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

WORKING PAPER NO 556

CONSULTATION

PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

ORIGIN:	**Belgium, Spain, Ireland, United Kingdom, Romania and the Czech Republic**
REFERENCE:	**Article 11**
SUBJECT:	**VAT grouping**

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1. CONSULTATION BY BELGIUM, SPAIN, IRELAND, THE UNITED KINGDOM, ROMANIA AND THE CZECH REPUBLIC

The Belgian and Spanish authorities have informed the Commission that they wish to consult the VAT Committee on the introduction into their national legislation of the VAT grouping scheme, in accordance with Article 11, read in conjunction with Article 398 of Directive 2006/112/EC (hereinafter the "VAT Directive").

Acting on the same legal bases, the Irish authorities wish to consult the VAT Committee on two issues relating to the operation of VAT grouping, while the United Kingdom authorities are seeking consultation of the Committee on the matter of certain updatings of their national legislation concerning VAT grouping.

Similarly, following their accession to the Community, the Romanian and 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,[1] 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 person engaged in several branches of activity could not, therefore, exclude one (or more) of them from the scheme.

[1] 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).

2.2. Commission questions

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

3.1. Belgian legislation

3.1.1. Description

The Belgian authorities introduced the VAT grouping scheme into their legislation on 1 April 2007 by way of Royal Decree No 55 on 9 March 2007. The term "VAT group" ("unité TVA", “BTW-eenheid”) has been used in that legislation to refer to the concept of VAT grouping.

The main elements of the legislation, which transposes Article 11 of the VAT Directive, are the following:

(1) The "VAT group" is a single taxable person which replaces its members for VAT purposes and to which all the provisions of the Belgian VAT Code and its implementing decrees (the national VAT legislation) are applicable *mutatis mutandis.* It is, therefore, identified by a single VAT number which is to be used to meet its VAT obligations and in exchanges with the administration. Accordingly:

- it is impossible to belong to more than one VAT group;

- supplies of goods and services between members of a VAT group do not fall within the scope of VAT;

- goods and services supplied by third parties to each member are supplied to the VAT group;

- imports and intra-Community acquisitions of goods by each member are carried out by the VAT group;

- goods and services supplied by each member are supplied by the VAT group;

- the members of the group are jointly and severally liable to the State for all the VAT debts of the group.

(2) As with all taxable persons, the right to deduct input tax on goods and services acquired from third parties by the VAT group depends on the end use of those goods and services by the group's members. The rules governing corrections of VAT deducted are also applicable. The burden of proof regarding end use lies with the VAT group. Accordingly:

- if the end use is immediately identifiable or if it will be possible to identify it precisely at a later date, VAT will be deductible or non-deductible depending on that use;

- if the end use is mixed (e.g. because the goods or services are used by group members other than the member that acquired them), the deduction will be determined as follows:

  - Until such time as the end use of the goods or services cannot be verifiably determined, the deductible VAT will be calculated on the basis of the VAT group's general deductible proportion. Where appropriate, it may be calculated on the basis of the particular proportion of the member that received the goods or services, provided that this can be verifiably ascertained;

  - As soon as the VAT group is authorised to use the actual application method and as soon as the end use of the goods and services can be verifiably determined (e.g. on the basis of formulas allowing the goods and services to be allocated to the intra- and extra-group activities undertaken by the members that acquired them), input VAT may be deducted (or corrected) accordingly;

- if the end use cannot be verifiably determined, input tax will be deductible on the basis of the VAT group's general deductible proportion.

(3) The VAT group can be set up only by members having taxable person status in Belgium (i.e. Belgian establishments of Belgian or foreign companies on the basis of the conditions set out in Circular No 4/2003). A permanent establishment of a foreign company may, therefore, form part of a Belgian VAT group but foreign establishments of foreign or Belgian companies are excluded.

(4) To ensure that, within the VAT group, Belgian VAT cannot be avoided by foreign outsourcing (problem of parent company/branch and channelling), appropriate legal and administrative accompanying measures will be taken pursuant to the second paragraph of Article 11 of the VAT Directive.

(5) The VAT group scheme is, in principle, optional: this is an option that has to be exercised both by the group and by the members individually. However, in the case of legal persons, if a company that belongs to a VAT group *has* a direct holding of more than 50% in another company, the participation conditions for forming a VAT group are presumed to have been met and the company in question must be included

in the VAT group unless the administration has granted authorisation to keep it outside the VAT group. To this end, the VAT group must demonstrate that, in spite of the participatory link, economic or organisational links with the parent company are either non-existent or only of a tenuous nature or that there are other circumstances that would justify keeping the subsidiary outside the VAT group. Similarly, if a member of the VAT group *acquires* a direct holding of more than 50% in a taxable person that is a member of another VAT group, the latter taxable person no longer ranks as a member of the VAT group to which it belonged and becomes a member of the VAT group of which the taxable person with a holding of more than 50% is a member. In the same way, the exception concerning economic and organisational links may be invoked in contacts with the administration.

(6) The presumption in paragraph 5 applies on a "cascade" basis (subsidiaries, sub-subsidiaries) but, in view of the fact that only entities established in Belgium may be members of the VAT group, that presumption does not apply if the subsidiary (which has legal personality of its own) is established abroad.

(7) The VAT group is made up of persons established in Belgium that have close financial, economic and organisational links. These links must exist at the three levels mentioned so that the persons concerned can join the VAT group (Royal Decree No 55 stipulates in which situations these conditions are, in any event, met).

(8) Only taxable persons for VAT purposes who have either a right to full or limited deduction or no right to a deduction may opt to form a VAT group. Passive holdings, which are not subject to VAT, are therefore excluded.

(9) The VAT group scheme is activated by way of a reasoned request submitted by the group's representative on behalf and for the account of the members that freely designated him. Provided that the membership conditions are met, the taxable persons, whether those that opted for the scheme or those to which the presumption in paragraph 5 applies, must remain members of the VAT group until 31 December of the third year following the date of their admission to the group. The VAT group ceases to exist when the membership conditions are no longer met or at its own request. If a member of the VAT group is declared bankrupt, this member will automatically be excluded from the VAT group. In the event of voluntary liquidation of a member of the VAT group, it is for the member itself to determine whether the conditions for membership of the VAT group are still met.

3.1.2. Commission opinion

The Commission departments have no particular remarks to make regarding points 1, 2, 5, 6, 7, 8 and 9 of item 3.1.1.

As regards point 3 of item 3.1.1, the Commission departments would point out that the approach taken by Belgium is consistent with the approach proposed by them in point 4 of item 2.1.

As regards point 4 of item 3.1.1, the attention of the Belgian authorities is drawn to the obligation to consult the VAT Committee in the case of anti-abuse measures adopted pursuant to the second paragraph of Article 11.

3.2. Spanish legislation

3.2.1. Description

By way of Article 3(5) of Law 36/2006 of 29 November 2006 adding a new Chapter IX (Articles 163 *quinquies* to 163 *nonies*) to Title IX of Law 37/1992, the Spanish authorities introduced into their national tax legislation the VAT grouping scheme, which will apply as from 1 January 2008.

The main elements of this legislation, which transposes Article 11 of the VAT Directive, are the following:

(1) The VAT grouping scheme is an optional scheme that taxable persons are free to adopt or not. Taxable persons meeting the conditions for applying the scheme and who decide to apply it are required to notify the tax authorities accordingly. The option is valid for a minimum period of three years. Unless it is suspended, this option is extended. Suspension lasts for a minimum period of three years.

(2) The concept of group of companies is defined by reference to the percentage holdings in the company capital. It is only when a holding exceeds 50% that the companies are deemed to be part of a group. The group comprises the dominant entity, i.e. the one with a (direct or indirect) holding of more than 50%, and all the entities dependent on it. Once the group of companies has been defined, it is for the members of the group to decide whether or not to apply the special scheme. In other words, not all the companies that are members of the same group are required to apply the special scheme, with the result that some of the taxable persons in the group may opt for exclusion and may continue to apply the standard VAT scheme.

(3) Companies whose registered office or permanent establishments are situated on Spanish territory may join a VAT group.

(4) A company may belong to only one VAT group.

(5) The VAT group scheme has the following characteristics:

- As regards intra-group transactions, the special scheme passes on to a single transaction the VAT that would have had to be paid on the purchases of goods and of the services used for such transactions. It is as if VAT were charged only at the level of the taxable persons who were the end users of the goods and services, irrespective of whether other taxable persons belonging to the same group participated as intermediaries or operators when the purchases were made. In addition, the exemptions applicable to these transactions under Articles 131 to 137 (former Article 13 of the Sixth Directive) may be waived.

- Intra-group transactions are regarded as being separate from the economic activity of the entities making up the VAT group. VAT chargeable on the goods and services intended, directly or indirectly and in full or in part, for that sector is deducted on the basis of the presumed use of those goods and services, without prejudice to any subsequent correction.

- As regards transactions with third parties, each entity making up the group acts according to the standard rules, i.e. as an individual taxable person and not as a group.

(6) The dominant entity is the one representing the group.

(7) The dominant entity and each of the dependent entities are required to meet all the obligations arising from the standard VAT scheme, except as regards the payment of VAT and the application for VAT compensation or refund. The dominant entity is, in point of fact, required to submit a regular VAT return for all the entities. After offsetting each entity's debtor and creditor balances with the tax authorities, the dominant entity either pays the VAT chargeable or submits a refund application to the tax authorities. It is also required to maintain and communicate an analytical information system based on reasonable criteria for offsetting goods and services used, directly or indirectly and in full or in part, for intra-group transactions.

(8) The entities applying the VAT group regime are joint and severally liable for payment of the tax debt resulting from application of the scheme.

(9) The VAT group scheme ceases to apply:

- if there is a scheme for small businesses;

- if an analytical information system is not maintained or kept;

- to the entity belonging to the group that is in liquidation.

3.2.2. Commission opinion

The Commission departments have no particular remarks to make regarding points 1, 4, 6, 8 and 9 of item 3.2.1.

As regards point 2, the Spanish legislation does not stipulate that financial, economic and organisational links must exist simultaneously for several taxable persons to be able to set up a VAT group.

As regards point 3, further explanation is needed of how a VAT group's transactions with permanent establishments abroad or the headquarters of foreign companies with a permanent establishment in Spain are treated in order to ascertain whether such treatment is consistent with the approach proposed by the Commission departments in point 4 of item 2.1.

As regards point 5, it is clear from the first two indents that the special treatment reserved for intra-group transactions actually seems to consist in treating them as being non-existent from the point of view of VAT (transactions falling outside the scope of VAT), with the right to deduct VAT on purchases by the VAT group being ultimately determined by the effective end use made of them by the group members concerned. However, the last indent is at variance with the general framework defined in item 2.1, under which the VAT group acts as a single taxable person, including vis-à-vis third parties. Once a VAT group has been formed, it is this group in its capacity as a single taxable person that is required to comply with all the obligations stemming from the VAT

Directive, and not each taxable person individually as in point 7. As a consequence, companies which are part of a VAT group cannot keep their VAT number.
The use of the expression "empresarios o profesionales" to designate the persons that may join a VAT group would seem to exclude, as it should, any non-taxable person for VAT purposes.

