21 written responses were received.

Next Steps

1.5. It is clear from the responses how valuable UK VAT grouping is to business. We will continue to look at the scope of VAT grouping, the issues you have raised and the impact of any potential changes. We intend to discuss our interim views with the Joint VAT Consultative Committee (JVCC) and other invited representative bodies.

1.6. We appreciate businesses will require certainty on any future changes and, alongside our review, we will consider the outcomes of the UK's EU exit negotiations to ensure that businesses are not required to make a series of changes.

1.7. In the meantime, and in response to concerns raised during the consultation process, HMRC will clarify its current approach to certain types of partnerships through a policy paper and clearer guidance for business.

2. Detailed Responses

Question 1: Which entities should be excluded from joining a VAT group and why? Where possible please provide illustrative examples.

Responses and comments received (20 responses).

2.1. All respondents said that VAT grouping should not be restricted on the basis of legal entity. Most agreed with HMRC's view that an entity could be excluded in the following circumstances:

- To prevent evasion.
- To prevent avoidance and abusive practices.

- Where an entity is not bound by close financial, economic and organisational links.
 - To prevent entities from joining more than one group.
- 2.2. Some respondents identified joint and several liability as being a barrier to grouping for certain entities, for example unincorporated charities, trustees and other similar bodies. A number of respondents said that rather than excluding specific entities from a group, an alternative approach could be to restrict certain activities or unwarranted treatment, regardless of entity type. This would be via the use of new targeted anti-avoidance rules, as well as the use of existing protection of the revenue powers.
- 2.3 Some respondents recommended HMRC takes the opportunity to clarify its guidance in relation to certain types of partnerships.

The government's response

- 2.4. The government recognises that any widening of grouping will come with a revenue cost unless it excludes businesses that make exempt supplies. This is not something that the government is planning to do, so any potential change must be assessed to fully understand the effect on UK revenue.
- 2.5. Whilst we agree that there may be implications with joint and several liability for certain entities, the government has no immediate plans to make any changes to joint and several liability rules. The government recognises there are various views on the extent to which the *Larentia & Minerva and Marenave* CJEU judgment impacts VAT grouping structures. HMRC acknowledge what respondents have said, and now have a greater understanding of which entities could benefit from broadening grouping eligibility. All the above factors must be considered further before the government can make any decision on the future of UK VAT grouping.
- 2.6. The government acknowledges respondent's comments on the clarity of guidance on VAT group eligibility for certain types of partnerships, and intends to clarify its current approach through improved guidance and a policy paper.

Question 2: How can we strike the right balance between the range of entities allowed to join a VAT group and an easily administered eligibility test?

Responses and comments received (18 responses).

- 2.7. The majority of respondents felt that the existing eligibility test should be retained. Respondents' replies included:
- The current test is clear, certain and should be retained.
 - The eligibility test must be clear, objective and easy to administer.
 - Partnerships where all partners are corporates that meet the existing control requirement or are all under common ultimate control and ownership should be allowed to VAT group.
 - Maintaining the current control test in most circumstances, but adapting the test allowing other entities, to VAT group provided they can demonstrate strong financial, economic and organisational links to the other VAT group members.

- 2.8. However, in order to extend eligibility to include those entities currently not allowed to VAT group, five respondents would like to see the existing test modified, and a further six would like a new additional test to sit alongside it.

The government's response

- 2.9. See the government's response to Question 3 below.

Question 3: If we move away from the current eligibility test, what could be the impact on businesses that are currently VAT grouped?

Responses and comments received (18 responses).

- 2.10. The consensus among respondents was that it is important for existing VAT groups and their members to be left undisturbed by any change. If there were a move away from the current test, respondents have said the impact could include:
- Businesses reassessing existing VAT group members under new eligibility requirements.
 - Increased administrative and compliance costs where VAT group members no longer meet the eligibility requirements.
 - Uncertainty for taxpayers as well as insecurity and disruption to markets.

The government's response

- 2.11. The government appreciates the certainty provided to businesses by the current test and understands the impact a new eligibility test may have on existing VAT groups.
- 2.12. Any expansion of grouping would need to be supported by robust anti-avoidance measures. The government will ensure that these measures are considered alongside any VAT grouping changes and aim to avoid further complexity for taxpayers.

Question 4: What alternative tests could be employed that demonstrate both financial control, and economic and organisational links?

Responses and comments received (18 responses).

- 2.13. The majority of respondents agree that all three links should be met for eligibility. Points raised by respondents included:
- The existing test for corporate bodies should be retained as it is objective but a further test for non-corporate bodies could be inserted.
 - That the financial control test was not required as Article 11 required only financial links.
 - The introduction of an 'economic' or 'organisational' link test alongside the existing 'financial' link test could lead to subjectivity and uncertainty for taxpayers.
 - A simple and objective financial test based on consolidated group accounts could allow entities that have to be separate persons for regulatory reasons to VAT group.
 - Direct tax transfer pricing rules for identifying related parties could be a potential test for VAT grouping.

