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**The VAT Group regime in France, Germany and Italy**  
*An Overview Q&A*



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## INTRODUCTION

Article 11 of the EU Directive no. 2006/112 (the VAT Directive) authorizes the EU Member States to consider as a single VAT entity the VAT taxable persons established in their territory who are legally independent but closely linked to each other by financial, economic and organizational relationship (so-called "VAT Group").

This Q&A provides an overview of VAT policy requirements and modalities for introducing the VAT Group regime in France, Germany and Italy, and also covers their consequences in terms of advantages and implications.





# REGULATIONS

## What are the regulations on which the VAT Group is based?

**France** introduced the full VAT Group simplification which came into effect as of January 1st, 2023. This implied extending the scope of the current VAT Group scheme from a mere administrative simplification to a full VAT Group regime, allowing the VAT Group to act as a single taxable person.

Prior to the implementation of the VAT Group regime, it was only possible for French companies to opt for an administrative simplification for VAT groups. In this respect, VAT groups were not treated as single taxable persons and intra-group supplies were not disregarded for VAT purposes. Each individual entity had its own VAT obligations and needed to file its own VAT return and issue invoices using its own VAT number.

The simplification simply consisted in consolidating all VAT due in one single payment thus allowing for cash flow advantages for groups of French companies.

The 2021 French Finance Bill implemented Article 11 of the VAT Directive and introduced the new French full VAT Group simplification regime. The first French VAT Groups were created and operational as of January 1st, 2023 (i.e., with an election prior to October 31st, 2022). The option can be applied for until October 31st of a given year in order to be effective as of January of the following year.

The regulations on tax groups for VAT purposes in **Germany** are found in section 2 para. 2 no. 2 of the Value Added Tax Act (*Umsatzsteuergesetz*, "VATA") as well as in para. 2.8 and para. 2.9 of the Value Added Tax Application Decree (*Umsatzsteueranwendungserlass*, "VATAD"). If there is a tax group for VAT purposes, the controlled company is not to be regarded as independent and is thus integrated into the company of the controlling company. The fiscal unity requires

the financial, economic and organizational integration of a legal entity or, in exceptional cases, a partnership. The parent company is to be regarded as the entrepreneur within the meaning of the VATA. The tax debtor with regard to the VAT of the fiscal unity is also the controlling company. For the affiliated companies, a claim can only be considered within the framework of liability.

**Italy** included in the domestic VAT law (Decree of the President of the Republic no. 633/1972) articles from 70-*bis* to 70-*duodecies*, containing the VAT Group regulations.

The newly introduced VAT Group regime is different from the so-called VAT group liquidation, still in force, according to which companies subject to common control can opt for a consolidated liquidation of the VAT periodically due.

Persons that do not qualify as VAT taxable persons cannot join a VAT Group. For example, foreign permanent establishments, non-commercial entities for the institutional activities carried out, *consortia* with mere internal relevance and pure/static holding companies (i.e., companies that only hold participations, without interfering in the management of the subsidiaries) cannot join a VAT Group.

# REQUIREMENTS

## What kind of conditions and requirements are needed to constitute a VAT Group?

In **France**, the conditions to constitute a VAT Group differ from those for the corporate tax group.

In order for French-established entities to be able to form a VAT Group, all the members must have financial, economic, and organizational links. In this respect, the following conditions need to be cumulatively fulfilled during the entire period of existence of the group to constitute a French VAT Group:

- Financial link: more than 50% of the capital or voting rights of a member company must be directly or indirectly held by another member company;
- Economic link: the members of the French VAT Group must carry out a principal activity of the same nature, be interdependent or have complementary activities or activities pursuing a common economic objective, or an activity carried out wholly or partially for the benefit of the other members of the group;
- Organizational link: the member entities of the VAT Group must in law or in fact, directly or indirectly, be placed under "common management".

The setting-up of a French VAT Group is only available to entities established in France, without any distinction being made as to their field of activity. The VAT Group regime is structured as follows:

- the VAT Group is optional: French-established companies can apply for a VAT Group when they meet the above-mentioned requirements;
  - the VAT Group is subject to a prior statement to the French Tax Authorities: the option should be applied for prior to October 31st of a given year for it to be effective as of January of the following year;
  - once elected, the VAT Group remains in place for a minimum 3-year period. If prior to the end of the 3-year period, a member no longer meets the VAT Group conditions, it will have to leave the VAT Group as of the first day of the month following the month during which it ceases to meet the necessary requirements;
  - the members of the VAT Group submit one single consolidated VAT return. The representative of the VAT Group is responsible for filing the VAT return and for the VAT payment. All members of the VAT Group remain jointly and severally liable for VAT debts up to the amount of duties and penalties for which they would be liable if they were not members of the VAT Group. The representative member is also in charge of claiming VAT credit refunds on behalf of the VAT Group;
  - the VAT group has its own VAT number;
  - once integrated, each member of the VAT Group becomes, for VAT purposes, a "separate business unit" of the VAT Group;
  - a taxable person may only be a member of one VAT Group. A VAT Group may not be a member of another VAT Group.
- Invoices issued by the group members must make mention of their belonging to a VAT Group ("*Membre d'un assujetti unique*"), as well as the name, address, and individual and group VAT numbers.

