



VAT NEWSLETTER

VAT group: new legal regulation in Germany

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1 Background

Everybody needs it, however hardly anybody has been happy with it so far. Both the scope and the significance of the VAT group have been the subject of much discussion between the tax authorities and taxpayers for several years. However, companies urgently need legal certainty concerning this issue. Above all, in the case of insolvencies, the tax authority needs to deal with tax losses. Therefore, both sides have been calling for a reform of the VAT group (see 2015's Küffner/Luber, *Steuerpolitischer Ideenwettbewerb* – fiscal policy ideas competition, ifst-Schrift 507). Now, perhaps the time has come: In March this year the Federal Ministry of Finance published a key issues paper on group taxation according to which the currently regulated VAT group is to be replaced by a group taxation based on Art. 11 of the EU VAT Directive. In the meantime, the trade associations have also commented and approved the new approach of group taxation, at least in principle. In fact, this step was long overdue.

2 Moving away from financial, economic and organisational integration towards being closely bound

In the case of group taxation, members of a VAT group should all be legal entities with a domestic domicile or permanent establishment in Germany. This now also includes natural persons domiciled in Germany, insofar as they carry out economic activities.

From a factual point of view, the concept of financial, economic and organisational integration into a parent company is to be replaced by the concept of being closely bound to the group members in all areas. Thus, in future, the focus will no longer be on majority shareholdings. The financial link will result from the group's joint and several liability for VAT, vis-à-



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vis the tax authorities. In addition, a uniform approach will apply to all members with regard to specific taxation schemes. In addition to their economic cooperation, the members must determine a group representation within the framework of their organisational link. This representation should correspond to the concept of the parent company as head of the VAT group according to the current legal situation. The group representation will be responsible to the tax authorities for all tax obligations for the entire VAT group.

At first, the joint and several liability might prove irritating. It is, however, justifiable, since each group member can freely decide to join the VAT group. Liability is virtually the price of more legal certainty. And that is good.

However, it will be necessary to extend group taxation to non-taxable persons. There is no reason to exclude non-taxable persons from the group. Already in its judgment of 9 April 2013 (C-85/11) the ECJ found that non-taxable persons could be members of a VAT group. Such an extension would have an impact on holding companies, non-profit institutions and corporations under public law. A VAT gap is not to be expected, as a distinction must already currently be made between taxable operations and non-taxable operations.

3 Increased legal certainty by implementation of an application requirement

In the future, the VAT group should no longer be able to result solely from the existence of factual requirements but rather an application requirement should be the decisive factor. In addition to the increased legal certainty, the application scheme will enable the tax authorities to prove the required close link. Therefore both, creating and terminating a VAT group will require the joint application of all members. New members will be able to join the group upon approval of all of the group members and leaving the group will also be possible upon application to the competent tax office. However, a termination of membership can also be a consequence of a situation where factual requirements are no longer met. The group representative must notify the responsible tax office of any changes to the membership. The introduction of an application requirement would be the greatest achievement of a reform. However, in the legislative procedure the goal should be focused on ensuring that the tax office, which is responsible for the group, be required to make a binding decision on the application within a reasonable period of time.

4 VAT group remains to be single taxable person

The rights and obligations in terms of VAT of all members should be automatically transferred to the VAT group, in its capacity as the single taxable person. As before, transactions within the group will not be subject to VAT. The joint and several liability, vis-à-vis the tax authorities with regard to VAT claims, will apply irrespective of any deviating provisions in the internal relationship.

5 Conclusion

The proposals made by the tax authority are very good and should not be watered down. However, some specific changes would still be useful and desirable. The trade associations have already developed practical suggestions. Now, all that remains to be done is for the reform to be implemented as soon as possible.