



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect taxation and tax administration  
VAT and other turnover taxes

TAXUD/2161/07 - EN

Brussels, 30 October 2007

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)**

**WORKING PAPER No 556**

**CONSULTATION**

**PROVIDED FOR UNDER DIRECTIVE 2006/112/EC**

**ORIGIN:**

**\_\_\_\_\_**  
and the Czech Republic

**REFERENCE:**

Article 11

**SUBJECT:**

VAT grouping

**1. CONSULTATION BY [REDACTED] AND THE CZECH REPUBLIC**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Similarly, following their accession to the Community, [REDACTED] the Czech authorities are submitting their national legislation on VAT grouping to the Committee.

The texts of the six consultations are attached.

The decision to deal with these six consultations in a single document was taken because the analysis of the key points of each body of national legislation has been carried out by reference to guidelines for implementing the VAT grouping option that are set out in this working paper and that the Commission departments are proposing to adopt. Any national legislation that has already brought in or is to bring in such a VAT grouping scheme should, therefore, also comply with these guidelines.

**2. COMMISSION OPINION**

**2.1. VAT grouping: general framework**

Article 11 of the VAT Directive reads as follows:

*"After consulting the advisory committee on value added tax (hereafter, the "VAT Committee"), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.*

*A Member State exercising the option provided for in the first paragraph may adopt any measures needed to prevent tax evasion or avoidance through use of this provision."*

- (1) The application of a VAT grouping scheme necessitates consultation of the VAT Committee. As the schemes in question are special schemes or even schemes that derogate from the basic concept of taxable person and its coverage, including from a territorial viewpoint, prior consultation with the Commission and the representatives of the Member States is justified. Both the preposition "after" and the former wording of the Sixth Directive ("subject to") clearly show that consultation is indeed a procedural precondition for the introduction of such a scheme.
- (2) The second paragraph of Article 11 of the VAT Directive allows Member States to adopt any measures needed to prevent tax evasion or avoidance through the use of that provision. It is however clear that these measures should be put into place where risks of

tax avoidance or evasion exist. This approach is supported by the Court of Justice which posits combating tax evasion or avoidance as being one of the objectives of the VAT Directive. Although this option is provided for in a separate paragraph, the obligation to consult the VAT Committee extends to that option since, as such, it forms an integral part of the VAT grouping scheme the overall operation of which must be subject to the opinion of that Committee. The same applies to any amendment made to the scheme under national legislation.

- (3) The reference to "persons" in Article 11 of the VAT Directive concerns only taxable persons within the meaning of Article 9(1) of the Directive. A non-taxable person (non-taxable either because that person does not satisfy the definition in Article 9(1) or because it is a public body operating under the conditions set out in the first subparagraph of Article 13(1)) cannot join a VAT group. It is self-evident therefore that persons regarded as a "single" taxable person must also be taxable persons since the meaning of the "grouping" concept is to "group together" persons who are all engaged in activities falling within the scope of the Directive. The adjective "single" means that, without the group, there would be several taxable persons who, together with the group, would constitute only a "single" taxable person. The status of taxable person is therefore implicitly present in the case of group members. This is borne out by the objectives of the legislator, viz. to combat abuses (committed by way of artificial divisions) and to ensure administrative simplification and even alignment on the economic realities of the group, these being objectives that would not be relevant if the activities engaged in were not taxable activities.
- (4) As for the more delicate matter as to what are "persons established in the territory" of the Member State introducing the VAT group scheme, such a scheme is tied firstly to the criterion of *legal personality* and secondly to that of *establishment in the Member State* concerned. If this covers companies governed by national law and established in that Member State, the letter of the provision does not permit exclusion of permanent establishments of foreign companies situated in that territory; this would, in any case, seem to run counter to the freedom of establishment because it discriminates against foreign companies. However, the permanent establishments of companies governed by national law and situated abroad, like foreign establishments of foreign companies, are excluded. Accordingly, only companies or permanent establishments physically present in the territory of the Member State that has introduced the scheme may join a VAT group.

Such an approach corresponds to a territorial scope that coincides with the VAT jurisdiction of that Member State and, as a result, even with the VAT identification conditions applicable there. In addition to the fact that such a definition of the scope of the option is compatible with the territoriality criterion in Article 11 of the VAT Directive itself, it has the advantage of facilitating the management and monitoring of the group in so far as all its members are subject to the same rules in the Member State. Furthermore, it avoids recourse to complicated anti-abuse measures designed to restore neutrality for certain cross-border transactions. As well as the territoriality criterion, the argument that membership of a VAT group in a Member State has the effect of conferring a *new taxable person identity on the VAT group* (instead of its members taken individually) and, in so doing, of dissociating the group members from the taxable person identity that they constituted together with their permanent establishments abroad, means that permanent establishments situated

abroad can be excluded. Such an approach is not at variance with the *FCE Bank* ruling,<sup>1</sup> which makes no reference whatsoever to the situation of a VAT group, which, in the opinion of the Commission departments, can exist only as a special form of taxable person set up on the sole initiative of the Member State concerned, subject to the limits of its territorial competence.