3.3. Irish legislation

3.3.1. Description

Following the discussions at the VAT Committee meeting on 8 November 2006, the Irish authorities amended their legislation on VAT grouping. A number of questions arise, however, regarding the treatment of transactions between a company's headquarters and its permanent establishment and as regards the inclusion or otherwise of holdings in a VAT group.

(1) Supplies of services between a company's headquarters and its permanent establishment where both are situated in two different territories

If no VAT group has been formed, Ireland has always taken the view that supplies of services between a company's headquarters and its permanent establishment – where both are situated in different territories - were non-existent from a VAT viewpoint. However, if one of these two entities were a member of a VAT group in Ireland, the services received by the entity that is a member of a VAT group in Ireland would be taxed, with membership of a group resulting in this entity being regarded as a separate taxable person. If, as transpires from the discussions of the VAT Committee and from the consequences of the *FCE Bank* ruling, this position has to be reviewed, Ireland wonders how improper use of the VAT group to bring into Ireland VAT-exempt services used by exempt taxable persons could be countered.

(2) Inclusion or otherwise of holdings in the VAT group

The practice in Ireland is for the parent company of a group of companies to be treated as a member of a VAT group if the group of companies is regarded as a VAT group even in cases where the parent company cannot be regarded as a taxable person. According to the Irish authorities, this practice does not seem to be fully in line with the discussions that have taken place within the VAT Committee but can be explained, on the one hand, by the fact that the VAT Directive refers to "persons established on the territory of the Member State" and, on the other hand, by the fact that both the companies and the tax authorities are satisfied with the practice. This is because, alongside the fact that the practice simplifies the treatment of intra-group transactions, it transpires that the parent company is, by nature, best suited to playing the role of the entity representing the VAT group. In this connection, even if the holding company does not engage as such in an economic activity, it appears that, in practice, it is the holding company that is designated as the customer for the services received and used by the group. If there were no VAT group structure, the holding company would moreover have been regarded as a taxable person for its involvement in the acceptance and supply of the said services.

3.3.2. Commission opinion

As regards point 1 of item 3.3.1 concerning the treatment of services supplied between a company's headquarters and its permanent establishment (both situated in different territories), see the proposal of the Commission departments in point 4 of item 2.1. This position also leads to the consequence that if a permanent establishment of an Irish holding is part of a VAT group in another Member State, e.g. the United Kingdom, the services exchanged between the holding and the permanent establishment would have to be taxed.

As regards point 2 of item 3.3.1 concerning the problem associated with holdings, see the proposal of the Commission departments in point 3 of item 2.1, where it is stated that only "taxable persons" may join a VAT group. The point should be made here that, if a holding does not engage in any economic activity, its role being confined to buying and selling shares or holdings in other companies, with the holding being involved in the management of those companies by supplying administrative, financial, commercial or technical services,[2] this activity can be treated as an economic activity and thus as being liable to VAT. If, as in the case referred to by Ireland, the holding company had, in the absence of a VAT group structure, been treated as a taxable person insofar as this implied the carrying out of transactions subject to VAT (e.g. the delivery of administrative, financial, commercial or technical services by the holding to its subsidiaries)it would have to be concluded that this holding can join a VAT group.

3.4. UK legislation

3.4.1. Description

Following the discussions on the VAT grouping scheme that took place at the recent meetings of the VAT Committee, the UK authorities reviewed their relevant national legislation and identified two minor measures that had been adopted. Since the UK authorities think that these measures to combat abuse are covered by the Sixth Directive, they have not consulted the VAT Committee. According to the UK authorities these anti-abuse measures are already provided for by the second paragraph of Article 11 of the VAT Directive.

(1) The first measure was adopted in 1996 with a view to preventing VAT groups from obtaining an undue advantage by receiving VAT-exempt services from abroad. This anti-abuse measure concerns services that are supplied VAT-exempt by a company situated in another Member State to a company situated in the United Kingdom through the intermediary of a company established in another Member State or outside the Community that supplies the same services in-house and exempt from VAT by way of a VAT group. The upshot of this measure is that the VAT group's representative is liable for VAT on services purchased outside the United Kingdom by a member of the VAT group that is established or has a permanent establishment outside (as well as within) the United Kingdom.

[2] See judgment of 27 September 2001 in Case C-16/00 (*Cibo Participations SA*).

(2) The second measure, introduced in 2004, is designed to counter a situation in which the "control rules" contained in UK legislation with a view to laying down the conditions for a VAT group have been manipulated in order to avoid paying VAT on outsourced services. In practical terms, this made it possible to introduce into a VAT group a company that also provided its services in-house and thus exempt from VAT even though it was controlled by a third party that obtained its benefit, for example, by way of dividends with no VAT liability. The anti-abuse measure consisted in the introduction of two further tests: a benefits test and a consolidation test. The benefits test is met when more than 50% of the direct or indirect benefits of the activity in question accrue to a third party. The consolidation test is met when the accounts of the company in question are consolidated with the VAT group accounts (or would have been if consolidated accounts had been produced). This measure ensures that only jointly owned companies are able to join a VAT group.

3.4.2. Commission opinion

As regards point 1 of item 3.4.1, the Commission departments would like to know which services are covered by the rule proposed by the United Kingdom.

Secondly, it seems that the effect of the measure is to locate in the United Kingdom the services supplied abroad (whether in another Member State or outside the Community) and redirected via the VAT group to the United Kingdom. The measure is similar, therefore, to the mechanism provided for in indent (b) of the first paragraph of Article 58 of the VAT Directive, whereby the services referred to in Article 56(1) – and the initial place of supply of which had been situated outside the Community – are shifted to the place of their effective use or enjoyment. Given the approach proposed by the Commission in point 4 of item 2.1, this measure no longer serves any useful purpose. However, if this interpretation is not correct the Commission would like more details on the issue and would also ask the United Kingdom whether they consider their scheme could lead to double taxation.

As regards point 2 in item 3.4.1, one solution would have been to also include in the VAT group the third party controlling the company forming part of the VAT group in so far as, in addition to the financial links, economic and organisational links exist. In this case, however, the scheme would no longer be optional for taxable persons but would be a compulsory scheme imposed by the tax authorities.

In addition, the Commission would invite the United Kingdom to explain which persons could become members of a VAT group and what would be the links foreseen between the taxable persons. It would seem that the exclusion of a third party could solely depend on the benefits test, however the role of this test is not clear.

3.5. Romanian legislation

3.5.1. Description

Romania has transposed Article 11 of the VAT Directive concerning VAT groups by way of Article 127(8) of the Tax Code, which stipulates that "under the conditions and within the limits laid down by the implementing arrangements, taxable persons established in Romania who, while legally independent, are closely bound to one another by financial, economic and organisational links shall be regarded as a VAT group". Point 4 of the implementing arrangements sets out the procedure for forming a VAT group.

The main features of this legislation are the following:

(1) The VAT group scheme is optional. Taxable persons meeting the requisite conditions may opt for the scheme.

(2) A taxable person may join only one VAT group.

(3) The option must run for a period of at least two years.

(4) All the taxable persons in a given VAT group must adopt the same tax period [later it's always called 'tax period'].

(5) The VAT group may comprise between two and five taxable persons.

(6) Up to 1 January 2009 the VAT group may be made up solely of taxable persons who are regarded as "large taxpayers".

(7) Taxable persons more than 50% of whose capital is held directly or indirectly by the same shareholders are regarded as being closely bound to one another by financial, economic and organisational links.

(8) One member of the VAT group is designated to be the group's representative.

(9) The competent tax authority takes an official decision approving or refusing the setting up of the VAT group which it communicates to the group's representative and to each of the tax authorities on which the members of the VAT group depend.

(10) The competent tax authority may discontinue the treatment of a person as a VAT group member where that person no longer fulfils the eligibility criteria for being treated as such. It may also discontinue the treatment of taxable persons as a VAT group where those taxable persons no longer comply with the eligibility criteria for being treated as such.

(11) From the date on which the VAT group is formed,

a) the members of the VAT group other than the representative:

- indicate on the VAT return all supplies of goods and services, imports or intra-Community acquisitions of goods or any other transaction carried out by or for them during the tax period;

- send their VAT return to the representative and a copy of that document to the tax authority on which they depend;

- do not pay any tax chargeable and do not apply for any refund on the basis of their VAT return;

b) the representative:

- indicates on its own VAT return all supplies of goods and services, imports or intra-Community acquisitions of goods or any other transaction carried out by or for it during the tax period;

- indicates in a consolidated return the results of all the VAT returns received from the other members of the VAT group and the results of its own VAT return for the tax period concerned;

- forwards to the tax authority on which it depends all the VAT returns of the members and the consolidated VAT return;

- pays or, as the case may be, applies for a refund of the amount of tax specified on the consolidated VAT return.

(12) Each member of the VAT group is required:

- to forward to the tax authority on which its depends the recapitulative statement for intra-Community supplies and acquisitions;

- to submit to control by the tax authority on which it depends;

- to be personally as well as jointly and severally liable for the payment of any tax chargeable to a member of the VAT group or to itself in respect of the period during which it is a member of the VAT group.

3.5.2. Commission opinion

The Commission departments would point out that, generally speaking, the VAT group scheme as envisaged by Romania does not seem to be in keeping with the general framework set out in point 2.1 since its object is not to establish a single taxable person. The taxable persons that are members of the VAT group are still regarded as individual taxable persons required to comply with all the obligations stemming from the VAT Directive.

The sole effect of the VAT group would seem to be to group together the members' different VAT returns into a single return, thereby making it possible to offset the balances payable to or receivable from the tax authorities and to create liability for payment of VAT.

However, the Commission departments have doubts regarding the treatment of transactions between taxable persons in the VAT group, and in particular whether those transactions are treated differently for VAT purposes on account of the fact that they took place between taxable persons belonging to the VAT group. In particular, they wonder whether the transactions between the taxable persons are taxed or not.

If they were not taxed, it should be pointed out that such a scenario could be envisaged only under the conditions set out in Article 11 and, in this case, Romania would have to comply with the aforementioned general framework.

Moreover, it has not been spelt out whether the permanent establishments of Romanian companies are included or are not included in the VAT group.

Pending clarification, the Commission departments would make the following remarks.

As regards point 5 of item 3.5, the Commission departments take the view that this limitation on the number of taxable persons is not compatible with Article 11 of the VAT Directive.

They have doubts regarding the reason for the limitation – referred to in point 6 of item 3.5 – of the VAT group option solely to "large taxpayers", who are not defined, and this until 1 January 2009.

Point 7 of item 3.5 does not define what is meant by economic and organisational links.

As regards point 9, the Commission would like to know what the rules underpinning the procedure for approving or refusing the setting up of a VAT group are.

As regards point 10, clarification is needed for cases where a VAT group member no longer fulfils the eligibility criteria. Is it supposed to remain within the group until such time as the administration allows it to leave or does it leave automatically once it no longer fulfils the eligibility criteria for being treated as a group member?

3.6. Czech Republic legislation

3.6.1. Description

The Czech authorities are introducing VAT grouping provisions in their national legislation. The provisions will enter into force in 2008, enabling the first VAT grouping to be created as from the beginning of 2009.

The essential elements of the Czech legislation are as follows:

(1) A VAT grouping is considered to be a single taxable person, which is separate from its members. The individual members are not regarded as taxable persons.

(2) Only closely bound persons can be members of the VAT grouping. Each person can only be member of one VAT grouping.

