

## VAT Groups

This document should be read in conjunction with section 15 of the VAT Consolidation Act 2010 (VATCA 2010) and regulation 4 of S.I. no. 639 of 2010

Document last reviewed July 2024

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## Introduction

This guidance sets out the Revenue position on VAT groups as provided for in section 15 of the VATCA 2010.

### 1 VAT Groups

A VAT Group is a group of two or more persons who have been approved by Revenue to operate as a single accountable person for the purposes of VAT. A VAT group is established when Revenue approves an application from two or more persons to form such a group; Revenue may also direct that specified persons are established as a VAT group where it is satisfied that it is appropriate for the efficient and effective administration of the tax to do so. In either case, a member of the group must be designated as the 'group remitter' responsible for making VAT returns on behalf of the VAT group.

Where a VAT Group has been established all transactions carried out by the individual group members are considered to have been carried out by the VAT group as a single accountable person.

Each member of a VAT group is jointly and severally liable for the VAT liabilities of the group.

### 2 Membership of a VAT Group

Both taxable and non-taxable persons can join a VAT group provided at least one member of the VAT group is an accountable person.

In order to become a member of a VAT group a person must be established in the State. The type of establishment has not been specified; a person may have either a business established or a fixed establishment within the State.

### 3 Formation of a VAT Group

A VAT group can be formed by two or more persons, at least one of whom is an accountable person, subject to the conditions outlined in paragraph 4.

Persons that wish to form or join a VAT group must apply to Revenue using the prescribed application forms. The person applying to be the remitter of a VAT group should complete and submit a [Form VAT 52](#). The other person(s) applying to be members of the VAT group should complete and submit a [Form VAT 53](#).

If Revenue approves the VAT group application, it will take effect from a date specified by Revenue. A refusal by Revenue of an application to form or join a VAT group may be appealed to the Tax Appeal Commission.

Revenue also has the power to compulsorily VAT-group persons where Revenue determines the conditions for a VAT group have been met. In cases where this power is exercised, the VAT group will come into existence from a date specified by Revenue. The compulsory registration, by Revenue, of a group of persons as a VAT group may be appealed to the Tax Appeal Commission.

## 4 Conditions to be met to form a VAT Group

To be approved as a VAT group, Revenue must be satisfied that the applicants are closely bound by financial, economic and organisational links and that the granting of a VAT group application would be necessary or appropriate for the efficient and effective administration of the tax. These conditions are cumulative and to qualify to establish a VAT group all of them must be met.

### 4.1 Financial Link

The financial link can be demonstrated by considering common control. In this respect, one measure of demonstrating common control would be the holding of fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors.

Whilst a subordinate relationship, such as a parent and subsidiary, would clearly satisfy the common control requirements, it is not the only kind of relationship that would meet the requirements. For example, two companies could meet the common control test if they had a common shareholder who holds fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors of each company.

In addition, the holding of fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors does not have to result from a direct relationship, it can also be met indirectly. For example, Company A owns 100% of the share capital of Company B who in turn holds 60% of the share capital of Company C. Company A indirectly holds 60% of the share capital of Company C.

Whilst considering common control in terms of share capital, voting rights and power to appoint board members is an appropriate assessment of control when looking at corporate entities seeking to form a VAT group, it may not be appropriate when looking at non-corporate bodies such as partnerships, etc. In this regard other factors such as the allocation of decision-making powers under formal agreements, the level of debt funding provided to the non-corporate person or the level of capital contribution, may be taken into account on a case by case basis.

## 4.2 Economic Link

An economic link must exist between persons who wish to form a VAT group. The following list outlines the circumstances which Revenue will accept as satisfactorily demonstrating the existence of an economic link:

- 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.

An example of group members having a principal activity of the same nature would be two companies that manufacture different kinds of medical devices.

An example of complementary activities would be a vehicle leasing company and a company that provides vehicle maintenance services.

