

VAT Alert

January 2017

The Italian VAT Law implements the VAT Group

The Italian Budget Law for 2017 provides for the introduction, in the national law, of the “VAT Group” scheme as set forth by art. 11 of EU Directive 2006/112.

Conditions to be met

The following VAT taxable persons are entitled to set up a VAT Group:

- VAT taxable persons established in Italy;
- VAT taxable persons running a business activity or performing an art or profession;

provided that they are closely bound to one another by financial, economic and organizational links.

According to the law provisions:

- a financial link (pursuant to art. 2359, para. 1 no. 1 of the Italian Civil Code) exists when two or more taxable persons are directly or indirectly bound by controlling interests or when the taxable persons are directly or indirectly controlled by the same entity; this connection must exist at least from July 1 of the calendar year preceding the creation of the VAT Group;
- an economic link exists when two or more taxable persons carry out the same core business or run similar, complementary or interdependent businesses or the activity benefits the other participants;
- an organizational link exists in case of coordination, de facto or de jure, between the decision makers.

If the financial link exists, it is assumed that the economic and organizational connections exist as well.

However, foreign permanent establishments of Italian entities are not entitled to participate in a VAT Group.

In creating a VAT Group, participants no longer qualify as individual VAT taxable persons and turn into a sole VAT taxable person.

The decision to opt for a VAT Group is left to each and every taxable person established in Italy and meeting the requirements set by the law.

As confirmed by the explanatory report, the decision to set up a VAT Group has “*a comprehensive nature, since it applies mandatorily to all participants (none excluded) that are bound jointly by all of the three links mentioned above (so called “all-in, all-out principle”)*”. Therefore, it is not possible to select the taxable persons that join VAT Group.

The VAT Groups scheme described in so far is alternative to the so-called “VAT Group settlement” scheme, as per art. 73, para 3, Presidential Decree 633/72, via which participants offset VAT debts and credit positions within the Group and the mother Company is the only one who is obliged/entitled to pay the remaining VAT due/ask for the refund of the VAT credit before the Tax administration.

Exercise of the option

The Representative of the Group shall exercise the option for the taxable persons to register into the VAT Group by submitting an electronic declaration (containing the name of the Group, the personal data of the Group Representative and of the other participants, the relevant signatures, a certification proving the existence of the links mentioned above, the business activities carried out, etc.).

The option is effective:

- as of the following year, if the electronic declaration is submitted between January 1 and September 30;
- two years after submitting the electronic declaration, in case transmission occurs between October 1 and December 31.

In case all conditions are met, the option is binding for a three-year period as of the year in which it becomes effective and is automatically renewed on an annual basis unless revoked by the Group Representative.

Effects

Being regarded as a sole VAT taxable person means that:

- supplies of goods and services among the participants of the VAT Group are not relevant for VAT purposes;
- supplies of goods and services carried out by a member of the VAT Group towards a third party are regarded as carried out by the VAT Group;
- supplies of goods and services carried out towards a member of the VAT Group by a third party are regarded as carried out towards the VAT Group.

In other words, in case of a VAT Group, only the transactions occurred between (a member of) the Group and a third party are relevant from a VAT point of view.

Being a sole VAT taxable person means that only the VAT Group, and not its participants, is called to abide by the obligations and rights arising out of VAT regulations.

As confirmed by the technical report, the following are the obligations of the VAT Group (by way of example):

- applying VAT to taxable supplies;
- determining deductible VAT;
- calculating any adjustments to VAT deductions;
- paying the VAT due;
- filing, if required, quarterly and annual VAT refund applications;
- complying with invoicing, recording and reporting obligations for the transactions carried out.

Group's Representative

The Representative of the Group is the subject exercising the control *de jure* (financial link).

Should the entity having the control *de jure* lack the necessary requirements to exercise the option (e.g. it is not established in Italy), the Representative of the Group would then be the group member with the highest turnover or total revenues, in absolute values, in the FY preceding the formation of the VAT Group.

Revocation and termination

In order to cancel the registration of a VAT Group, an electronic declaration undersigned by all participants needs to be submitted by the Group Representative.

The revocation will be effective:

- starting from the following year, if the electronic declaration is submitted between January 1 and September 30;
- two years after submitting the electronic declaration, in case the filing occurred between October 1 and December 31.

Each participant of a VAT Group terminates to be part thereof when:

- the financial link with the Group Representative no longer exists;
- the termination of economic or organizational links with the Group Representative is acknowledged.

The VAT Group terminates when there is no longer a plurality of participants taking part therein. The termination is to be notified by the Group Representative by submitting an electronic declaration, within 30 days from the event which caused the termination.

Entry into force

Pursuant to art. 11 of the Directive 2006/112/EU, the new law will enter into force subject to the consultation of the Italian Ministry of Economy and Finance with the EU VAT Committee.

Said preliminary consultation, though mandatory (a mere notification of the adoption of the derogation is actually not sufficient), is only aimed at granting that the derogating provisions and their impact on the Inland Revenue Office and on taxable persons are taken into account.

The VAT Committee is not liable to provide a favourable or unfavourable opinion on the Country's derogating provisions and can just acknowledge their adoption, provided that the member State supplied sufficient information allowing it to examine said provision with full knowledge.

Assuming that the European Community legislative process is regularly completed, the provisions under title V-bis should be effective as of January 1, 2018. VAT Groups will thus actually start operating from 2019. However, some uncertainties arise from the content of the illustrative report. Confirmations from Tax Authorities are expected.

Moreover, in order for the new provisions to enter into full force, some implementing decrees shall be issued in the near future.

Our professionals will be happy to assist you with carrying out all proper checks, as well as with the relevant fulfillments.

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