(3) A VAT grouping can only be formed by persons established in the territory of the Czech Republic. Thus, the individual members establishments located outside the country are excluded from the VAT grouping.

(4) All members are jointly and severally liable for the tax obligations. One of its members must be appointed as primarily responsible for the group's tax obligations.

(5) The VAT grouping is identified with its own number for VAT purposes.

(6) It is voluntary to create, cancel, join or leave a VAT grouping. A VAT grouping can only be created and cancelled from the first day of the calendar year. The same applies in case of joining or leaving the group by the individual members. The only exception to this rule is accession of non-taxpayers (i.e. persons without VAT number) to the group. Such a person can join the group within the calendar year, from the beginning of the calendar month.

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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ANNEX

Belgium

CONSULTATION BY THE KINGDOM OF BELGIUM IN ACCORDANCE WITH ARTICLE 11(1) OF DIRECTIVE 2006/112/EC

RE: CONSULTATION ON THE INTRODUCTION OF THE CONCEPT OF VAT GROUP BY THE KINGDOM OF BELGIUM

The Kingdom of Belgium hereby submits this dossier to the VAT Committee for consultation in accordance with Article 11(1) of Directive 2006/112/EC.

On 1 January 1993 an amendment to the VAT Code made it possible in Belgium to adopt an implementing decree which, in the cases provided for and in accordance with the provisions set out therein, would allow persons established in Belgium who, while legally independent, are closely bound to one another by financial, economic and organisational links to be regarded a single taxable person under the VAT Code (i.e. introduction of the concept of VAT group).

It is only now, in 2007, that Belgium has realised its intention of actually introducing VAT groups by adopting the enclosed implementing decree (Royal Decree No 55) and detailed explanatory notes (Report to the King).

The Report to the King successively provides a detailed overview of:

- the background to the introduction of VAT groups;
- the Community legal framework and the Belgian legal framework;
- how a VAT group works;
- comments on the individual provisions.

The enclosures will be supplemented by an overall summary note setting out the key provisions of the Belgian legislation.

KINGDOM OF BELGIUM

FEDERAL PUBLIC DEPARTMENT OF FINANCE

ROYAL DECREE NO 55 ON THE TREATMENT OF TAXABLE PERSONS FORMING A VAT GROUP

REPORT TO THE KING

Your Royal Highness,

1. Background to the introduction of VAT groups

1. The Federal Government's declaration of 17 October 2006 announcing the introduction of a VAT group system in Belgium took place in an economic climate in which companies are faced with increasing international competition and are therefore forced into an ongoing drive for efficiency in order to remain competitive.

All economic operators, whatever their VAT status and sector of activity, are currently forced to adopt strategies for rationalising administration costs and optimising the use of their financial resources.

Of the strategies usually developed by companies, outsourcing or centralising certain operations (particularly administrative support, IT, back-office activities, call centres, etc.) requiring a large workforce by, for example, creating centres of excellence or service centres is one of the most common because it enables groups of companies to achieve significant economies of scale for such services and to concentrate fully on their core business.

In this context, it has though become apparent that, for all sectors including non-market sectors (schools, hospitals, cultural associations, etc.), the current VAT system creates significant obstacles by generating additional VAT charges and/or by adding to the administrative burden. These obstacles are being considered at European level, but there is no way of determining when this will lead to any tangible results.

2. The system of VAT groups, which makes it possible to regard legally independent persons with close financial, economic and organisational links as forming a single taxable person for VAT purposes is an effective solution provided for by European legislation and recognised at international level (it was explicitly included among the solutions put forward by the European Commission in its "Consultation Paper on modernising Value Added Tax obligations for financial services and insurances", which was published in March 2006).

Within a VAT group transactions between members of the group are not subject to VAT. The system therefore allows companies to set up centres of excellence or service centres without running the risk of creating additional non-deductible VAT charges.
As the VAT group is regarded as a single taxable person, it also allows companies to simplify and rationalise their administrative burden considerably because it takes on all the rights and obligations of its members.

This is the main reason why a scheme for setting up VAT groups is already in place in 13 of the 27 European Union Member States, with a number of others currently looking into the matter.

3. Furthermore, given its success, VAT groups are currently an extremely important factor in attracting such centres of excellence, headquarters, group operations and other financial centres (such as coordination centres) to Belgium and ensuring that they remain here.

In this respect, the introduction of VAT groups in Belgium can be seen as a measure to modernise and reshape the Belgian tax environment in order to attract these operations to Belgium and keep them here.

4. Finally, in addition to the anticipated positive effects on the Belgian economy and on the employment situation, a VAT group also has significant advantages in terms of administrative simplification, combating tax fraud and improving VAT collection.

The introduction of VAT groups should considerably reduce the number of VAT returns to be submitted and the number of VAT refunds to be paid. This should actively contribute towards combating VAT fraud by making it possible to identify fraudsters more quickly.

Moreover, even for companies that conduct only intra-group transactions, it is currently not possible in principle to collect VAT (e.g. in the event of bankruptcy) from other members of the group. A VAT group improves the situation for the Treasury because, since it is a single taxable person, all of its members are jointly and severally liable for the VAT debt of the group as a whole for as long as they remain members.

2. The introduction of VAT groups in Belgium

2.1. The European legal framework

5. The VAT group scheme is provided for in the first paragraph of Article 11 of Directive 2006/112/EC of 28 November 2006 (formerly Article 4(4) of the Sixth VAT Directive), which leaves Member States the possibility of considering as a single taxable person any persons established in their territory who, while legally independent, are closely bound to one another by financial, economic and organisational links. Directive 2006/112/EC contains no other provisions that relate specifically to VAT groups.

It therefore follows that a VAT group should be considered to be a taxable person subject to the same rights and obligations as any other taxable person and that all the provisions of Directive 2006/112/EC (as well all the interpretations placed on this concept by the rulings of the Court of Justice of the European Communities) apply *mutatis mutandis*.

Consequently, the introduction of VAT groups cannot, in itself, lead to any change (reduction or increase) in members' rights to deduct VAT or to any other additional obligations, other than those associated with the definition of the concept as such.

6. The introduction of VAT groups in a Member State does not constitute a derogation from the system established by Directive 2006/112/EC. The decision to introduce the scheme is subject only to consultation with the European VAT Committee established by Article 398 of the above Directive (as distinct from derogation requests, which are subject to approval in accordance with Article 394 thereof).

As the consultation procedure does not have suspensive effect, the Decree may enter into force on the specified date without awaiting the Committee's opinion on the introduction of VAT groups in Belgium (cf. the current consultation on the Irish scheme).

2.2. The Belgian legal framework

7. Article 4 §2 of the Belgian VAT Code is an almost word-for-word transposition of the first paragraph of Article 11 of Directive 2006/112/EC of 28 November 2006.

Under this Article, the introduction of a VAT group requires a Royal Decree setting out the terms according to which persons established in Belgium who, while legally independent, are closely bound to one another by financial, economic and organisational links are to be regarded as a single taxable person for the purposes of the VAT Code. As with Directive 2006/112/EC, Belgian law contains no other specific provisions.

Consequently, the VAT group scheme in Belgium complies with the system established by Directive 2006/112/EC: a single taxable person subject to the same rights and obligations as other taxable persons and to which all the provisions of the VAT Code and its implementing decrees apply *mutatis mutandis*.

8. The Royal Decree in question sets out the implementing provisions for this scheme. They were drawn up in consultation with the business community in order to ensure that the scheme is not only practical and simple to apply but can also be monitored.

This meant that it was possible to accommodate both the wishes expressed by the business community for a similar system to those in place in other countries and the State's legitimate expectations of preventing possible abuses.

9. The Decree was amended in accordance with the opinion of the Belgian Council of State, except as regards:

- Limiting the scope of the draft Decree to companies with legal personality that are taxable persons: This limitation does not correspond to the wording of the law or to that of the Directive.

- The proposal to replace the system for granting power of attorney to the group's representative with a contract between the members: To set up a VAT group, it is enough to appoint one member as representative.

- The need to specify that a decision to refuse to allow a VAT group to be set up must be substantiated: The requirement to inform the taxpayer of the exact reasons for the refusal is clearly conveyed by leaving the text as it is.

10. The Decree will enter into force on 1 April 2007 with a view to protecting existing

jobs in centres of excellence, headquarters and group operations and quickly attracting foreign investors. This date has also been chosen by the authorities and the business community for practical reasons.

Furthermore, the date of entry into force in no way conflicts with the European procedure set out above. However, it does require the Decree to be published as soon as possible in order to enable both the business community and the authorities to make all the necessary arrangements.

3. How a VAT group works

11. In line with the above legal framework, a VAT group constitutes a single taxable person which replaces its members for the purposes of VAT and is subject to all the provisions of the VAT Code and its implementing decrees *mutatis mutandis*. Consequently, it is not possible to belong to more than one VAT group.

A VAT group is considered to be a single taxable person and therefore has a single VAT number. This number is to be used for submitting the VAT group's periodic return, keeping the group's VAT accounts and setting up any special accounts, as well as for any additional taxation and for all payment and collection procedures imposed by the authorities.

The general operation of the VAT group can briefly be described as follows:

3.1. Internal and external transactions

12. The VAT group is a single taxable person both as regards goods and services obtained from third parties and as regards transactions carried out in relation to these third parties. Consequently:

- supplies of goods and services between members of a VAT group do not fall within the scope of VAT;
- for VAT purposes, supplies of goods and services by third parties to individual members are regarded as supplies to the VAT group;
- imports and intra-Community acquisitions of goods by individual members are deemed to have been carried out by the VAT group;
- goods and services supplied by individual members are deemed to have been supplied by the VAT group.

These implications apply to all supplies of goods and services without exception (this approach is consistent in that of the VAT Committee: see Taxud/1830/06, working document No 528, p. 9).

3.2. Deductions and corrections

13. Articles 45 to 49 of the VAT Code and the rules laid down by Royal Decree No 3 of 10 December 1969 on deductions for the purposes of value added tax (*l'arrêté royal n°3 du 10 décembre 1969 relatif aux déductions pour l'application de la taxe sur la valeur ajoutée*) apply to VAT groups.

In other words, as is the case for all taxable persons, the right to deduct input VAT on goods and services acquired by the VAT group from third parties depends on the end use of these goods and services by the members of the group. This also applies to the right to deduct VAT on capital goods within the meaning of the VAT Code (e.g. buildings).

The rules governing corrections to VAT deducted also apply.

14. The burden of proof regarding end use lies with the VAT group. In brief, the right to deduct (and to make any necessary corrections) can be illustrated as follows:

- If the end use is immediately identifiable or if it will be possible to identify it precisely at a later stage, VAT will be deductible or non-deductible depending on this use.

- If the end use is mixed (e.g. because the goods or services are used by group members other than the member that acquired them), the deduction is to be determined as follows:

  - Until such time as the end use of the goods or services can be verifiably determined, the deductible VAT shall be calculated on the basis of the VAT group's general deductible proportion. Where appropriate, it may be calculated on the basis of the particular proportion of the individual member that received the goods or services in question, provided that this can be verifiably ascertained.

  - As soon as the VAT group is authorised to use the actual application method and the end destination of the goods and services in question can be verifiably determined (e.g. on the basis of formulas allowing the goods and services to be allocated to the intra- or extra-group activities undertaken by the members that acquired them), input VAT may be deducted (or corrected) accordingly.