A company that carries out activities which are wholly or substantially to the benefit of the other members could include a shared service centre or a group treasury company.

## 4.3 Organisational Link

Organisational links between persons can take different forms and are generally designed to assist the persons concerned achieve a shared purpose. The existence of a link can be determined based on whether there is a shared, or partially shared, management or corporate structure involving the persons.

In most cases, the applicants will be members of the same corporate group and this would normally satisfy the requirement for an organisational link.

# 5 Application of VAT group provisions

## 5.1 Effective date of a VAT Group: application by taxpayers

In cases where persons apply to Revenue for the creation of a VAT group, the group only comes into existence upon the issuing of a notification in writing by Revenue to each person who is a member of the VAT group. The notification will specify the date from which the VAT group is effective, and this will be a date no earlier than the start of the VAT period in which the application was made.

## 5.2 Nominated Group Remitter

In relation to carrying out its taxable activities, the VAT group must nominate one of the members, known as the group remitter, to be responsible for fulfilling all the statutory VAT obligations of the group. The nominated remitter is responsible for submitting a single VAT return and any associated payments on behalf of the entire VAT group. This return and payment are made under the VAT number of the remitter.

The remitter may file an INTRASTAT return for transactions concerning some or all of the members of the VAT group. A VIES return must be filed under each of the group members' own VAT numbers.

## 5.3 VAT numbers and invoicing

While supplies by each member of the VAT group to persons outside the group are considered to have been made by the group as a single taxable person, each member of the group must issue an invoice for its individual supplies under its own name and quoting its individual VAT number.

## 5.4 Section 56 authorisations

If a VAT group or a member of a VAT group applies for a [section 56 authorisation](#), the turnover of the entire VAT group must be considered when assessing whether the conditions for a section 56 authorisation have been met. Provided the group meets the qualifying criteria, each member must obtain an individual section 56 authorisation to present to suppliers.

# 6 Consequences of a VAT Group

## 6.1 Joint and several liability

Each member of the VAT group is jointly and severally liable for ensuring that the VAT group, a single taxable person, complies with the requirements of the VATCA 2010. This includes the requirement of the group to pay tax.

## 6.2 Intra-Group transactions

Internal transactions between members of the VAT group do not constitute taxable supplies by the VAT group and are therefore outside the scope of VAT. Please see paragraph 9 for exceptions to this general rule.

## 6.3 Supplies to and from third parties

The members of a VAT group form a single taxable person and therefore, even though the members of the VAT group are required to quote their individual VAT numbers on invoices issued, supplies made by the individual member are deemed to

be made by the VAT group. Similarly, supplies received by individual members of the group from third parties are deemed to have been received by the VAT group as a single taxable person rather than by the individual members of the group.

#### 6.4 Non-taxable persons joining a VAT Group

The place of supply of services received by a non-taxable person can change on becoming a member of a VAT group. In general, where a non-taxable person receives a service from outside the State the place of supply is the place where the supplier is established.

However, when a non-taxable person joins a VAT group, the services received by that person, are now received by the VAT group for VAT purposes. Where a taxable person including a VAT group, receives a service from outside the State the place of supply is where the recipient is established. The VAT group must therefore account for VAT on all services received by each member of the group.

#### 6.5 Registration within a VAT Group

Unregistered non-taxable persons or VAT exempt entities within a VAT group may be required to register for VAT.

Some examples of when a non-taxable person or VAT exempt person in a VAT group will need to register for VAT include:

- If they receive services from a non-Irish supplier to which the reverse charge applies;
- If they make an Intra-Community acquisition of goods.

Further information on VAT registration and VAT thresholds can be found on [Revenue's website](#).

VAT thresholds for registration apply on a group wide basis; the turnover from all of the supplies of goods and services by VAT Group members to persons outside the group must be taken into account.

