

VAT Grouping Consultation

Submitted via email to:
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Dear Madam

HMRC Consultation on VAT Grouping

The Investment Association¹ welcomes the opportunity to respond to HMRC's consultation on VAT Grouping. In responding to the consultation we have summarised our overall position and then turned to comment on the specific questions.

General Comments

VAT grouping has been in place in the UK since the early days of VAT. The current provisions work well as the test is clear and certain. We believe that a principles-based test which is more open to interpretation would be unwelcome. On the basis that HMRC wishes to amend the position in the UK following recent CJEU cases we would advocate that the changes are limited to widening the entities that can join/ form a VAT group but do so by maintaining the current eligibility rules with new rules being added alongside.

It is paramount that any entities that currently qualify for VAT grouping should remain eligible to do so and the voluntary nature of VAT grouping should be preserved. We would also request clarity of the UK's position following the Skandia cases as noted below.

Lastly, the Cost Sharing Exemption is a significant topic in its own right which is currently being tested at the CJEU (by no less than three cases) and so should be dealt with separately after any amendments to VAT grouping rules have been decided rather than in parallel. Following the Brexit vote any changes which add complexity or additional administrative or a cost burden to businesses should be avoided. Any changes should be made in the spirit of the current Office of Tax Simplification's (OTS) VAT Simplification Review.

¹ The Investment Association is the trade body that represents UK investment managers, whose 200 members collectively manage over £5.7 trillion on behalf of clients.

Responses to specific questions



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

As long as HMRC maintains its powers to reject and remove entities from a VAT group then we would not advocate that any special exclusions should be created. Further, the creation of any additional "lists" raises the challenge of future-proofing nor does it sit well with the current OTS VAT simplification review.

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?

At present the UK has a reasonably easily administered eligibility test. We anticipate that the primary change would be to extend the VAT grouping provisions to include partnerships and other non-corporate entities, it would therefore, seem appropriate to create some new eligibility rules that sit alongside the current ones. This could be achieved, similar to the current arrangements, by there being a number of eligibility tests and only one need be met for VAT grouping to apply (subject to the continued application of the existing anti-avoidance rules).

Currently, non-corporate bodies in the financial services sector can suffer a competitive disadvantage due to being unable to VAT group. For those members affected the impact can be significant. In such cases, consideration should be given to whether any change should apply retrospectively where a non-corporate body had wished to utilise VAT grouping but had previously been unable to do so.

As part of the review, the availability of VAT grouping for non-established taxable persons should be considered. For instance, a Property Unit Trust or a Limited Partnership may be registered for UK VAT as non-established taxable persons on the basis that it owns UK property which is rented out to commercial tenants. Under the current VAT grouping provisions, these entities would meet all the current UK VAT group eligibility rules other than the specific provision that states the taxpayer must be "established" in the UK or have a "fixed establishment" in the UK. The decisions in the various CJEU cases that have triggered this consultation clearly support the availability of VAT grouping for taxpayers that can otherwise register for VAT individually.

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

Businesses would have to reassess whether they were still eligible for VAT grouping. Depending on the size and complexity of the organisation this could be an onerous task. Furthermore, where the new criteria were not met, this would result in real cost as irrecoverable VAT would arise on recharges between any VAT group members and non-grouped companies. There would also be an increased compliance cost to maintain separate VAT registrations, amend systems and supporting infrastructure.

Additionally, the removal or amendment of the existing control test would also create uncertainty for taxpayers and therefore could lead to increased litigation. Members' experience in other member states that apply a more principles based approach to VAT grouping, for instance Germany, illustrates the additional time and effort incurred by all parties to evidence eligibility for VAT grouping. This is in contrast to the UK where there is a test which is clear and certain. Again, this would go against the principles of the OTS's work on VAT simplification.

Following the Brexit vote unnecessary changes or complications or challenges for businesses should be avoided.

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



Where HMRC decide to widen the current test, our strong preference would be to maintain the existing test for bodies corporate. A separate sub section could be inserted to create a test for non-corporate bodies which would sit alongside the current test and could be met on an "either/or" basis, subject to the existing anti-avoidance rules. Such an approach would maintain the status quo for existing VAT group members which we believe is a critical consideration.