- If the end use cannot be verifiably determined, input VAT will be deductible on the basis of the VAT group's general proportion.

15. It therefore follows that, as long as the actual use of the goods and services acquired cannot be established to the satisfaction of the authorities, the group's general proportion applies.

In this respect, it should be borne in mind that the obligation to keep proper accounts, as laid down in Article 14 of Royal Decree No 1 of 29 December 1992 on measures intended to guarantee payment of value added tax (*arrêté royal n^{o} 1 du 29 décembre 1992 relatif aux mesures tendant à assurer le paiement de la taxe sur la valeur ajoutée*), applies in full in this case.

3.3. Geographical limitation, accompanying measures, and joint and several liability

16. In line with the principle of territoriality enshrined in tax law, only those with taxable person status in Belgium (i.e. Belgian establishments of Belgian or foreign companies, subject to the conditions set out in Circular No 4/2003) may be members of a VAT group. A fixed establishment of a foreign company may therefore form part of a Belgian VAT group, but foreign establishments of foreign or Belgian companies are excluded.

17. The Belgian VAT group scheme is based on the premise that this arrangement applies only to taxable persons established in Belgium. In order to prevent companies using VAT groups to evade Belgian VAT by outsourcing their operations abroad (problem of parent company/branch and channeling), appropriate legal and administrative accompanying measures will be taken pursuant to the second paragraph of Article 11 of Directive 2006/112/EC.

18. Finally, as the VAT group is itself a taxable person with the rights and obligations laid down in the VAT Code and its implementing decrees, it follows that its members are jointly and severally liable to the State for the VAT debts of the group as a whole.

3.4. Incorrect application of the rules on tax groups

19. If taxable persons incorrectly apply the rules on VAT groups and therefore fail to enter the VAT due into their accounts, they bear the full consequences in terms of tax payments, fines and interest payments in accordance with the VAT Code.

4. Analysis of the individual provisions of the Royal Decree

4.1. Article 1 – optional nature and scope

20. Subject to the situation discussed below, the VAT group scheme is optional. A VAT group may be formed only if that option is exercised by the group and, in principle, by the individual members.

The optional nature of the system is necessary so as not to impose VAT group status on groups of companies which do not (or do not yet) have the administrative and financial framework to apply it. The principle of optional formation of the group is, after all, accepted by most of the other Member States that have introduced a VAT group scheme.

The individual option available to the members is intended to prevent the formation of a VAT group with so many members that it would be difficult to manage or monitor.

21. However, with regard to legal persons, if a company that belongs to a VAT group has a direct holding of more than 50% in another company, the participation conditions (see below) for the formation of a VAT group are assumed to have been met and the company in question must, in principle, be included in the VAT group.

Only direct holdings of more than 50% are taken into account. For example, the presumption does not apply to a subsidiary in which its three parent companies each have a 33% holding, even if all three are members of the VAT group.

Furthermore, given the fact that only entities established in Belgium may be members of the VAT group (see below), the presumption does not apply if the subsidiary is located outside Belgium.

This presumption and the associated obligation apply on a "cascade" basis. For each of the members of the group, it will be necessary to check which of their subsidiaries are in this situation (likewise for the sub-subsidiaries of these subsidiaries).

22. The combination of option and presumption can be illustrated as follows. For a

group of companies in which the main holding company A has two direct subsidiaries B and C, with more than a 50% holding in each, and these subsidiaries in turn have a direct holding (also of more than 50%) in subsidiaries D and E respectively, the following hypothetical situations are possible, provided that all of these companies are established in Belgium:

- A opts to form a VAT group: applying the "cascade" principle, the presumption applies to B and C and then to D and E;

- B opts to form a VAT group with C: the presumption applies to their subsidiaries, D and E;

- B and/or C form two separate VAT groups: the presumption applies to their respective subsidiaries.

23. The presumption that a subsidiary in which the parent company has a holding of more than 50% fulfils the conditions required for the formation of a VAT group, namely having financial, economic and organisational links (see below), is rebuttable.

The member representing the group will be able to submit a reasoned request to the authorities for the subsidiary to remain outside the VAT group.

This request must show that, despite the shareholder relationship, economic or organisational links with the parent company are either non-existent or only of a tenuous nature or that there are other circumstances that would justify keeping the subsidiary outside the VAT group.

In particular, these circumstances might relate to a possible need to limit the VAT group to a reasonable number of members, both for operational reasons and for monitoring purposes.

For example, these might include:

- the fact that the subsidiary's object or activities are very different from those of the rest of the group and/or its target clientele is different;

- the fact that the subsidiary is in the process of being sold, wound up or otherwise restructured.

If a subsidiary remains outside the VAT group following such a request, the presumption no longer applies to its own subsidiaries, but this is without prejudice to their right to demonstrate that, for their part, they are eligible for membership of the VAT group.

24. Except in the case of compulsory membership as set out above, the scope of the VAT group is defined according to the three cumulative conditions laid down in Article 4 §2 of the VAT Code: the group is to consist of persons established in Belgium who are closely bound to one another by financial, economic and organisational links.

For the persons concerned to be eligible for membership of the group, there must be links in all three of these areas. Consequently, each person may belong to only one VAT group.

The three conditions are deemed not to have been met in the following situation:

A company (X-CO) has legal control of a second company (Y-CO), which provides it

with IT services. If the first company (X-CO) has no influence over the management of the second company (Y-CO) or has no control over it, the condition relating to organisational links is deemed not to have been met. The second company (Y-CO) is therefore not eligible for membership of the VAT group, even if there are financial and economic links.

Article 1 §1 of the Royal Decree in question specifies the situations in which these three conditions are "met in all cases". No reference has been made in the Decree to company law, among other things. This is because of the independent nature of VAT law (see the case law of the Court of Justice in this respect) and so as not to make it dependent on any other legislation which is subject to amendment.

For the rest, the wording of the Decree conforms with Article 93*undecies* C of the VAT Code as regards the joint and several liability of the directors.

25. Only taxable persons for VAT purposes who have either a right to full or limited deduction or no right to a deduction may opt to form a VAT group. Passive holdings, which are not subject to VAT, are therefore excluded.

Moreover, the taxable persons for VAT purposes must all be established in Belgium. This also includes the fixed establishments in Belgium of foreign companies subject to VAT but excludes their head offices abroad. Foreign establishments of Belgian companies are similarly excluded.

4.2. Articles 2 to 5: commencement and cessation of the VAT group's activities

26. A VAT group is formed following the submission of a reasoned request to the Control Office responsible by the group's representative on behalf and for the account of its members. This declaration must be accompanied by a list of the group's members.

Submission of this request is deemed valid only if it is complete and is accompanied by all the documents required to prove that the conditions for forming a VAT group have been met. As long as the dossier remains incomplete in the sense that it does not contain all the elements and supporting documents needed for the authorities to assess whether all the legal requirements for the formation of a VAT group have been met with regard both to the group and to its individual members, the request is deemed invalid.

The members are free to chose their representative. This makes it possible to take account of the fact that each group has a different administrative structure.

A taxable person becomes a member of a VAT group only by opting to do so. Once this option has been exercised, the taxable person must remain a member of the VAT group until 31 December of the third year following admission to the group, provided that the membership conditions continue to be met.

Taxable persons to whom the presumption that the required links exist applies must remain members of the VAT group for the same period of time, unless they obtain permission to be excluded from it.

Following the valid submission of a request (see the second paragraph of point 26), the VAT authorities have a period of one month in which to notify the group's representative of their reasoned refusal either of a request to form a VAT group or of the exclusion of a member who is, in principle, obliged to be part of the group.

27. A VAT group ceases to exist either when the conditions for its existence are no

longer met or at the request of the group itself.

28. During the period of its existence the VAT group:

- may accept new members provided that no reasoned refusal is issued by the authorities as a result of failure to comply with the conditions;

- must, in principle, accept as new members taxable persons in which a parent company that is a member of the VAT group has a direct holding of more than 50%, unless they are excluded.

Members may leave the VAT group voluntarily, but only after 31 December of the third year following their admission to the group.

Members are obliged to leave the group when they no longer meet any one of the three conditions for membership.

Both voluntary and compulsory withdrawal from a VAT group must be notified to the VAT authorities.

Furthermore, the VAT group must ensure that, at all times, one of its members can act as its representative.

In view of the fact that requests to form or disband a VAT group and all applications to join or leave such a group are to be regarded as declarations of commencement, cessation or modification of activity within the meaning of point 1° of the first paragraph of Article 53 §1 of the VAT Code, they are also subject to the time limits laid down in Articles 2 and 3 of Royal Decree No 10 of 29 December 1969 on the manner of exercising the options provided for in the third paragraph of Articles 15 §5 and the third paragraph of Article 25ter §1 of the VAT Code, on declarations of commencement, modification or cessation of activity and on prior declarations relating to VAT (*arrêté royal n° 10 du 29 décembre 1969 relatif aux modalités d'exercice des options prévus aux articles 15, § 5, alinéa 3, et 25ter, § 1er, alinéa 3, du Code de la taxe sur la valeur ajoutée, aux déclarations de commencement, de changement, de cessation d'activité et aux déclarations préalables en matière de taxe sur la valeur ajoutée*).

4.3. Article 6: insolvency of a member or of the representative

29. If a member of the VAT group is declared bankrupt, this member shall automatically be excluded from the VAT group. In such situations, the insolvency process is managed by the receiver under the supervision of the Commercial Court. The organisational and economic links cease to exist or are at least profoundly altered.

If the member in question is the group's representative, another member must replace the insolvent member with effect from the date of the latter's exclusion from the VAT group.

The insolvency procedure is deemed to have commenced as follows:

- for bankruptcy: on the day on which the person in question was declared bankrupt in accordance with Articles 11 et seq. of the Bankruptcy Act;
- for pre-bankruptcy proceedings: on the day on which payment of debts was provisionally suspended in accordance with Article 15 of the Pre-bankruptcy Act;
- for collective settlement of debts: on the day of the admissibility ruling in accordance with Article 1675/6 of the Judicial Code.

30. However, no automatic exclusion is necessary if a member of the VAT group goes into voluntary liquidation. In this case, there is no seizure of assets, and shareholders retain their influence over the management of the company. Furthermore, it sometimes takes several financial years to wind up a company, so it cannot be assumed that its financial, economic and organisational links with the other members of the group would necessarily be broken immediately.

Where liquidation is voluntary, it is for the member to determine, under the supervision of the authorities, whether or not it still meets the conditions for membership of the VAT group.

4.4. Article 7: assumption of rights and obligations

31. As the VAT group is a single taxable person made up of its individual members, it assumes, on their behalf, all rights and obligations arising from or pursuant to the VAT Code and its implementing decrees.

It therefore follows that each person can be a member of only one VAT group.

The assumption of rights and obligations ceases and all rights and obligations with regard to VAT revert to the individual members from the moment the VAT group ceases to operate or when the members in question leave the group, whether voluntarily or compulsorily.