Thus, all transactions between a VAT group and permanent establishments abroad are treated as transactions between two separate taxable persons, whether they involve supplies of goods or services. No distinction is made according to whether the transactions with the permanent establishment abroad take place with a VAT group member other than the member of the group of which it is a permanent establishment or with the member of the group of which it is a permanent establishment. The same rule applies between a permanent establishment that is a member of a VAT group in the Member State concerned and the foreign company on which it depends.

- (5) The financial, economic and organisational links must exist simultaneously if a number of taxable persons are to be able to form a VAT group. Since the VAT group is regarded as constituting a derogation, quite strict conditions should be attached (see the above cumulative requirements). Such cumulation provides more guarantees that the group concept will not be applied in an abusive manner since it excludes purely artificial constructions that have no economic logic.
- (6) The effect of a VAT group is to treat a number of taxable persons, i.e. the VAT group, as a single taxable person. And so, any activity engaged in by any one of the group members is deemed to have been carried out by the group, which constitutes the "taxable person" as referred to in the VAT Directive. The group's internal transactions are treated as having been carried out by the group (the taxable person) for itself and so do not exist for the purposes of VAT (transactions falling outside the scope of VAT), except in the case of like transactions (Articles 16, 17, 18, 26 and 27). Similarly, the group's external transactions are treated as having been carried out by the group (the taxable person) and constitute its "output". The VAT situation of such a group and the treatment of its incoming and outgoing transactions are fully comparable to those of a taxable person engaged in several branches of activity.
- (7) The possibility of treating several taxable persons as a single taxable person for VAT purposes means that, where VAT is concerned, the group (and thus its members and their activities) will be identified by a single number. The situation of a group is parallel to that of a legal person (e.g. an association) whose members no longer appear in the context of the legal person absorbing them. Thus, any obligation to which a taxable person is subject relates to the VAT group as a single taxable entity.
- (8) A company cannot join two VAT groups, nor can only some of its activities form part of a VAT group (activities carried out by establishments situated outside the territory are not covered by this rule). Accordingly, where a taxable person is a member of a VAT group, all its activities must be included for this scheme to apply. A taxable

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<sup>1</sup> Judgment by the European Court of Justice of 23 March 2006 in Case C-210/04 (*FCE Bank plc*).

- (9) As for the right of deduction, it will have to be correctly applied: to avoid VAT being deducted for exempt activities, the deductible proportion rule (Article 173 *et seq.*) will have to be applied to the VAT group *mutatis mutandis*. Action would have to be taken to combat abuse of the scheme, as allowed by the case law of the Court (see Case C-255/02 *Halifax*).
- (10) The principle of VAT neutrality means that the VAT grouping scheme cannot be introduced only for certain sectors as this would favour certain undertakings relative to others and would also be open to criticism from a state aid viewpoint (selectivity).

For each Member State's legislation the Commission has given a specific opinion taking into account all of the distinctive features. The provisions have been analysed separately and the problems relating to each scheme have been explained.

Going beyond the specific analysis, the Commission has noted that not one of the requests for consultation has sufficiently explained the consequences of a bankruptcy of one of its members on the VAT group. Since the Commission considers this information as important it would like all delegations to give more details on this issue.

### 3. NATIONAL LEGISLATION ON VAT GROUPING

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### 3.6.1. Description

The essential elements of the Czech legislation are as follows:

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#### 3.6.2 Commission opinion

The Commission have no particular remarks regarding points (1) – (5).

Regarding point (6), the VAT grouping provision seems applicable to non-taxpayers. If this is the case, the provision is not in conformity with the approach suggested by the Commission in point (4) in section 2.1.

The Commission invites the Czech authorities to further comment point (6).

#### **4. OPINIONS OF THE DELEGATIONS**

The delegations are asked to give their opinions on the above matters.