- 2.14. Nearly half of those who responded felt that the definitions of close financial, economic and organisational links provided by the EU Commission in section 3.3.4 of their paper [COM \(2009\) 325](#), would provide a good starting point to build upon.

The government's response

- 2.15. The government believes that all three links (financial, economic and organisational) should be met during the entire time a VAT group exists. As there is no real consensus amongst respondents about what alternative tests could be employed, detailed work would be required to explore the pros and cons of alternative tests. This might include further consultation.

HMRC response to *Skandia* judgment

Question 5: How have the changes the UK introduced, following the *Skandia* CJEU decision, impacted business, both financially and operationally? Where possible please provide illustrative examples.

Responses and comments received (17 responses).

- 2.16. Most respondents appreciated that the UK did not make radical changes to VAT grouping rules following *Skandia* but did suggest that the changes that were made had created additional complexity and cost for businesses. Points raised included:
- Lack of legal certainty.
 - Requirement for complex new controls to capture the correct VAT treatment for accounting and invoicing purposes.
 - Difficulty in establishing whether a particular member state operates 'establishment only' VAT grouping.
 - Partly exempt businesses are incurring increased VAT costs in respect of being charged VAT on transactions which were previously treated as outside the scope of VAT.
 - Countries without VAT grouping have implemented rules to capture a local reverse charge. This has created problems in establishing what set of rules apply in the UK VAT return and potentially creates double taxation.
- 2.17. Some respondents queried whether changes to UK VAT grouping rules were required or if existing anti-avoidance provisions under Section 43(2A) of the VAT Act 1994, would be sufficient to deal with the implications of *Skandia*. They suggested the changes implemented should be removed.
- 2.18. Most respondents also indicated that HMRC should give an update on their position in relation to *Skandia*; and provide clearer guidance on the position in other EU Member States.

The government's response

- 2.19. The government welcomes as feedback the concerns of businesses following the *Skandia* judgment and recognises the difficulties businesses have had in obtaining information on other Member States' VAT grouping rules. However, HMRC believe that it remains the responsibility of individual businesses to adhere to local VAT grouping rules where they operate outside of the UK and assess the application to their own circumstances.

Question 6: Are there any other CJEU decisions that have impacted business in terms of UK VAT grouping, both financially and operationally?

Responses and comments received (13 responses).

2.20. Most respondents did not consider there to be any other relevant CJEU decisions impacting UK VAT grouping.

The government's response

2.21. The government acknowledges that there do not appear to be any other recent CJEU judgments with significant impact on UK VAT grouping.

VAT Cost Sharing

Question 7: Do you have any views on the interaction between VAT grouping and Cost Sharing Exemption (CSE)? In particular, what would be the impact on the CSE of widening eligibility for grouping?

Responses and comments received (15 responses).

2.22. Most respondents said that VAT grouping and the CSE should be dealt with separately as they are designed to deal with different circumstances and any interactions between the two are limited.

The government's response

2.23. The government accepts that VAT grouping and the CSE should be dealt with separately. There are no immediate plans to further review the interaction between VAT grouping and the CSE.

Tax Impact Assessment

Question 8: 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?

Responses and comments received (14 responses).

2.24. The majority of respondents commented that if VAT grouping is widened beyond bodies corporate there will be one-off administrative costs for entities previously ineligible to join a VAT group; but there would be on-going reduced administration costs and VAT savings, which would outweigh any increase in transitional administration. Respondents also suggested that:

- Administrative costs for HMRC would rise due to processing additional forms and updating relevant legislation; but there will be significant savings as there would be fewer VAT returns to file and payments to process.
- Any changes to VAT grouping rules, which are complex or result in removing existing entities from VAT groups, would create one-off and ongoing costs for business.

- HMRC should consider not making any changes to VAT grouping until EU negotiations have developed further.
- Existing rules should be retained for entities who are currently VAT grouped and no existing VAT group rights should be withdrawn.
- Legislation and guidance should be clear, unambiguous and provide certainty; and should not prevent small and micro businesses from taking advantage of any simplifications.

The government's response

2.25. The government recognises that many businesses would benefit from VAT grouping, not only in administrative savings, but also financially. HMRC administrative costs resulting from this would likely be minimal as many of our processes are now automated. The government plans to complete a full and accurate analysis on changes to VAT grouping rules, in conjunction with businesses.

Annex A: List of stakeholders consulted

Association of British Insurers
Baillie Gifford & Co
British Bankers' Association and the Association for Financial Markets in Europe (Joint response)
British Land
British Property Federation
Charity Law Association
Charity Tax Group
Chartered Institute of Taxation
Confederation of British Industry's
Deloitte LLP
Grant Thornton UK LLP
London and International Insurance Brokers' Association
Places for People Group Limited
PricewaterhouseCoopers LLP
Saffery Champness
The Institute of Chartered Accountants in England and Wales
The Investment Association
The Law Society of England and Wales
VAT Practitioners Group

Two individuals also contributed to the consultation.