4.5. Article 8: entry into force

32. The Decree shall enter into force on 1 April 2007.

I have the honour to be,

Sir,
Your Majesty's humble and obedient servant,

Deputy Prime Minister and Minister for Finance,

KINGDOM OF BELGIUM

FEDERAL PUBLIC DEPARTMENT

FINANCE

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ROYAL DECREE No 55 ON THE TREATMENT OF TAXABLE PERSONS FORMING A VAT GROUP

ALBERT II, King of the Belgians,

To all, present and to come, GREETINGS.

Having regard to the VAT Code, and in particular Article 4 §2 thereof, as incorporated into the Code by the Law of 28 December 1992;

Having regard to the opinion of the Inspector of Finances given on 23 November 2006;

Having regard to the agreement given by our Minister for the Budget on 24 November 2006;

Having regard to the urgent need resulting from the fact that:

- the measure was adopted as part of the budget decision-making procedure in order to strengthen Belgium's competitiveness;

- the measure should ensure that labour-intensive activities that are currently at risk of being relocated abroad remain in Belgium;

- it should also encourage foreign investors to locate their business operations in Belgium;

the measure should therefore come into force as soon as possible and, for reasons of simplicity and practicality both for the business community and for the tax authority responsible, the date chosen in this respect should be 1 April 2007;

Having regard to Opinion No 41.802/2 of the Council of State, given on 4 December 2006;

On a proposal from our Deputy Prime Minister and Minister for Finance,

WE HAVE DECIDED AS FOLLOWS:

Article 1 §1. In so far as they are established in Belgium, taxable persons within the meaning of Article 4 §1 of the VAT Code may be regarded as a single taxable person in accordance with Article 4 §2 thereof, provided that they meet the following

cumulative conditions:

1° They are bound by close financial links. This condition shall be deemed to have been met whenever there is a direct or indirect *de jure* or *de facto* control relationship between them.

For persons other than legal persons with share capital, this financial link shall be deemed to exist whenever the majority of shares issued for business purposes are directly or indirectly owned by the same person.

2° They are bound by close organisational links. This condition shall be deemed to have been met whenever:

- they are indirectly or directly under the same *de facto* or *de jure* management; or

- their activities are organised either fully or partially in concert with one another; or

- they are directly or indirectly under the *de facto* or *de jure* control of a single person.

3° They are bound by close economic links. This condition shall be deemed to have been met whenever:

- their principal activity is of the same nature; or

- their activities are complementary, interdependent or share a common economic goal; or

- one taxable person operates wholly or partly for the benefit of the others.

§2. If a member of the VAT group has a direct holding of more than 50% in another taxable person, the latter shall be assumed to meet the conditions specified in §1, unless they can demonstrate that, in the absence of organisational or economic links or for some other reason, they are not or cannot be linked.

§3. For the purposes of this Royal Decree, taxable persons who are regarded as a single taxable person as set out in §1 shall, when taken together, be designated a VAT group.

For the purposes of this Royal Decree, a taxable person who is part of a VAT group shall be designated a member of a VAT group.

The members of the VAT group shall appoint one of their number to act in their name and on their behalf in exercising the rights and discharging the obligations of the VAT group as laid down in the VAT Code and its implementing decrees. For the purposes of this Royal Decree, the member in question shall be designated the group's representative.

§4. A taxable person may not be a member of more than one VAT group.

If a member of a VAT group acquires a direct holding of more than 50% in a taxable person who is a member of another VAT group, the latter shall cease to be a member of the VAT group to which it belonged and shall become a member of the VAT group of which its majority shareholder is a member, unless it can demonstrate, in accordance with §2, that, in the absence of organisational or economic links or for some other reason, they are not or cannot be linked.

Article 2 §1. A taxable person other than the one referred to in Article 1 §2 applies shall become a member of a VAT group if it exercises the option of joining it by granting power of attorney to the group's representative. This decision shall apply at

least until 31 December of the third year following the date stipulated in §4.

A taxable person referred to in Article 1 §2 must remain a member of the VAT group for the same period of time.

§2. The group's representative shall, by means of a power of attorney, submit a reasoned request to the appropriate VAT Control Office for and on behalf of all of its members.

The submission of this request shall be deemed valid only if it is complete and is accompanied by all the documents required to prove that the conditions set out in Article 1 §1 have been met.

The request shall be regarded as a declaration of commencement of activities as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code. However, in the same request, the group's representative may also request the exclusion from the VAT group of one or more taxable persons referred to in Article 1 §2.

§3. If the head of the Control Office referred to in §2 establishes that the VAT group does not meet or does not fully meet the conditions set out in Article 1 §1 or if the exclusion request provided for in the second paragraph of §2 is refused, the group's representative shall be notified in writing of the reasons for the decision within one month of the valid submission of the request referred to in §2.

§4. Except in the case of a refusal, the VAT group shall be regarded as a single taxable person from the first day of the month following the expiry of the time limit stipulated in § 3.

Article 3 §1. If a VAT group ceases to exist either because it no longer meets the conditions set out in Article 1 §1 or at the request of the VAT group itself, the Control Office referred to in Article 2 §2 shall be notified of this fact by means of a request for the VAT group to cease operating. This request shall be regarded as a declaration of cessation of activities as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

This request shall be submitted by the VAT group's representative by way of a power of attorney for and on behalf of all the members of the VAT group.

§2. The VAT group shall cease operating with effect from the first day of the month following that in which the request was submitted.

§3. The members of the VAT group shall notify the appropriate VAT Control Office that the VAT group has ceased operating. For the members of the VAT group, this notification is regarded as a declaration of commencement of activities as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

Article 4 §1. If a taxable person other than a person referred to in Article 1 §2

wishes to join the VAT group after it has become operational, the VAT group's representative shall, by way of a power of attorney, submit a reasoned request to the appropriate VAT Control Office for and on behalf of the member opting to join the group.

The submission of this request shall be deemed valid only if it is complete and is accompanied by all the documents required to prove that the conditions set out in Article 1 §1 have been met.

The request shall be regarded as a declaration of modification of the group's activity as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code. The decision to join the VAT group shall apply at least until 31 December of the third year following the date specified in §3.

§2. If a taxable person referred to in Article 1 §2 applies is required to join the VAT group after it has become operational, the VAT group's representative shall notify the appropriate VAT Control Office. This notification is regarded as a declaration of modification of activity as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

However, the VAT group's representative may simultaneously submit a reasoned request for that taxable person to be excluded from the VAT group.

§3. If the head of the Control Office referred to in §1 and in the first paragraph of §2 establishes that the new member does not meet the conditions set out in Article 1 §1 or if the exclusion request referred to in the second paragraph of §2 is refused, the VAT group's representative shall be notified in writing of the reasons for this decision within one month of the valid submission of the request referred to in §1 or in the second paragraph of §2.

If the head of the Control Office referred to in §1 and the first paragraph of §2 establishes that the conditions specified in Article 1 §1 have been met or that the conditions elating to the exclusion request referred to in the second paragraph of §2 or in the second paragraph of §2, the new member shall join the VAT group on the first day of the month following the expiry of the time limit stipulated in the first paragraph.

§ 4. The taxable person joining the VAT group shall notify the appropriate VAT Control Office during the month in which it is supposed to join the VAT group in accordance with the second paragraph of §3.

Article 5 §1. After expiry of the time limit specified in the first paragraph of Article 2 §1 or in Article 4 §1, the VAT group's representative shall, by way of a power of attorney, notify the appropriate VAT Control Office of a member's withdrawal from the VAT group. This notification shall be regarded as a declaration of modification of the group's activity as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

The member's withdrawal from the VAT group shall take effect from the first day of the month following this notification.

§2. A member of the VAT group must leave the group if it no longer meets the conditions set out in Article 1 §1.

The VAT group's representative shall, by way of a power of attorney, notify the appropriate VAT Control Office of a member's withdrawal from the group. This notification shall be regarded as a declaration of modification of the group's activity as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

The member's withdrawal from the VAT group shall take effect from the first day of the month following this notification.

§3. The member leaving the VAT group shall notify the appropriate VAT Control Office during the course of the month in which wit leaves the VAT group in accordance with §1 or §2.

Article 6 §1. A member who is subject to insolvency proceedings shall automatically be excluded from the VAT group.

§2. The member in question shall leave the VAT group with effect from the date on which the insolvency proceedings commenced. The VAT group's representative shall notify the appropriate VAT Control Office of the exclusion of this member by registered letter with 15 days. As far as the VAT group is concerned, this notification shall be regarded as a declaration of modification of activity as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

§3. If the VAT group's representative withdraws from the group, a replacement shall be in place from the date on which this withdrawal takes effect. A replacement shall also be appointed if the VAT group's representative steps down. Within 15 days of the representative withdrawing from the VAT group or stepping down, its new representative shall notify the appropriate VAT Control Office by registered letter that the representative has been replaced. As far as the VAT group is concerned, this notification shall be regarded as a declaration of modification of activity as referred to in point 1° of the first paragraph of Article 53 §1 of the VAT Code.

Article 7 §1. With effect from the moment specified in Article 2 §4, the VAT group shall assume, on behalf of its members, all their rights and obligations arising from or pursuant to the VAT Code and its implementing decrees.

§2. From such time as the VAT group ceases to operate, all rights and obligations under the VAT Code and its implementing decrees shall revert to the individual members.

§3. If a taxable person joins a VAT group, the group shall assume the new member's rights and obligations under the VAT Code and its implementing decrees.

§4. If a member leaves the VAT group, all rights and obligations under the VAT Code and its implementing decrees shall revert to that member.

Article 8. This decree shall enter into force on 1 April 2007.

Article 9. The Minister for Finance shall be responsible for implementing this Decree.

Done at

By order of the King:

Deputy Prime Minister and Minister for Finance,

Spain

The Spanish Tax Authority intends to establish in Spain a special scheme about VAT grouping from 1 January 2008.

This special scheme will be introduced on the basis of article 4.4, second subparagraph of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value-added tax: uniform basis of assessment. This provision prescribes:

"Subject to the consultations provided for in Article 29, each member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organizational links".

The new scheme has the following elements:

1º. It is an optional system, therefore, taxable persons decide whether or not applying it.

Anyhow, taxable persons who finally decide to apply the scheme have to notify this decision to the Tax Authority.

2º. The rule will define the concept of group depending on the percentage of sharing in the capital of the companies. Only when this sharing is bigger than 50%, the company belongs to the group. The group integrates the principal entity, the one who has the sharing bigger than 50%, and all the entities depending from that one.

Once the group is determined, the entities individually decide if they want to apply the scheme or not. In other words, it is not compulsory for all the companies that belong to the same group to apply the special scheme. It is possible that in the heart of one group, some companies choose to be excluded of the special scheme, so they would apply the VAT general scheme, while some others that come to a decision of applying the scheme do it observing the special rules of it.

3º. The content of the special scheme has two levels:

- In the first level, taxable persons that apply the scheme compensate among themselves the balances that they have with the Tax Authority. So, if there are three entities in a group that their balance is some payment to the Administration for a specific period and other two entities have the right to ask for refund, there will be a compensation among all these amounts.

  This is the level in which most of the companies will be interested in, because it increases the neutrality of the tax and reduces financial costs that are involved in its mechanism.

