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# VAT GROUPING IN MALTA - an update

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## Introduction of VAT Group registration in Malta


In pursuance of the Budget 2018 measure to introduce VAT Group registration, Malta carried out a consultation with the VAT Committee during the 110<sup>th</sup> meeting of the VAT Committee held on 13<sup>th</sup> April 2018 in Brussels.

The Working Paper No. 942 published by the Commission outlines the proposed draft regulations presented by Malta to the Commission for the introduction of a VAT Grouping scheme in terms of Article 11 of Council Directive 2006/112/EC on the common system of value added tax.

Following an assessment of the draft regulations and subject to the current consultation the Commission (Legal) requested the Malta delegation to clarify the following:

- the territorial scope of the VAT grouping scheme since the regulations as proposed allow that a branch or head office established outside Malta, both within or outside the EU, may be regarded as forming part of a VAT group in Malta if it has an establishment or a fixed establishment in Malta which is a member of a VAT group;
- the limited application of the VAT group scheme in that it is being restricted to legal persons licensed in terms of Insurance, Financial, Banking and Gaming legislation whereas under Article 11 of the VAT Directive there is no such restriction;
- why the financial, economic and organisational links test, which has to be cumulatively satisfied, may be reduced to two, since the proposed regulation will be providing that where the required financial links exist, it shall be presumed that the requisite organisational links also subsist;
- the anti-avoidance measures are of a general nature and as such allow a wide discretion in their application to the Tax Authority and may even be perceived as creating a situation to attract businesses to Malta to form a VAT group creating a sort of fiscal competition between Member States which needs to be avoided.

Since the minutes of the meeting are not yet published, we are not in a position to write on the outcome of the discussion by the delegations, the clarifications by the Malta delegation or the conclusions of the Commission. However, our understanding is that the Commissioner will proceed, perhaps with some amendments, with the publication of the pertinent legal notice to be titled “Value Added Tax – Registration as a Single Taxable Person – Regulations 2018” which should come into force on 1<sup>st</sup> June 2018.





In terms of the proposed rules, VAT group registration would be subject to the following conditions:

- ✓ application for registration is open for two or more persons established in Malta with at least one of them being a taxable person who is licensed or recognised in terms of Banking, Financial, Gaming, Insurance, Lotteries and Other gaming, Retirement Pension and Securitisation Acts;
- ✓ no person may be a member of more than one VAT group at the same time;
- ✓ applicants must be bound to each other by financial, economic and organisational links (which are defined);
- ✓ at time of application, all the applicants are to be fully compliant (i.e., submitted all returns and notices including those relative to the Income Tax Management Act; and paid all tax, administrative penalties) excluding any tax which is currently under appeal;
- ✓ any credits or refunds due to the individual members prior to joining the group shall be refunded to the members individually and shall not be utilised to offset any tax payable by the VAT group;
- ✓ a person established in Malta may apply to join an existing VAT group provided he is eligible;
- ✓ when registered the VAT Group will be regarded as a single taxable person for VAT purposes and will be allocated a unique VAT registration number with the individual VAT registration numbers of the members being concurrently cancelled;
- ✓ the members shall nominate a Group Reporting Entity ("GRE") who shall exercise any and all rights and discharge any or all obligations arising to the VAT group under the VAT Act;
- ✓ the members of the VAT group will be jointly and severally liable for the payment of any tax, administrative penalties and interest which are due or payable by the GRE;
- ✓ supplies to and from the members of the group shall be deemed to be supplies made to and from the VAT group;
- ✓ supplies between members of the VAT group shall be disregarded for VAT purposes;
- ✓ a VAT group may apply to cancel its registration at any time after the lapse of twenty-four calendar months from the effective date of registration and a VAT group cannot subsequently be reconstituted with the same membership until the lapse of twenty-four calendar months from the effective date of cancellation thereof;
- ✓ the Commissioner may, upon application, allow for a member to leave or join a VAT group;
- ✓ a VAT group registration application or an application for a member to join an existing VAT group are to be made electronically in the prescribed format via the VAT Department web portal;

- ✓ for the purposes of S.L. 406.12 (Adjustments relating to Input Tax on Capital Goods Regulations) any adjustments thereof required by a change in circumstances with regard to Input VAT deducted by members at the time they did not form part of the VAT group are to be carried out by GRE;
- ✓ GRE shall be required to keep a consolidated record of all transactions which are treated as being carried out by the VAT Group.

Given that the above is reproduced from the draft of the proposed regulations presented by the Malta delegation to the VAT Committee for consultation purposes, they do not constitute and are not to be considered as definitive regulations for the Malta VAT group scheme.

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