



Italy introduces VAT Group regime

The Italian Finance Act 2017 implemented in Italy the VAT Group regime laid down by Article 11 of the VAT Directive.

The regime applies as of 1 January 2018. Groups that want to elect into the regime effective since 2018 will have to opt in by 30 September 2017.

In broad terms, the Italian VAT Group regime can be described as follows.

All VAT taxable persons acting as such (i.e. body corporate and individuals) that are established in the Italian territory having financial, economic and organizational links among themselves may opt to be treated as a single taxable person (i.e. a VAT Group). Under the VAT Group regime supplies of goods and services between members of the group are no longer relevant for VAT purposes. An ad hoc VAT identification number is attributed to the VAT Group and such a VAT number will make it clear that the relevant VAT taxable person is the VAT Group (and not each affiliate).

The following conditions must be jointly met to be part of a VAT Group in Italy:

- taxable persons joining the VAT Group must be resident for VAT purposes in Italy;
- “financial”, “economic” and “organizational” links must be satisfied between the members of the VAT Group;
- a specific election must be filed with the Italian Tax Authorities.

A “financial” link is presumed to exist in cases in which a parent company directly or indirectly controls the majority of the voting rights of the subsidiaries. This presumption is rebuttable. The VAT Group regime among subsidiaries can also apply if the parent company is established outside of Italy, provided that the State where the parent is established allows an effective exchange of information with Italy.

An “economic” link is deemed to exist if the taxable persons concerned carry on similar activities that are ancillary to each other or activities that are substantially for the benefit of one of the participants. Finally, an “organizational” link is deemed to exist if the companies are subject

to common coordination (“direzione e coordinamento”) as provided by Italian civil law.

In any event, “financial”, “economic” and “organizational” links are always deemed to be met in case of direct or indirect control of voting rights (i.e. they are presumed to exist in case of a standard group situation). Where “financial”, “economic” and “organizational” links are deemed to exist according to the above mentioned presumption, if there is the intention to keep a subsidiary out of the VAT group, a ruling application shall be filed to prove the absence of at least one of the above mentioned links.

The VAT Group regime is indeed subject to an “all in all out” rule (no cherry picking). If a company which meets the conditions to be part of the VAT Group does not opt in, any tax benefit is assessed upon the VAT Group as if the company were part of the VAT Group. The election into the VAT Group regime is forfeited, unless a new election including all subsidiaries is newly filed for the year following the one in which it has been assessed that a company was wrongly left out of the VAT Group.

The possibility to be part of a VAT Group is excluded for:

- non-resident taxable persons;
- foreign permanent establishments of resident taxable persons;
- taxable persons which are subject to certain preemptive judicial measures (court-ordered seizure under Article 670 of the Italian Civil Procedure Code);
- taxable persons undergoing bankruptcy procedure;
- taxable persons undergoing a liquidation/dissolution procedure.

The option must be filed by 30 September of the year before the year in which the regime is intended to apply and is valid for three years . Special rules apply if the “financial”, “economic” and “organizational” links cease to exist.

The members of the VAT Group are jointly and severally liable for VAT, penalties and interest deriving from assessment and control activities.

The implementation of the VAT Group regime rules does not impinge on the possibility to opt for the existing Italian VAT consolidation system that will remain applicable.

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