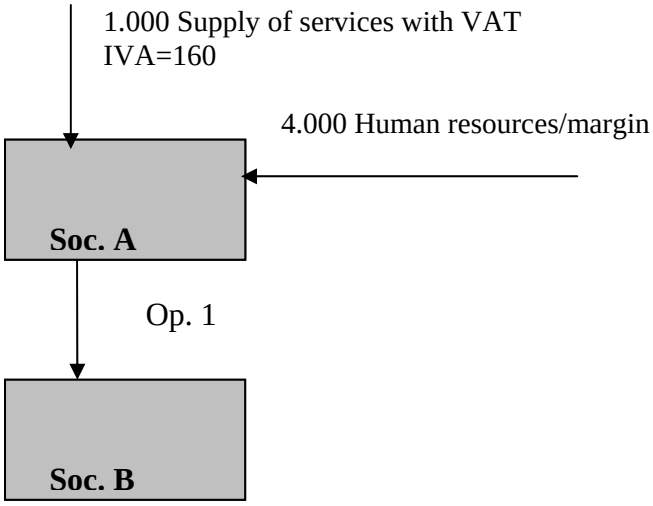
- The second level implies a special treatment to intra-group transactions, which mean transactions that take place between taxable persons that belong to the same group.

  In this second level, the special scheme lies in charging in one transaction the same VAT that should have been paid for the purchase of goods and services used in it. With this legislative technique VAT can get to the last taxable persons for whom these goods and services are supplied, with no distortion that could turn out because some other taxable persons could be intermediaries or could manage the supply.

This provision, which is optional as well for the companies, could make easier tax audits and management of the tax for taxable persons.

The provision is completed with the choice of resignation to the exemptions that could be applied to these transactions by virtue of article 13 of the Sixth Directive.

The following graphic shows how this rule works:



Taxable amount of the transaction 1 = 1.000; VAT= 160
Balance for Company A is 0.

In the opinion of the Spanish Tax Authority, the special scheme which is going to be introduced in Spain keeps the aims of article 4.4 of the Sixth Directive, because:

- It prevents taxable persons from financial costs that arise because of amounts that have to be paid to the Tax Authorities and, simultaneously, amounts that have to be refunded to other companies of the same group.

- It makes unnecessary for the companies to adopt some kind of special organization for better management of their internal transactions or supplies.

At the same time, one characteristic of the special scheme is that it is very easy to be managed, not only for companies but also for the Tax Administration.

It is a communication to that Committee according to the article 4.4 of Sixth Directive

CHAPTER IX. SPECIAL SCHEME FOR GROUPS OF COMPANIES.

Article 163d. Subjective requirements for the special scheme for groups of companies.

1. The special scheme for groups of companies may apply to traders or professionals who are part of a group of companies. A group of companies is defined as a group made up of a parent company and its subsidiaries, provided that the places of business or permanent establishment of each and every one of these lie within the territory as defined for VAT purposes.

No trader or professional may simultaneously form part of more than one group of companies.

2. The status of parent company shall be attributed to the company that meets the following requirements:

(a) Having separate legal personality. Notwithstanding this requirement, permanent establishments located within the territory as defined for VAT purposes may be attributed the status of parent company with regard to companies in which they have shares if all other requirements set out in this subparagraph are met.

(b) Having a direct or indirect holding of at least 50% of the share capital of one or more other companies.

(c) Maintaining this holding for the full calendar year.

(d) Not being dependent on any other company that is located within the territory as defined for TAX purposes and meets the requirements for parent-company status.

3. The status of subsidiary shall be attributed to companies located within the territory as defined for VAT purposes which form a trading or professional entity that is separate from the parent company but in which the parent company has a holding that meets the requirements set out in indents b and c of the previous subparagraph. Under no circumstances may a permanent establishment located within the territory as defined for VAT purposes constitute a subsidiary by itself.

4. Companies in which the parent company obtains a holding as defined in Article 163d(2)(b) shall join the group of companies with effect from the calendar year following the acquisition of the shareholding. For newly established companies, membership of the group shall become effective, where appropriate, as soon as the company in question has been set up, provided that the remaining requirements for membership of the group have been met.

5. Subsidiaries that lose their subsidiary status shall be excluded from the group with effect from the tax period during which this occurred.

Article 163e. Conditions for the application of the special scheme for groups of companies.

1. The special scheme for groups of companies shall apply when the companies that meet the requirements set out in the previous Article individually agree to this and opt to apply the scheme. Their decision shall remain effective for a minimum of three years, provided that the conditions governing the application of the special scheme continue to be met. This decision shall automatically be extended unless revoked in accordance with Article 163h(4)(1) of this Law. The decision shall be revoked in the same way as it was adopted, and this revocation shall remain effective for a minimum of three years. In any case, application of the special scheme shall be conditional upon its application by the parent company.

2. The agreements referred to in the previous subparagraph shall be adopted by the Executive Boards, or equivalent, of the companies in question before the start of the calendar year from which the special scheme is to apply.

3. Companies that subsequently join the group and decide to apply this special scheme shall fulfil the obligations referred to in the previous subparagraphs before the start of the first calendar year in which the scheme is to apply.

4. Failure to adopt the agreements referred to in subparagraphs 1 and 2 of this Article in time or in the correct manner shall result in the companies in question being unable to apply the special scheme for groups of companies, but this is without prejudice to its application by the other companies in the group, where appropriate.

5. The group of companies may opt to apply Article 163g(1) and (3) of this Law, in which case they must comply with Article 163h(4)(3) thereof.

This option shall include all companies that apply the special scheme and are part of the same group of companies. It must be agreed in accordance with subparagraph 2 of this Article.

Exercising this option entails the power to waive the right to exemptions under Article 20(1) of this Law with regard to the transactions referred to in Article 163g(1) hereof. However, this is without prejudice to the exemption, where appropriate, of other transactions carried out by companies applying the special scheme for groups of companies. This waiver may be invoked subject to the requirements, restrictions and conditions laid down by law.

Article 163f. Circumstances leading to forfeiture of the right to apply the special scheme for groups of companies.

1. The special scheme set out in this Chapter shall cease to apply in the following situations:

1. In the event of the occurrence of any of the circumstances which, in accordance with Article 53 of General Tax Law 58/2003 of 17 December 2003, govern the application of the indirect estimation method.

2. In the event of failure to comply with the requirement to establish and maintain the data system referred to in Article 163h(4)(3) of this Law.

If the special scheme set out in this Chapter ceases to apply for any of the above reasons, this shall not preclude the imposition of the penalties provided for under Article 163h(7) of this Law.

2. The special scheme for groups of companies shall cease to apply, as set out in the previous subparagraph, with effect from the tax period during which any of the above circumstances arise. All members of the group must thenceforth comply with all the requirements laid down by this Law.

3. Where one member of the group is undergoing insolvency or liquidation proceedings at the end of any tax period, the member in question shall be excluded from the special scheme for groups of companies from that tax period onwards. This is without prejudice to the continued application of the special scheme by the remaining members that meet the prescribed criteria.

Article 163g. Content of the special scheme for groups of companies.

1. If the group is exercising the option referred to in Article 163e(5) of this Law, the taxable base for supplies of goods and services within the territory as defined for VAT purposes and between members of the same group who are all applying the special scheme set out in this Chapter shall be the expenditure on the goods and services used in connection with these transactions, whether directly or indirectly, in full or in part, and on which VAT has been levied or paid. If the goods used are capital goods, the expenditure should be charged in full within the appropriate adjustment period for the goods in question, as set out in Article 107(1) and (3) of this Law.

However, for the purposes of Articles 101 to 119 and 121 of this Law, the value of these transactions shall be calculated in accordance with Articles 78 and 79 hereof.

2. As regards transactions with entities that do not form part of the same group, each group member shall comply with general VAT rules, in which case the scheme shall be of no effect.

3. When exercising the option referred to in Article 163e(5) of this Law, the transactions referred to in subparagraph 1 of this Article shall constitute a separate sector of activity which shall include the goods and services used in connection with these transactions, whether directly or indirectly, in full or in part, and on which VAT has been levied or paid.

By way of derogation from Article 101(1)(4) of this Law, traders or professionals may deduct, in full, any tax levied or paid with regard to the acquisition of goods and services intended to be used in connection with said transactions, whether directly or indirectly, in whole or in part, provided that these goods and services are used in connection with transactions in respect of which tax is deductible pursuant to Article 94 hereof. This deduction shall be based on the intended use of the aforementioned goods and services and may be adjusted if they are put to a different use.

4. The deductible portion for the individual traders or professionals that make up the group of companies shall be calculated by applying Chapter I of Title VIII of this Law in conjunction with the special rules set out in subparagraph 3 above. These deductions shall be made individually by each one of the traders or professionals applying the special scheme for groups of companies.

Once the deductible portion has been calculated for each of these traders or professionals, they shall each individually exercise the right to deduct tax in accordance with the aforementioned Chapter of Title VIII.

However, if traders or professionals include a compensation amount based on one of their individual TAX returns in the group's joint tax return, no compensation may be made for this amount in any subsequent individual tax returns, irrespective of whether or not the special scheme for groups of companies continues to apply.

5. If any of the transactions carried out by a member of the group of companies are eligible for any of the other special schemes set out in this Law, deductions shall be made for these transactions according to the system that applies under those schemes.

Article 163h. Specific requirements under the special scheme for groups of companies.

1. Companies applying the special scheme for groups of companies shall be subject to the TAX requirements set out in this Chapter.

2. The parent company shall be the group's representative before the tax authorities and, as such, it must comply with the specific material and substantive tax requirements arising from the special scheme for groups of companies.

3. Both the parent company and all of the subsidiary companies must comply with the requirements set out in Article 164 of this Law, with the exception of payment of sums owed and claims for compensation or refunds, in respect of which companies should proceed as set out under point 2 of the next subparagraph.

4. Without prejudice to its own obligations or the requirements, restrictions and conditions laid down by law, the parent company shall be responsible for complying with the following requirements:

1. Communicating the following information to the tax authorities:

a) Compliance with the prescribed requirements, adoption of the appropriate agreements and the decision to apply the special scheme, as set out in Articles 136d and 136e of this Law. All

of this information must be notified before the start of the calendar year from which the special scheme is to apply.

b) A list of the companies in the group applying the special scheme, highlighting, where appropriate, any changes in the composition of the group in comparison to the previous year. This information must be submitted each December for the following calendar year.

c) The decision to withdraw from the special scheme, which must be taken in December of the calendar year preceding the one in which it is to take effect, both as regards the withdrawal of the whole group of companies from the special scheme and as regards the withdrawal of individual companies.

d) The decision to exercise the option set out in Article 163e of this Law, which must be taken in December of the calendar year preceding the one in which it is to take effect.

2. Submitting the joint periodic TAX returns for the group and, where appropriate, paying any sums owed or claiming any compensation or refunds that may be due. Joint tax returns shall include the totals from the individual TAX returns submitted by the companies applying the special scheme for groups of companies.

Periodic tax returns for the group as a whole should be submitted after each company applying the special scheme for groups of companies has submitted its individual periodic tax return.

The tax period for companies applying the special scheme for groups of companies shall correspond to the calendar month, irrespective of their turnover.

If, for a given tax period, the total compensation amount for the companies applying the special scheme for groups of companies exceeds the total amount to be paid for that tax period by the other companies applying the scheme, the surplus amount may be compensated for in subsequent joint tax returns, provided that less than four years have elapsed since the submission of the individual tax returns from which the amount is derived.

