

# Common system of value added tax (VAT)

2004/0079(CNS) - 02/07/2009 - Follow-up document

Article 11 of Council Directive 2006/112/EC on the common system of value added tax provides the Member States with an option to introduce VAT grouping schemes into their national legislation. A Member State may regard two or more persons established in that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links, as a single taxable person for VAT purposes. Where the VAT grouping option is taken up by a Member State, this is to be considered as a particular national deviation from the normal Community VAT rules.

Given the advantages a VAT grouping scheme can offer to certain taxable persons, the scheme may run counter to the principle of fiscal neutrality and may be a source of fiscal competition between Member States. In view of this, the current divergences between the national VAT grouping schemes involve a potential impact on the internal market and on the basic principles of the Community VAT system. It is therefore essential to make sure that this provision is applied more uniformly.

Against this background, the aim of this Communication is to explain the Commission's view on how the provisions of Article 11 should be translated into practical arrangements whilst respecting the basic principles of the Community VAT system.

The Commission invites the Council and the European Parliament to take note of its position on VAT grouping schemes as set out in this Communication with a view to:

- contribute to a more uniform application of Article 11 of the VAT Directive, thereby avoiding negative impacts on the internal market and contradictions with the basic principles of the Communities' VAT system;
- serve as guidelines for Member States when introducing VAT grouping schemes into their national legislation or when amending such schemes.

In the light of reactions to this Communication, the Commission will reflect on whether and when further action will be appropriate. In this Communication, the Commission makes a number of observations concerning:

**Need for prior consultation of the VAT Committee:** consultation of the VAT Committee is obligatory before introducing a national VAT grouping scheme. The very wording of the provision makes it clear that a VAT grouping scheme can only be implemented after the VAT Committee has been consulted. The Commission takes the view that this must be taken to mean that the obligation to consult the VAT Committee has to be fulfilled prior to the publication of the national rules governing the VAT grouping scheme. The same applies to substantive amendments to existing VAT grouping schemes. In order to give full meaning to this provision, and in particular to allow a genuine discussion in the VAT Committee, such a consultation should take place sufficiently in advance.

**The main purpose of the VAT grouping option:** a VAT group could be described as a 'fiction' created for VAT purposes, where economic substance is given precedence over legal form. A VAT group is a particular type of taxable person who exists only for VAT purposes. Given that the treatment of a VAT group is considered as a single taxable person, it follows logically that the group can only be identified for VAT purposes by a single VAT number.

**Who can form a VAT group:** under Article 11, Member States may regard as a single taxable person any persons established in the territory. The Commission examines in particular: (i) the notion of 'persons'; (ii) the notion of a 'person established in the territory of that Member State' and its interpretation. Moreover, the Commission notes that all activities of the group members have to be included and that national VAT grouping schemes should preclude taxable persons from joining more than one VAT group at a time.

The Commission also considers that the condition of 'financial, economic and organisational links' is to be interpreted as meaning that all three links have to be met during the entire time a VAT group exists and, that any member no longer fulfilling all three links, should be required to leave the VAT group. In addition, the Commission considers that a VAT grouping scheme should be open to all sectors of economic activity.

**The rights and obligations of a VAT group:** since a VAT group is considered to be a single taxable person, the group is subject to the same rights and obligations as any other taxable person and all the provisions of the VAT Directive apply to it. Moreover, the VAT situation of the group and the treatment of its incoming and outgoing transactions are fully comparable to those of a taxable person with different branches. As regards internal transactions, they should also be deemed to have been carried out by the group for itself. Lastly, when the VAT group becomes a single taxable person, the VAT rights and obligations of the individual members are automatically transferred to the VAT group. Likewise, when a VAT group ceases to exist, the rights and obligations assumed by the group revert to the individual members.

**The right of deduction of a VAT group:** the right to deduct input VAT is determined on the basis of the transactions of the group as such with third parties. There is scope for significant differences between the Member States as regards the methods used to determine the right to deduct input VAT, which may result in differences in the deductible amount of VAT in Member States.

The Commission notes that a VAT grouping scheme can offer financial advantages to VAT groups which include members with no right of deduction or a right of partial deduction. These advantages can vary depending on the implementing modalities chosen by Member States. Lastly, it is of the utmost importance that Member States take all necessary measures to avoid tax evasion or avoidance, as well as abusive practices, carried into effect through the use of their national VAT grouping schemes. No unjustified advantage or unjustified harm should arise from the implementation of the VAT grouping option.

The Commission invites the Council and the European Parliament to take note of these observations with a view to:

- contributing to a more uniform application of Article 11 of the VAT Directive, thereby avoiding negative impacts on the internal market and contradictions with the basic principles of the Communities' VAT system;
- serving as guidelines for Member States when introducing VAT grouping schemes into their national legislation or when amending such schemes.

