



13 September 2009

BUSINESSEUROPE POSITION ON THE COMMUNICATION ON VAT GROUPING FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT OF JULY 2009.

1. Introduction

BUSINESSEUROPE has noted with great interest the Commission communication on VAT grouping. BUSINESSEUROPE understands and supports the Commission's efforts to ensure the neutrality of VAT in the internal market.

According to article 11 of the VAT Directive¹, each Member State may regard as a single taxable person for VAT purposes any persons established in that Member State who, while legally independent, are closely bound to one another by financial, economic and organizational links. A requirement is that Member States have to consult the VAT Committee.

The VAT group is considered as single taxable person for VAT purposes. As a consequence, all supplies within a VAT group (from one legal entity to another legal entity) are ignored for VAT. This implies no VAT invoices, no VAT and no VAT reporting. The filing of VAT returns can be done at the level of the VAT group.

BUSINESSEUROPE wants to emphasise that several Member States have used this provision in their national VAT laws for more than two decades and are successfully operating VAT grouping regimes.

The use of VAT grouping by 16 Member States illustrates that this rule does not harm the neutrality of VAT or the amount of VAT collected. Instead, VAT grouping is a very good tool to streamline and reduce administrative burdens for both business and government authorities.

BUSINESSEUROPE therefore asks the European Commission to

- ➔ **base guidance on existing best practices which tax administrations and business have developed over decades:** It is important that the Commission works to maintain and improve best practice and that these are not lost as a result of any compromise agreement in the future.
- ➔ **encourage Member States to implement the provisions:** The Commission has an important role to play by explaining the benefits of VAT grouping which is taken up by increasing numbers of Member States and businesses.

¹ Council Directive 2006/112/EC on the common system of value added tax



2. Build on best practices

With the EU accession commencing in 2004, VAT Grouping has become more popular both in the new Member States (e.g. Hungary, Czech Republic, etc.) and in some old Member States (e.g. Belgium and Spain). As a consequence, in the last couple of years various countries have been looking into the benefits and have been incorporating VAT Grouping proposals into their national VAT laws. These were not all based on the same nor necessarily on sound criteria as we have experienced in practice, but all of them quote Article 11 of the VAT Directive, as their basis.

Against this background, BUSINESSEUROPE welcomes and is happy to support the Commission's initiative on this subject. However, any guidance must be balanced and based on the existing best practices which tax administrations and business in the best practice countries have developed. That is based on their very positive and practical experience in successfully operating grouping arrangements in their countries.

Member States such as the UK, Germany and the Netherlands have made use of this provision in their national VAT laws for more than two decades and are successfully operating VAT grouping regimes with no major problems reported - neither from tax administrations nor from business. We, therefore, view these countries as best practice countries when it comes to VAT grouping.

There is nothing in life without risk and the same is true for VAT grouping. But, as with other aspects in life as well, it is all about risk management. As the best practice countries clearly demonstrate, the risk of operating VAT groups can be successfully managed in practice with targeted anti-abuse measures and a good working relationship between tax administrations and business.

There have not been any significant reports of the VAT system being attacked successfully through abuse of VAT grouping. The abuse that has been attempted has been countered effectively by tax authorities and the courts using targeted anti-abuse legislation. If VAT grouping is implemented with proper anti-abuse measures, and operated correctly in practice, there should be no VAT shortfall as a result.

We would add that use of VAT grouping by partly exempt businesses to achieve the economic benefits of outsourcing or the efficiency gains of centralising functions in service companies should not be seen as abusive, where the arrangements are genuinely commercial and the rules have been followed correctly. It simply enables businesses to structure their operations in the most cost-effective way without incurring an additional, unjustified tax liability.

These are all aspects which need to be considered and need to be high up on the list when this topic is analyzed and discussed in further detail.

We, therefore, urge the Commission to also look into this and consider adopting and implementing the approach of the best practice countries on VAT grouping when further discussing this topic. We recommend that a VAT technical and practical analysis of the different VAT grouping regimes across the EU is undertaken.



Assessing the benefits and risks that tax administrations and business have met when operating VAT grouping regimes and learning from best practice is key for a successful operation of VAT grouping. We could support the Commission in this exercise.

3. Encourage remaining Member States to adopt VAT grouping

BUSINESSEUROPE wants to emphasize that VAT grouping has tremendous benefits for both tax administrations and business, by simplifying administrative aspects such as processing of returns, or making group audits more efficient, etc. Grouping is particularly useful in safeguarding VAT revenue both by mitigating the effects of VAT fraud and through the joint and several liability regime which kicks in when VAT groups are operated. At the same time VAT grouping also has a very positive side benefit to businesses' cash flow, which is a very important advantage in the current economic crisis.

BUSINESSEUROPE believes that the Commission has an important role to play by explaining to Member States who have not yet taken advantage of this provision, the benefits an increasing number of Member States and businesses enjoy. The Commission should encourage those Member States to consider incorporating VAT grouping provisions into their national legislation.

As an important facilitation both for Member States and business it is important that the Commission works to maintain and improve best practice and that this is not lost as a result of any compromise agreement in the future.

This is our first reaction to the Communication and we foresee to provide more detailed input. We look forward to meeting you for a further exchange of views.