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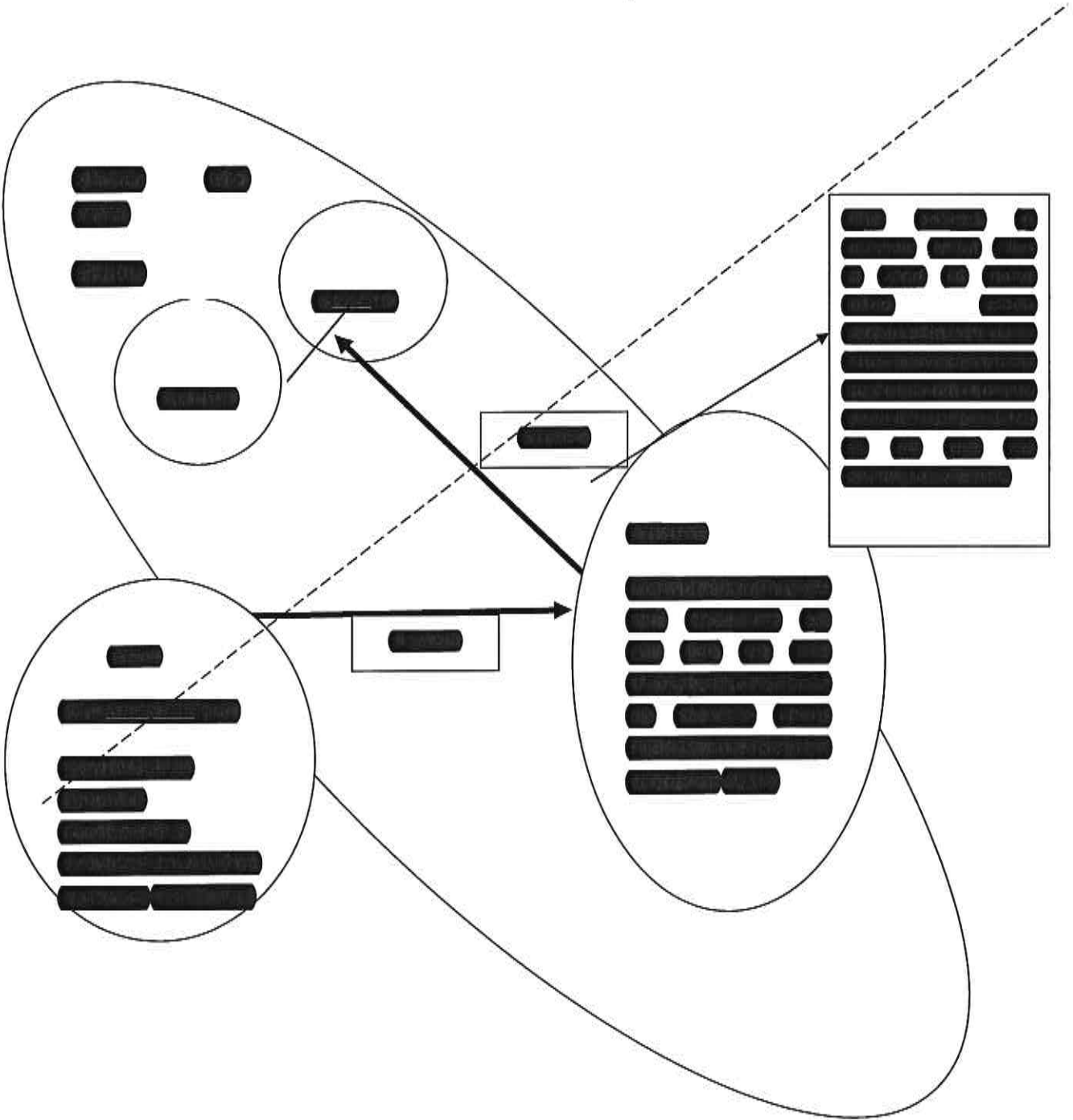
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**Czech Republic**

**MINISTRY OF FINANCE  
CZECH REPUBLIC**

**Indirect Taxes Department**

**Subject: Request for consultation the VAT Committee in accordance with Article 11 of Directive 2006/112/EC – VAT grouping**

The Czech Republic is introducing the VAT grouping rules and therefore is consulting the VAT Committee on this subject.

Description of the VAT grouping rules

1. VAT groups and their members

A VAT group is considered to be a single taxable person, separate from its members. Consequently, its individual members are not regarded as taxable persons.

Only closely bound persons can be members of the group.

For these purposes closely bound persons can be

- those persons when one person directly or indirectly participates in the capital or voting rights of other person or persons and such participation constitutes at least the share of 40 % of the capital or of the voting rights of such persons; or
  - those persons in whose managements at least one identical person participates.
- Each person can only be a member of one VAT group.

Only persons established in the territory of the Czech Republic can form the group. However, their establishments located outside the country are excluded from the group.

2. Action and fulfilment of obligations by VAT groups

Each VAT group must appoint a representative from its members who is primarily responsible for the group's tax obligations. However, all the other members are to be held jointly and severally liable for such obligations.

A VAT group has its own VAT number (separate from the VAT numbers of their members, that will not be valid during their membership in the group), which must be indicated on the invoices.

A VAT group (i.e. representative acting on its behalf) submits monthly VAT returns and quarterly recapitulative statements.

A VAT group shall keep records relating to its obligations and transactions. In addition all the members shall keep records of the transactions supplied to other members (such transactions are not subject to the tax).

### 3. Forming of VAT groups

Forming (creating, cancelling, joining and leaving by individual members) of VAT groups is voluntarily.

A VAT group can be created and cancelled only from the first day of the calendar year. The same also applies in case of joining or leaving the group by individual members. Such a rule enables at least one year long duration of the group with the same members and can be understood as the anti-avoidance measure according to Article 11 2<sup>nd</sup> subparagraph.

The only exception to the rule is accession of non-taxpayers (i.e. persons without VAT number) to the group. Such persons can join the group within the calendar year, always from the beginning of the calendar month.

If a group does not fulfil all the preconditions for its existence, the tax authority will cancel it. Similarly, if a member of the group does not fulfil all the preconditions, the tax authority will cancel his membership in the group. Furthermore, the tax authority is entitled to cancel the group if it does not fulfil its VAT obligations.

### 4. Entry into force

The new rules will enter into force in 2008 and the first VAT groups can be created from the beginning of 2009.

Blanka Mattauschová

Director