Re-iterating our comments above, we believe that it would be appropriate to have additional tests sitting alongside the current ones rather than alternative tests. The EU VAT Committee comments [section 3.3.4 of COM (2009) 325] provide some useful guidance to build-on:

- "The financial link: Defined by reference to a percentage of participation in the capital or in voting rights (over 50%), or defined by reference to a franchise contract. This guarantees that one company has the actual control of another.
- The economic link: Defined by reference to the existence of at least one of the following situations of economic cooperation. The principal activity of the group members is of the same nature, or the activities of the group members are complementary or interdependent, or one member of the group carries out activities, which are wholly or substantially to the benefit of the other members.
- The organisational link: Defined by reference to the existence of a shared, or at least partially shared, management structure."

Consequently, where the existing test of common control was not met then on a case-by-case a business could be eligible provided that it could establish a link to one of the tests above.

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.

Whilst one interpretation is that the UK has taken a flexible position, it requires UK businesses to have an up-to-date knowledge of other member states rules. This creates uncertainty together with additional costs. HMRC's guidance is incomplete and we would welcome it being updated to reflect the position in all member states which businesses could rely upon until subsequently amended.

More generally, we have a concern at the direction of travel at an EU level which is in stark contrast to the VAT expert committee which concluded:

"We are not in favour of a broad interpretation of Skandia, but firmly believe in the need to limit it to the facts of the case. That means, applying to a situation with a third country involved, regarding a VAT group in a country following a narrow territorial scope, limited to transactions involving services and excluding the taxation of internal cost elements such as labour cost. Instead, we recommend broad application of the FCE Bank principles, considering most intra-company transactions as out of scope of VAT.

In order to deal with situations of non-taxation, anti-avoidance provisions could be introduced in all Member States which have VAT grouping provisions based on Article 11. We find the benchmark of the UK anti-avoidance rules as one useful way of achieving a correct outcome"

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



We have not identified any such CJEU cases, however, we would note that there are a number of cases currently at the CJEU relating to the Cost Sharing Exemption which is raised in Question 7 below.

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?

As noted above the Cost Sharing Exemption should be considered separately rather than in parallel, particularly given that the principles are still evolving with three live cases currently at the CJEU which will provide an indication of travel at a future date. In addition, given HMRC's current view of the application of the exemption and the uncertainty how it will apply or not following our exit from the EU, resources at present could be better deployed elsewhere.

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?

Any changes may result in some administration costs, however, we anticipate (and strongly advocate) that all current VAT groups would be retained and any changes would allow additional entities to form / join VAT groups on a voluntary basis. This should provide VAT savings and we would anticipate outweigh any increase in transitional administration. Maintaining the voluntary nature of VAT grouping allows businesses to make the choice.

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.

We have no further comments.

c) How might any negative impacts be alleviated?

It is important that businesses are given appropriate time to understand any proposed changes as well as for implementation. In some specific cases, which we anticipate to be very limited for example following the clarification on the Scottish v English Limited Partnerships noted below grandfathering provisions should be implemented to ensure no existing VAT group rights are withdrawn.

Other Points

Two other points that we would like to raise where additional clarity would be welcome that do not neatly fit into the questions raised above:

Limited Partnerships

We note that HMRC's VAT Manual (VATREG 09420) was updated last year stating that Scottish Limited Partnerships should be registered in the name of the firm rather than via the General Partner. Although HMRC's policy approach is clear, the application in practice appears inconsistent given that two different HMRC offices can or may have historically treated Scottish Limited Partnerships differently. It would be helpful if the HMRC's position was more widely communicated as part of the consultation. Given that different treatments it would be appropriate to have grandfathering provisions to ensure no Limited Partnerships' existing VAT group status is impacted.

Authorised Unit Trusts & Authorised Contractual Schemes



Clarity for asset managers which are part of life insurance groups with investments held in in-house managed Authorised Unit Trusts, which are consolidated on the company's financial statements would be helpful. Similarly with Authorised Contractual Schemes where HMRC's guidance is still draft pending other changes principally in relation to capital allowances.

Finally, thank you again for the opportunity to respond to the consultation and we hope to continue to work with you to develop VAT grouping rules and related guidance. If you would like to discuss anything in this letter, I am available at pauline.hawkes-bunyan@theia.org or on +44 (0)20 7831 0898.

Yours faithfully

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