Clause 18 and Schedule 10: VAT groups: eligibility

Summary

1. This clause introduces amendments to section 43A of the Value Added Tax Act 1994 (VATA) which allow non-corporate entities, subject to certain conditions, to join a VAT group. These changes will come into effect after Royal Assent on a day to be appointed by Treasury regulations.

Details of the Schedule

2. Paragraph 1(2) substitutes the term "UK bodies corporate" for "bodies corporate" and deletes the existing establishment criteria which now appear in a new subsection (6) of section 43A.

3. Paragraph 1(3) removes subsections (2) and (3) of section 43A which are now covered in the new section 43AZA (control test for VAT grouping).

4. Paragraph 1(4) inserts new subsections (4), (5), (6) and (7). New subsections (4), (5) and (6) detail the eligibility requirements for individuals and partnerships. A partnership can comprise individuals, bodies corporate, Scottish partnerships or a mixture of all of them. For these entities to be eligible they must have a business establishment in the UK and be liable or entitled to be registered for VAT in the UK. They must also control the UK body corporate that they wish to group with. New subsection (7) provides that the control test is now contained in a new section 43AZA.

5. Paragraph 2 inserts the new section (43AZA) which contains the control test for VAT grouping previously covered in section 43A (2) and (3). The test that is applied to bodies corporate, is that all members of a group must be controlled by one member of the group, or by a single other person who is not one of the members of the group.

6. New subsection (1) provides that section 43AZA applies for the purposes of section 43A.

7. New subsection (2) details the requirements for a body corporate to demonstrate control for the purposes of VAT grouping. A body corporate is regarded as controlling another body corporate if:

   - It is the body corporate's holding company, or;
   - It is empowered by statue to control the body corporate

8. New subsection (3) details the requirements for an individual to demonstrate control for the purposes of VAT grouping. An individual is regarded as controlling another body corporate if:

   - It would be a parent company of the body corporate, if it were a company

   An individual must be able to demonstrate that it controls all of the bodies corporate within the VAT group.

9. New subsection (4) details the requirements for a partnership to demonstrate control for the purposes of VAT grouping. A partnership is regarded as controlling a body corporate if:

    - It would be a parent company of the body corporate, if it were a company

    A partnership must be able to demonstrate that it controls all of the body corporates within the VAT group.

10. New subsection (5) defines a "holding company" in relation to section 43A. The test itself relies on a Companies Act 2006 definition of parent company and subsidiary.

11. Part 2, paragraphs 3 through 14 make consequential amendments to section 18A, section 43-43D, section 44, section 53, section 97 of and Schedule 9, Schedule 9A and Schedule 10 to VATA replacing "body corporate" with "person'', or variations of this.

Background note

12. The UK will leave the European Union on 29 March 2019. Until we do so, we will remain a member with all the rights and obligations that membership entails. During this period the government will continue to negotiate, implement and apply EU legislation.

13. UK VAT grouping 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, or has a fixed establishment, in the UK; and
    - They are under common control, for example a parent company and its subsidiaries.

14. VAT group treatment is a business facilitation measure to simplify VAT administration for business and HM Revenue and Customs (HMRC). The effect of a VAT group is that its members account for tax on a single return and supplies between them are disregarded for VAT purposes.

15. Following a judgment from the Court of Justice of the European Union (CJEU) in *Larentia + Minerva* and *Marenave* (C-108/14 and C-109/14) the UK government is extending its eligibility beyond 'bodies corporate'.

16. At Autumn Statement 2016, the government launched a formal consultation on the Scope of VAT grouping and published the summary of responses document on 5 December 2017.

17. This measure will widen the eligibility criteria for VAT grouping to include non-corporate entities (such as partnerships and individuals) who have a business establishment in the UK and control a body corporate. In determining whether there is a business establishment in the UK, the tests for business establishment for place of supply should be considered.

18. HMRC will update guidance after Royal Assent.

19. Please send any comments to cit.vatregistration&accountingpolicy@hmrc.gsi.gov.uk. HMRC would also be grateful for information on one-off costs and savings anticipated as a result of these amendments, including estimated take-up rates.

20. If you have any questions about this change please contact Samantha Whittaker on 03000 575560 (email: samantha.whittaker@hmrc.gsi.gov.uk).