## REQUIREMENTS (CONTINUED)

In **Germany**, the conditions of the VAT fiscal unity differ from those of corporate tax or trade tax. A VAT Group between German companies can be in place irrespective of whether these companies are also forming an income tax consolidation. In contrast to an income tax consolidation, there should not be a minimum term for which the VAT Group would need to be in place.

Once (and as long as) the material requirements are fulfilled, a tax group should automatically be in place between these entities. A tax group is terminated once one (or more) requirement(s) is / are no longer fulfilled. In order to achieve a tax group *inter alia* the following preconditions need to be fulfilled:

- **Financial link:** it exists if the controlling company has the majority of voting rights in the controlled company and decisions can therefore be enforced there. As a rule, the shareholding ratios correspond to the voting rights ratios, so that financial integration can be assumed in the case of a shareholding of more than 50%. A tax group between sister companies is therefore ruled out;
- **Organizational integration:** if the controlling company controls the controlled company, organizational integration can be assumed. The control must actually be exercised in the day-to-day management, so that a deviating formation of will at the subsidiary is excluded. In practice, organizational integration is usually achieved through the following arrangements:
  - at least one managing director or employee of the controlling company is the sole managing director of the subsidiary (complete personal union);
  - at least one managing director or employee of the controlling company is managing director of the controlled company in addition to other managing directors (partial personal union), and there are additional measures to ensure that the managing director who is the same person can assert himself against the third-party managing director;
  - there is no interlocking of the management, but there are institutionally secured possibilities of direct intervention in the core area of the management of the controlled company (e.g. through management regulations, group guidelines, control agreement);
- **Economic integration:** the controlled company operates in close economic connection with the controlling company. In particular, this integration exists if there are not insignificant economic relations between the companies.

In **Italy**, the VAT Group regime is applicable to all business sectors.

According to article 70-*bis* of the Presidential Decree no. 633/1972, Italian VAT taxable persons that are tighted by financial, economic and organizational links, as defined below, can be treated – jointly – as a single VAT taxable person.

The financial, economic and organizational links relevant for being included in a VAT Group can be defined as follows:

- **Financial link:** a financial link between Italian VAT taxable persons is deemed to exist (pursuant to article 2359, para. 1, no. 1), of the Italian civil code, provided that one of the following conditions is met starting from 1st July of the previous calendar year:
    - a) one of such VAT taxable persons holds the majority of the voting rights in the shareholders' meetings of the other; or
    - b) such VAT taxable persons are controlled, directly or indirectly, by the same entity, provided that it is resident in Italy or in a State with which Italy has stipulated an agreement which ensures an effective exchange of information.
- The financial link is also considered to exist

between Italian VAT taxable persons that participate to a bank group (referred to in article 37-*bis* of Legislative Decree n. 385/1993).

- Economic link: an economic link between Italian VAT taxable persons is deemed to exist when, alternatively:
  - a) they carry out the same main business activity;
  - b) they carry out complementary activities;
  - c) they carry out activities which grant substantial benefits to one or more of the other participants to the VAT Group;

The above financial, economic and organizational links must be met jointly for being included in the VAT Group. The economic and organizational links are presumed to be met if the financial link is met.

In this respect, it must be noted that should the VAT Group regime be opted, all the companies that meets the financial, economic and organizational links above-mentioned must be included in the VAT Group (i.e., "all in, all out"). In this respect, the Italian tax law grants the possibility to file *ad hoc* rulings with the Italian Tax Authorities in order to demonstrate the existence or (un-existence) of such links (in order to include, or exclude, a specific company in/from the VAT Group).

As a consequence of the option for the VAT Group regime, the members of the VAT Group lose their autonomous subjectivity for VAT purposes since a new unique tax entity (i.e., the VAT Group) is created with its own VAT number.

The newly established VAT Group acts for VAT purposes in lieu of its participants. Therefore, the tax declaration, liquidation and payment obligations, as well as all other accounting obligations, fall on the VAT Group rather than on each single participant. In particular, all the VAT obligations are fulfilled by the "VAT Group

- Organizational link: an organizational link between Italian VAT taxable persons is considered to exist when coordination exists between such VAT taxable persons, by law, pursuant to the provisions of the Italian civil code, or in fact, between the decision-making bodies of the same, even if this coordination is carried out by another subject.

representative", who is in principle identified as the VAT taxable person that exercises the financial control described above on the other participants of the VAT Group.

Considering the existence of a unique VAT position, the supplies of goods and services carried out between participants to the same VAT Group (i.e., the intragroup transactions) fall outside the scope of VAT (i.e., they are irrelevant for VAT purposes). This means that intragroup transactions are not subject to invoicing obligations, annotation in the VAT registers and inclusion in the annual VAT return, being understood that such operations continue to be booked in the accounting records of each participant to the VAT Group.