#### 6.6 Outstanding returns or liabilities upon joining a VAT Group

Specific provisions apply where two or more persons have formed a VAT group and one or more members of the VAT group have outstanding returns or have not remitted all tax payable prior to the group formation. In this case, if one or more of the other group members have VAT refund claims that arose prior to the formation of the VAT group, Revenue may defer payment of the refundable VAT until such time as the outstanding obligations of the other group members have been satisfied.

## 7 VAT Deductibility for a VAT Group

Entitlement to deductibility for costs incurred by a VAT group is subject to the same conditions as would apply to any other taxable person, in that the costs must be used for the purposes of the Group's activities which give rise to an entitlement to deductibility.

The entitlement of a VAT group to a deduction for costs incurred by any person within the group will depend on establishing a link, whether a direct and immediate link or a link as a general cost of the economic activity of the VAT group. As the members of the group are no longer taxable persons in their own right and as transactions between members of the group are deemed not to take place for VAT purposes, the matter of consideration between members of the group is not relevant for the purposes of determining the existence of that link.

The CJEU has confirmed in the *European Commission v Ireland (C-85/11)* that normal VAT deductibility rules must continue to apply while considering the VAT group's overall position. As a result, VAT grouping should produce the same VAT deductibility outcome as that which would apply in a situation where all of the activities of the VAT group are carried out by a single legal entity.

Also, the Advocate General in this case recognised that VAT grouping may result in economic advantages accruing to group members. It was stated that **“In certain situations members of a VAT group may gain economic benefits from belonging to the group. This, in my opinion, is simply an inevitable consequence flowing from the basic fiscal policy choice of a Member State to permit VAT grouping.”** An example of such an economic advantage is an increase in VAT deductibility.

Revenue will not challenge cases where legitimate economic advantages arise from VAT grouping. However, Revenue will be alert to situations that may arise where VAT grouping is utilised as part of a series of transactions whose main purpose is to generate a tax advantage that is contrary to the purposes of the VAT Directive. In such circumstances, Revenue will take appropriate action to challenge such cases.

Specific examples of VAT deductibility for VAT groups that contain a holding company can be found in the [VAT Deductibility for Holding Companies guidance](#).

## 8 Cancelling membership of a VAT Group

### 8.1 Exiting a VAT Group

It is the responsibility of the VAT group members to ensure that the conditions for a VAT group continue to be met.

Where there is a significant change in the financial, economic, or organisational links between the members of a VAT group, the VAT group remitter must notify Revenue



of these changes within 30 days of the end of the taxable period in which the change occurs.

Where either i) a person in the group ceases to be established in the State or ii) the requirement that at least one of the persons in the group is an accountable person is no longer met, the VAT group remitter must notify Revenue of these changes within 30 days of the end of the taxable period in which the change occurs.

Where a member is to be removed from a VAT group, in circumstances where the VAT grouping conditions for that member are still met, Revenue should be contacted setting out the reasons to remove that member. It should be noted that it is at the discretion of Revenue to remove a member from a VAT group in circumstances where the VAT grouping conditions are still met.

Where Revenue no longer considers the existence of a VAT group to be appropriate, whether on the request of the members of the group or otherwise, it may cancel the group.

The date of cessation of VAT group membership or cancellation of a VAT group will be notified in writing by Revenue.

## 8.2 Consequences of exiting or cancelling a VAT Group

Once a member of a VAT group is notified by Revenue of the date that their VAT group membership ceases, any VAT that becomes chargeable or reclaimable by that member from that date must be included on their own individual VAT return with effect from that date.

Where a person leaves a VAT group during a VAT period, any VAT chargeable or deductible that arose prior to the date of exit must be included in the VAT return of the VAT group.

Where a former member of a VAT group is under Revenue audit and unreported liabilities are discovered from a period when they were a member of the VAT group, assessments to tax will be raised on the VAT group as the liabilities are the responsibility of the group.