The group of companies may, however, opt for a refund of the existing surplus if this is appropriate under Chapter II of Title VIII of this Law, in which case this surplus may not be compensated for in subsequent joint tax returns, irrespective of the time taken before the refund is paid. Articles 115(2) and 116 of this Law shall not apply to traders or professionals who opt to apply the group scheme.

Pursuant to Article 121 of this Law, if the special scheme for groups of companies ceases to apply while there are compensation amounts still outstanding for members of the group, these amounts shall be allocated to the companies in question pro rata in accordance with their turnover in the last calendar year in which the special scheme applied.

3. Establishing an analytical data system that uses reasonable criteria to attribute goods and services used, whether directly or indirectly, in whole or in part, in connection with the transactions referred to in Article 163g(1) of this Law. This system must show each successive use of the goods and services up to and including their end use outside the group.

The data system must include a note explaining the attribution criteria used. These must be the same for all companies in the group and are to be retained for all tax periods in which the special scheme applies, unless there are good reasons for changing them, which must be explained in the note.

This data system must remain in place throughout the limitation period.

5. If a member of the group of companies submits its individual tax return late, additional charges and interest shall be payable, where appropriate, in accordance with Article 27 of General TAX Law 58/2003 of 17 December 2003. The fact that the amount submitted in the individual TAX return was originally included in a joint tax return for the group as a whole shall have no bearing upon this.

If the joint TAX return for the group as a whole is submitted late, the charges set out in Article 27 of General TAX Law 58/2003 of 17 December 2003 shall apply to the total amount included in that tax return. Payment of these charges shall be the responsibility of the parent company.

6. The companies applying the special scheme for groups of companies shall be jointly and severally responsible for paying any sums owed under this special scheme.

7. Failure to establish or maintain the data system referred to in point 3 of subparagraph 4 shall be deemed to constitute a serious tax infringement on the part of the parent company. The penalty imposed shall take the form of a fine amounting to 2% of the group's turnover.

Errors or omissions in the data system referred to in point 3 of subparagraph 4 shall be deemed to constitute a serious tax infringement on the part of the parent company. The penalty imposed shall take the form of a fine amounting to 10% of the value of those third-party goods and services to which the error or omission relates.

In accordance with Article 180(3) of General TAX Law 58/2003 of 17 December 2003, the penalties referred to in the two previous subparagraphs shall be compatible with those imposed under Articles 191, 193, 194 and 195 thereof. As a result of the failure to establish the data system referred to in point 3 of subparagraph 4 or the failure to maintain it or to do so correctly, the imposition of the penalties set out in this subparagraph shall prevent the infringements described in Articles 191 and 193 being classified as serious or very serious.

The parent company shall be held responsible for any infringements of the specific requirements of the special scheme for groups of companies. The other group members applying the special scheme shall be jointly and severally responsible for paying these fines.

The individual group members applying the scheme shall bear responsibility for any infringements arising from their failure to comply with their own tax obligations.

8. Measures intended to verify proper compliance with the obligations on the part of the companies applying the special scheme for groups of companies shall be taken with regard to the parent company, as the group's representative. Such measures may also be taken with regard to its subsidiaries, which must comply with any requests made by the tax authorities.

Verification or inspection measures taken with regard to any member of the group shall interrupt the limitation period for the group as a whole, taking effect as soon as they are officially notified to the parent company.

Reports and assessments issued following the verification of this special scheme shall be made available to the parent company.

Application of this special scheme is deemed to constitute a situation of particular complexity in accordance with Article 150(1) of General Tax Law 58/2003 of 17 December 2003.

Ireland

Re: Consultation by Ireland under Article 29 of Directive 77/388/EEC

Dear Sir,

I refer to our previous correspondence and discussions at the meeting of the VAT Committee of 8 November 2006. Since then we have been considering our position on the question of supplies between a Head Office and a Branch, where either is a member of an Irish VAT Group. We have also commenced the process of amending the legislation in line with the consultation. The revised legislation will become law at the end of this month.

Head Office to Branch supplies:

At that meeting two issues arose one of which was the VAT treatment of supplies of services between a Head Office and a Branch where the Head Office is located in another Member State and the branch is located in Ireland and is also a member of a VAT group. You had previously identified a number of suggestions as to how the supplies should be treated as well as referring to an important decision of the ECJ in the FCE case which dealt with the issue of Head office to Branch supplies.

As you are aware, it has been Ireland's position up to now that, where no VAT group existed, the supplies between the Head Office and the Branch were ignored for VAT purposes. This is because both are regarded as the same legal entity and a legal entity cannot provide services to itself. However, where the Branch was a member of an Irish VAT group, it was no longer regarded as the same taxable person as its parent abroad and in such circumstances services received by the Branch from its parent were taxable in Ireland on a reverse charge basis. If the branch was engaged in an exempt activity the VAT chargeable would not be recoverable.

Following the decision of the ECJ in the case of FCE Bank pic (C 210/04) and in the light of comments made in Working Paper No 528 (TAXUD/18360/06-EN), we are reviewing our treatment of Head Office to Branch supplies where the Branch is a member of a VAT group

- you will be aware that our previous approach was based on earlier advice from the Commission, and that the FCE case did not deal with the question of supplies between a Head office in one country and a Branch which is a member of a VAT group in another country. Our concern is that the VAT group structure could be abused to create a conduit for taxable supplies of services to be received without any VAT liability by exempt members of a VAT group We would welcome the Commission's view on how such abuse could be prevented if the FCE ruling were to apply to entities which have a branch in a VAT group abroad.

Holding Companies:

It has come to our notice that it has been the practice in this country to treat the parent company of a group of companies as a member of a VAT group when the group of companies is itself a VAT group. This has occurred even in cases where that parent company might not be considered a taxable person in its own right. This was done on the basis that the 6th Directive merely referred to 'persons established in the territory of the

country[5] and hence it was considered that a holding company whose only business was the holding of shares in a trading group could be regarded as member of the VAT group which contained the other members of the trading group.

From a practical point of view, it appears that this approach suits both business and the Revenue authorities. It effectively eliminates any VAT on intergroup transactions and simplifies the accounting for VAT on such transactions. In addition, it was pointed out to us that the holding company would be person who would most naturally fit into the role of group remitter of VAT. Finally, while the holding company may not be carrying on any trading activities in the normal sense, the practice in many cases is that services that are shared within the group and received from abroad would be received by the holding company and it is the holding company that would account for the VAT on these services in accordance with Article 56 of Council Directive 2006/112/EC. On the basis of receiving such services for the benefit of the other companies within the business group, the parent company would be considered a taxable person, in the absence of VAT grouping.

We are conscious that this is somewhat at variance with the information already provided as regards holding companies. We apologise that a wrong impression may have been created inadvertently. The practice of including such companies in groups was brought to our notice in the course of discussions concerning the amending legislation. While we have no record of having formally approved such a practice, we are satisfied that it is possible under the national legislation and under the VAT Directives.

If you have any views on these matters or require further clarification please let me know.
Your sincerely,

[redacted]

Head of Delegation.

United Kingdom

Consultation under Article 11 of 2006/112/EC - VAT Grouping measures

1. The UK is aware that the October VAT committee will consider a number of consultations on VAT grouping. As a result of this, and the previous VAT Committee discussions, UK decided to carry out a detailed review of changes made to its VAT grouping legislation.

2. This review identified two minor measures which have not been the subject of consultation. The two measures involve ensuring the proper working of existing VAT grouping regulations in the UK. We are not convinced that VAT Committee consultation of these measures is necessary. However, if the Commission's view is that the UK ought to have consulted, the UK asks that this notification be treated as a consultation in accordance with Article 398 to discharge our obligations.

3. The first change was made in 1996 to prevent multinational VAT groups from obtaining an unfair tax advantage by getting services from abroad tax free. This change to the legislation blocked a specific tax avoidance scheme whereby taxable services (such as accountancy or advertising) were supplied from a business in another EU Member State to a UK business entirely VAT-free by routing the services to another Member State or outside the EU, and then back into the UK VAT group. See **Annex A** for detailed technical analysis of the scheme and how this was tackled by the UK.

4. The second change was made in 2004 to stop a misuse of VAT grouping whereby a jointly owned company was able to join a VAT group, even though that company was run by and for the benefit of an external third party. The change excludes a company from a VAT group where it is not treated as part of the group for accounting purposes, or most of the benefit of its activities goes to a third party outside the group. See **Annex B** for detailed technical analysis.

5. It is clear, that both the 1996 and 2004 changes were made to stop unacceptable misuse of the UK's VAT grouping provisions. The changes were targeted anti-avoidance rules which prevented certain businesses from exploiting the simplicity of our approach. Neither of these measures changed the UK's VAT grouping rules in a material way. These anti-avoidance measures were justified under the terms of Directive 77/388, then in force, as each measure defended the integrity of the tax by ensuring that VAT is payable on supplies that ought to be taxable in accordance with the aims of the Directive.

6. The UK notes that this position was accepted by the Commission when the UK previously consulted the VAT Committee on measures introduced under Article 4(4) of the Directive 77/388. It is clear that these measures are now permissible because they fall squarely within the second paragraph of Article 11 of the 2006/112 (the VAT Directive).

7. In the interest of openness, the UK is happy to discuss this in detail during the October meeting and we feel that this is an opportune time to put these changes before you.

Annex A

Avoidance measure to combat avoidance of the 'reverse charge'

1. Under Article 196 of the VAT Directive, the recipient of certain services is liable to pay the VAT, rather than the supplier – a 'reverse charge'.

2. This means that, for example, where a Netherlands-based business (with no fixed establishment in the UK) supplies accountancy services to a UK-based business, the UK based business is liable to pay VAT on the supply in order to ensure VAT is paid in the Member State of consumption.

3. This anti-avoidance measure in UK legislation blocks a specific VAT avoidance scheme whereby taxable services (such as accountancy or advertising) were supplied from a business in another EU Member State to a UK business entirely VAT-free by routing the services via another Member State or outside the EU, and then back into the UK VAT group.

4. With effect from 26 November 1996, the UK introduced a VAT charge (like a reverse charge) payable by the representative member of a VAT group, where certain services are purchased outside the UK by a member of the VAT group which is established or has a fixed establishment outside the UK (as well as within the UK). This charge is based upon the value of the supplies purchased by the overseas member.

5. A brief example of the scheme and how the anti-avoidance legislation stopped it is outlined below, referring to the diagram at the end of this annex.

Step 1

An EU supplier of consultancy services (NLP) based in a Member State, supplies Article 56 services to a US Company (AB Inc). These services are meant for the UK Company (CD), but are routed through AB Inc's headquarters based in the US. There is no VAT due from NLP, since the place of supply is in the US.

Step 2

The bought in service from NLP is used to make intra-group supplies in the UK VAT group. This is possible because AB Inc is a member of ABCD VAT group in the UK. It has fixed establishment in the UK and meets all the VAT grouping control conditions. AB Inc provides supplies to CD Ltd using the "bought in" services that were routed through the US. These intra-group supplies are within the ABCD VAT group. So they are disregarded for VAT purposes.

The change

6. This mischief was tackled by ensuring that a Step 2 supply of Article 56 services from an overseas member (AB Inc) to a UK member of a VAT group (CD) is not disregarded if the overseas member has bought in Article 56 services from outside the group and used them to make the supply which would otherwise be disregarded.

