

## FOCUS ON ...

EXPERTISE



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## VAT Group: the application of the principles of tax consolidation

The 2021 Finance Act has transposed into French law the VAT Directive which allows the formation of a VAT group. Following the example of what already exists for tax consolidation, the members of a VAT group constitute a single taxable person. For the determination of the right to deduct of the single taxable person, each member is considered as a sector of activity of the group. It is therefore necessary to draw the consequences in terms of right to deduction and payroll tax. The constitution of a VAT group is offered to all sectors of economic activity. The exercise of this option, for a period of 3 years, will have to be formalized before October 31, 2022 for an implementation from January 1, 2023.

France has transposed Article 11 of Council Directive 2006/112/EC of November 28, 2006 on the common system of VAT into Article 256 C of the General Tax Code. **This new provision is scheduled to come into force on January 1, 2023. The option must be made by October 31, 2022 at the latest.**

This new arrangement creates a single taxable person at the group level. As a consequence, the transactions carried out between the members of this group remain outside the scope of VAT, but all transactions with non-members follow the rules of common law.

### Who is concerned by this device?

The new article 256 C of the CGI defines the conditions to be met to constitute a VAT group.

### *The following are eligible:*

**A VAT group consists of at least 2 taxable persons.**

Individually, the members of a VAT group :

- Can only belong to one group,
- Must have the headquarters of their economic activity in France. The different French branches of a foreign company can also be members of a VAT in France,
- Must be closely linked to each other financially, economically and organizationally. These links must exist at the time the option is exercised and continuously throughout the period covered by the option.

### *Be closely related to each other financially*

**Taxable persons who are legally controlled, directly or indirectly**, by the same person, including the latter, are considered to be financially linked. This condition is met when a taxable person or a non-taxable legal person holds :

- **More than 50% of the capital of another taxable person, directly or indirectly** through other taxable persons or non-taxable legal persons,
- **More than 50% of the voting rights of another taxable person** or a non-taxable legal person under the same conditions.

**A presumption of financial links exists for certain entities** such as mutual insurance companies or banks, members of social security organizations, AGIRC-ARRCO, HLM companies.

### *Be closely linked economically*

The economic link is effective when the taxpayers carry out :

- **Either a principal activity** of the same nature,
- **Or interdependent activities, or interdependent activities, complementary activities or activities pursuing a common economic objective,**
- **Or an activity carried out in whole or in part for the benefit of the other members.**

### *Be closely linked organizationally*

Taxable persons are considered to be organizationally linked if they :

- Either are in law or in fact, directly or indirectly, under common management,
- Or organize their activities totally or partially in concert

### *Not eligible*

Permanent establishments of French companies that are not located in France cannot benefit from this new regime. of this new regime.

An entity that already belongs to another VAT group cannot be part of another VAT group.

### *What are the terms of the option?*

#### *Exercise of the option :*

**The option for the VAT group is exercised for 3 years.** It must be formalized **before October 31 of the year preceding the formation of the group and for the first year of entry into force, before October 31, 2022 to be effective on January 1, 2023.**

The "representative", head of the group, must be freely designated by the other members of the group. He will be responsible for following up on the declaration obligations and for payment.

The declaration of option to the SIE must mention :

- The names of the member companies,
- Their individual VAT identification number assigned before they joined the VAT group,
- The agreement of each member,
- The activities of the member companies,
- The name and address of the company chosen as the sole taxable person.

### Evolution of the perimeter

The scope of the VAT group must be freely determined at the time of its formation. The option is applied for 3 calendar years, during which the group's scope cannot in principle change.

However, as soon as a member no longer meets the conditions for membership of the group, he will have to leave the group as of the first day of the month following the month in which he no longer meets the conditions.

Any membership or exit of a member will be assimilated to the transmission of a total universality benefiting from the VAT exemption regime of article 257 bis of the CGI.

The VAT credit recorded by a member, for a period prior to the entry into force of the option, will remain with him. It cannot be carried over to the return filed by the single taxable person.

### How will the TVA group work?

#### Generalities

**The VAT group will have its own VAT number.**

**Each member of the VAT group loses its own status as a taxable person in favor of the single taxable representative of the group.** Thus, for the duration of the scheme, the VAT group acts as a single taxable person in relation to third parties. Thus, all transactions carried out by a member of the group with a third party will be deemed to have been carried out by the group itself. **The VAT credit recognized by one of the members of the group is definitively acquired by the single taxable person.**

The group's representative is responsible for following up on reporting obligations and for making payments and claims for refunds (VAT credit) for all entities in the VAT group.

The members are jointly and severally liable for the payment of the VAT and for any adjustments up to the amount they would have had to pay in the absence of the VAT group.

#### Deduction rights

Each member of the group becomes a separate sector of activity from the single taxpayer, and the consequences for the right to deduct must be drawn.

**The calculation and payment of adjustments** (annual adjustments linked to the 1/10 rule, global adjustments at the time of transfers) **are then the responsibility of the single taxpayer.**

#### Implications for payroll taxes

As it stands, the reform should also have an impact on payroll tax. Indeed, **the establishment of a VAT group should lead to an increase in the payroll tax burden of employers who are members of a single taxable person.** In fact, flows within the VAT group should, a priori, be considered for the purposes of calculating the payroll tax liability ratio as flows outside the scope of VAT.

#### Changes in the scope of application of article 261 B of the CGI

Finally, article 261 B of the CGI, which provides for a VAT exemption for services rendered to their members by autonomous groups of persons, will be amended as of January 1, 2023. The exemption will only apply to the fields of health and education, as well as to services rendered by non-profit organizations.



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