Where a former VAT group member discovers input tax that has not been claimed relating to a period when they were a member of the VAT group, it is the VAT group that must submit a claim for repayment of the input tax as it was incurred by the VAT group.

## 9 Transactions excluded from VAT Grouping provisions

### 9.1 Supply of property

The supply of immovable goods between members of a VAT group is subject to VAT under the normal rules as if those persons were not members of the VAT group.

### 9.2 Transfer of business relief

The provisions relating to VAT grouping will not apply to a transfer of goods between two members of a VAT group, where transfer of business provisions would have applied to that transfer if the transferor and transferee were not members of the group. This restriction in the application of VAT grouping provisions does not apply where all the members of the VAT group would, themselves, be accountable persons if they were not members of the VAT group.

## 10 The territorial scope of VAT Groups

The Court of Justice of the European Union in the FCE Bank case<sup>1</sup> confirmed that a Head Office and a Branch, not being independent of each other, are part of the same person. If a person has either a fixed or business establishment in Ireland and applies to join an Irish VAT group, it is the entire person, including any overseas Head Office or Branches, that must join the Irish VAT Group.

The consequence is that any transactions between the overseas establishments of the person and members of the Irish VAT group being intra-group transactions are outside the scope of VAT, subject to the exclusions in section 15 of the VATCA 2010.

Revenue is aware that some Member States have introduced VAT grouping rules that restrict VAT group membership to the establishment in that Member State only. Businesses should take account of the potential implications of transactions with persons established in such jurisdictions.

## 11 Double taxation

If the interaction of Ireland's VAT grouping rules and the VAT grouping rules of another Member State results in double taxation for a taxpayer, please contact your Revenue Branch.

## 12 Further information

Any issue arising for a taxpayer from this guidance should be raised with the Revenue Branch responsible for the taxpayer's affairs.

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<sup>1</sup> Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v FCE Bank plc (C-210/04)

## 13 Examples

### **Example 1 – deductibility**

Company A is a company that makes taxable supplies of staff to Company B, a Bank. There is no VAT group in place. Company A charges VAT on its supplies to Company B and is generally entitled to full VAT recovery on its input costs.

Company A and Company B decide to form a VAT group. The outputs of the VAT group are VAT exempt banking activities. No VAT recovery is available for any costs incurred by the VAT group as the outputs of the VAT group are exempt from VAT.

### **Example 2 – deductibility**

Company A is an insurance company that underwrites risks for a related Company B, a fully taxable entity. There is no VAT group in place. Company A is not entitled to any VAT deductibility as its activities are exempt from VAT.

Company A and Company B decide to form a VAT group. The only outputs of the VAT group are fully taxable. VAT recovery is available for the costs incurred by the VAT group on the basis that the outputs of the VAT group are fully taxable.

### **Example 3 – conditions for grouping**

Company A, an airline, and Company B, a medical facility, apply to join a VAT group. Both entities are 100% subsidiaries of Company C and, as such, meet the financial and organisational link conditions to form a VAT group. However, it is clear they do not meet the economic link condition and, therefore, cannot be VAT grouped.

### **Example 4 – territorial scope**

Company A and Company B form a VAT group. Company A has a branch in another EU Member State. Company B supplies services directly to the branch of Company A. The supplies by Company B are outside the scope of VAT as the entirety of Company A is a member of the VAT group, including the branch. It is a person that joins a VAT group and the FCE Bank decision confirmed that a Head Office and a branch are the same person.

Any supplies by the branch of Company A to the Head Office or to Company B are also outside the scope of Irish VAT.

### **Example 5 – territorial scope**

Company A and Company B form a VAT group. Company A has a branch in another EU Member State. The branch in the other Member State is in a local VAT group with Company C, a company established only in the other EU Member State. Company C makes a supply of administration services to the Irish VAT group.

The supply is subject to Irish VAT in the normal manner and the Irish VAT group is required to self-account for Irish VAT on the supplies received from Company C.