The VAT Group cannot offset the VAT due with credits relating to other taxes, as well as the VAT credit accrued by the VAT Group cannot be used to offset other tax liabilities.

All the participants to the VAT Group are jointly and severally liable on an equal basis for the amounts to be due (VAT, interest and penalties) as a result of the liquidation and control activities carried out by the Tax Authorities.

The option for the VAT Group regime lasts three years and is automatically renewed year after year unless expressly waived.

# CONSEQUENCES

## What are the main advantages and implications deriving from the structuring of a VAT Group?

In **France**, the VAT Group regime makes it possible, under the above-mentioned conditions, to consider the VAT Group as a single taxable person, so that all invoicing flows between members of the VAT Group are considered as transactions outside of the scope of VAT. In this respect, the two main consequences of the French VAT Group are as follows:

- supplies of goods and services that take place within the VAT Group are considered to fall outside of the scope of VAT. In order for a supply to be subject to VAT, it has to be made between two independent entities. In the case of one unique taxable entity, this condition is no longer met;
- reporting obligations of each member of the group are transferred to the representative of the group.

Even if it is expressly stated that the VAT Group mechanism only applies for VAT purposes, and that the calculation of other taxes should not be affected by the implementation of a VAT Group in any way, the French Tax Authorities clearly

state in their doctrine that the implementation of the VAT Group may have an impact on the French payroll tax. The French payroll tax is calculated based on a taxation ratio, which itself is calculated by dividing the total amount of income that a company receives and that is not subject to VAT, by the total income of the company (whether taxable or not). Therefore, if a majority of the income received by an entity suddenly falls outside of the scope of French VAT, it will have negative consequences from a payroll tax perspective. Therefore, the VAT Group regime may lead to an increase in the French payroll tax to be paid by employers who are members of a VAT Group and who provide services to group members that would have been subject to VAT had the VAT Group not existed.

These consequences will be residual for companies that already have a VAT-exempt activity, whether totally or partially. However, the financial stakes could be much higher for operational entities that have always used taxable input and output flows and which hire most of the workforce within a group.

In **Germany**, the legal consequence of the fiscal unity is that only the controlling company is regarded as the entrepreneur for VAT purposes. He is obliged to submit consolidated VAT returns for the entire tax group. Services between the controlling company and the controlled company or between different controlled companies are no longer subject to VAT as so-called intercompany sales.

The main purpose of the tax group is to simplify complex structures, since instead of a large number of controlled companies, only the controlling company appears to the Tax Authorities as an entrepreneur. In practice, however, implementation is often complex. Further, the controlling shareholder as sole taxpayer of the VAT consolidated entities may require additional funding to settle VAT liabilities of the entire VAT consolidated group.

In some cases, the tax group also offers real VAT advantages: whenever a part of the tax group is not entitled to full input tax deduction and there are service relationships within the tax group, the creation of non-deductible input tax can be avoided with the help of the tax group.

Therefore, the ECJ case law has a particular impact on companies and institutions with limited input tax deduction, including non-profit corporations and legal persons under public law. For these, the ECJ's statements ((C-141/20 "*Norddeutsche Gesellschaft für Diakonie*" and C-269/20 "*Finanzamt T vs. S*", both published on 1 December 2022) on the non-taxation of internal services and transfers of value from the business sector are particularly important.



In **Italy**, the VAT Group generally results in a positive effect for the intercompany transactions - that fall outside the scope of VAT - occurring with participants carrying out VAT exempt transactions, since these latter would not suffer from a (partial or total) limitation on VAT deductibility due to the *pro-rata* mechanism.

For groups carrying out both vatable and exempt transactions, it has however to be considered that the VAT group acts as a single taxable person and therefore it determines a group deduction *pro-*

*rata*. The determination of a group *pro-rata*, while having generally a positive effect for the group, could result in a disadvantage for some of the participants that could suffer from a worsening of the VAT deductible based on group *pro-rata* compared to the theoretical stand-alone *pro-rata*. Therefore, before opting for the regime, it would be necessary to estimate the difference between the VAT that each participant could deduct on a stand-alone basis and the VAT deductible based on the group *pro-rata*.

## CONTRIBUTORS



### Philippe de Saint-Bauzel

**ADVANT** Altana  
+33 (0)1 79 97 93 00  
philippe.desaintbauzel  
@advant-altana.com



### Marie Darcq

**ADVANT** Altana  
+33 (0)1 79 97 93 00  
marie.darcq  
@advant-altana.com



### Markus Linnartz

**ADVANT** Beiten  
+49 211 518989-162  
markusp.linnartz  
@advant-beiten.com



### Helmut König

**ADVANT** Beiten  
+49 211 518989-117  
helmut.koenig  
@advant-beiten.com



### Andrea Mantellini

**ADVANT** Nctm  
+ 39 02 725511  
andrea.mantellini  
@advant-nctm.com



### Barbara Aloisi

**ADVANT** Nctm  
+39 02 725511  
barbara.aloisi  
@advant-nctm.com

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