7. Under Section 43(2B) of the UK VAT Act, the Step 2 supply from the overseas group member to the UK member of the VAT group is treated as a taxable supply made in the UK by the VAT group to itself. The VAT group therefore has to account for output VAT on this supply and treat the same amount as input VAT.

8. This has no effect if the VAT group can deduct all input VAT it is charged. However, if it makes exempt supplies, it cannot deduct this VAT, or can only deduct part of it, in accordance with its right to deduct provisions under Art 173-175 of the VAT Directive.

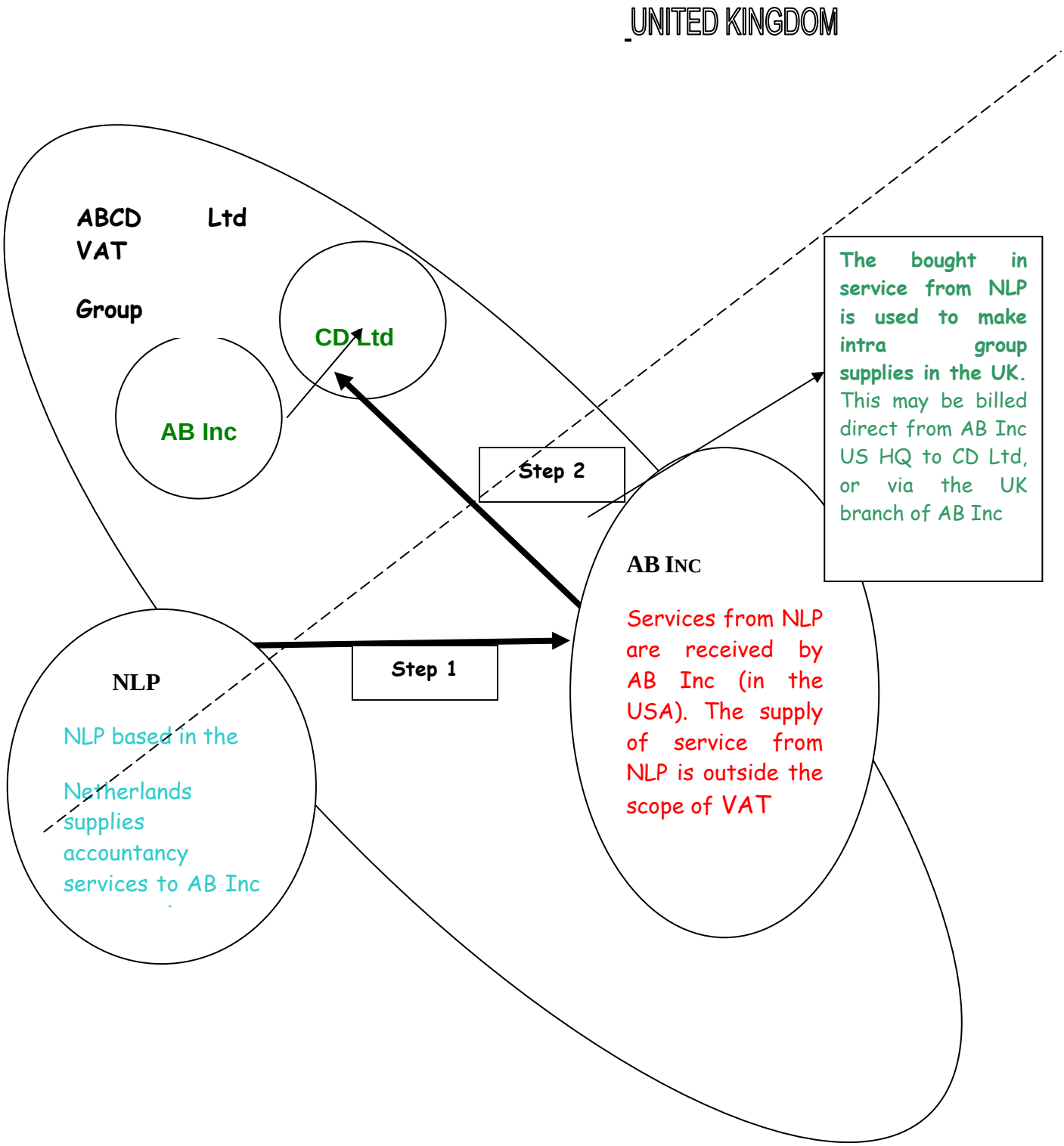
9. If the Step 2 supply is higher value than the Step 1 supply, VAT is charged only on the value of the Step 1 supply. This avoids charging VAT on the value added within the VAT group, and gives the same result as if the scheme had not been undertaken at all (that is, NLP had supplied CD directly).

10. The approach of taxing the Step 2 supply was adopted rather than challenging the place of the Step 1 supply, because the original supplier ('NLP' in the example) could be an innocent party who genuinely believed that the services were received outside the EU. This legislative change stopped this VAT avoidance scheme.

11. The scheme still works if the services from NLP are routed through another EU Member State rather than through a country that is outside of the EU. This means that on receiving the Step 1 supply from NLP, AB Inc will be subject to reverse charge VAT in that other EU Member State. However AB Inc can recover this VAT as attributable to the onward Step supply to CD (since that other Member State does not recognise the UK VAT group). If there is no UK VAT on Step 2, CD will have received a tax free service, however this cannot be right as the service in question is a taxable service that is provided entirely within the EU. We cannot tax Step 1 since that is already taxed in another Member state, therefore to ensure the correct operation of VAT law we tax at Step 2.

Annex A – Cont'd

Avoidance measure to combat avoidance of the 'reverse charge'



Annex B

Misuse of VAT grouping by jointly owned companies

1. Article 11 of the VAT Directive provides that a Member State may allow VAT grouping for persons bound by "financial, economic and organisational links". The UK has implemented this by a simple test which achieves the aim of the Directive while being simple for business to operate.

2. A VAT group can exist in the UK where a number of corporate bodies are controlled by the same person(s) (whether or not it is/ they are in the VAT group). 'Control' is defined by national legislation regulating UK corporate bodies.

3. In the past the UK encountered an avoidance scheme which manipulated the 'control' rules to avoid VAT on outsourced services. Under this scheme, a corporate body was introduced to a VAT group and provided services to other group members. These services were disregarded for VAT purposes.

4. However, although the supplier of the services was in formal legal terms under the same 'control' as the other group members, in reality it was controlled by a third party (which partially owned it). This scheme therefore had the effect of enabling taxable services to be provided to the VAT group by a third party, although technically they were treated as occurring within the VAT group, and the profits to be siphoned away (for example through dividends), without a VAT charge arising.

The change

5. With effect from 1 August 2004 the UK introduced legislation to block this VAT avoidance scheme by identifying corporate bodies using the scheme and excluding them from VAT grouping. Where a corporate body is effectively managed or controlled by a third party, it has to satisfy not only the control conditions, but it also has to satisfy two additional control conditions based upon the benefits and groups accounts consolidation test.

Benefits test

6. This condition is satisfied where no more than 50% of the direct or indirect benefits of the business activities in question accrue to one or more third parties;

Consolidation test

7. The consolidated accounts condition: this condition is satisfied where, according to normal accounting practice, the accounts of the body corporate in question are consolidated in the accounts of the VAT group (or would be if consolidated accounts were produced).

8. This change gave businesses legal certainty, and it effectively prevented the misuse of VAT grouping and consequent revenue loss because it ensures that only companies under common control can be in a UK VAT group.

Annex C

UK Legislation

1) Anti Avoidance measure to combat avoidance of the 'reverse charge'

Section 43 Groups of companies

…

(2A) A supply made by a member of a group ("the supplier") to another member of the group ("the UK member") shall not be disregarded under subsection (1)(a) above if—

(a) it would (if there were no group) be a supply of services falling within Schedule 5 to a person belonging in the United Kingdom;

(b) those services are not within any of the descriptions specified in Schedule 9;

(c) the supplier has been supplied (whether or not by a person belonging in the United Kingdom) with [any services falling within paragraphs 1 to 8 of Schedule 5 which do not fall within any of the descriptions specified in Schedule 9;]

(d) the supplier belonged outside the United Kingdom when it was supplied with the services mentioned in paragraph (c) above; and

(e) the services so mentioned have been used by the supplier for making the supply to the UK member.

(2B) Subject to subsection (2C) below, where a supply is excluded by virtue of subsection (2A) above from the supplies that are disregarded in pursuance of subsection (1)(a) above, all the same consequences shall follow under this Act as if that supply—

(a) were a taxable supply in the United Kingdom by the representative member to itself, and

(b) without prejudice to that, were made by the representative member in the course or furtherance of its business.

(2C) Except in so far as the Commissioners may by regulations otherwise provide, a supply which is deemed by virtue of subsection (2B) above to be a supply by the representative member to itself—

(a) shall not be taken into account as a supply made by the representative member when determining any allowance of input tax under section 26(1) in the case of the representative member;

(b) shall be deemed for the purposes of paragraph 1 of Schedule 6 to be a supply in the case of which the person making the supply and the person supplied are connected within the meaning of section 839 of the Taxes Act (connected persons); and

(c) subject to paragraph (b) above, shall be taken to be a supply the value and time of which are determined as if it were a supply of services which is treated by virtue of section 8 as made by the person by whom the services are received.

(2D) For the purposes of subsection (2A) above where—

(a) there has been a supply of the assets of a business of a person ("the transferor") to a person to whom the whole or any part of that business was transferred as a going concern ("the transferee"),

(b) that supply is either—

(i) a supply falling to be treated, in accordance with an order under section 5(3), as being neither a supply of goods nor a supply of services, or

(ii) a supply that would have fallen to be so treated if it had taken place in the United Kingdom,

and

(c) the transferor was supplied with services falling within paragraphs 1 to 8 of Schedule 5 at a time before the transfer when the transferor belonged outside the United Kingdom,

those services, so far as they are used by the transferee for making any supply falling within that Schedule, shall be deemed to have been supplied to the transferee at a time when the transferee belonged outside the United Kingdom.

(2E) Where, in the case of a supply of assets falling within paragraphs (a) and (b) of subsection (2D) above—

(a) the transferor himself acquired any of the assets in question by way of a previous supply of assets falling within those paragraphs, and

(b) there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling within that Schedule, would be deemed by virtue of that subsection to have been supplied to the transferor at a time when he belonged outside the United Kingdom,

that subsection shall have effect, notwithstanding that the services have not been so used by the transferor, as if the transferor were a person to whom those services were supplied and as if he were a person belonging outside the United Kingdom at the time of their deemed supply to him; and this subsection shall apply accordingly through any number of successive supplies of assets falling within paragraphs (a) and (b) of that subsection.

2) Anti avoidance measure to combat diversion of benefits

Section 43AA Power to alter eligibility for grouping

(1) The Treasury may by order provide for section 43A to have effect with specified modifications in relation to a specified class of person.

(2) An order under subsection (1) may, in particular—

(a) make provision by reference to generally accepted accounting practice;

(b) define generally accepted accounting practice for that purpose by reference to a specified document or instrument (and may provide for the reference to be read as including a reference to any later document or instrument that amends or replaces the first);

(c) adopt any statutory or other definition of generally accepted accounting practice (with or without modification);

(d) make provision by reference to what would be required or permitted by generally accepted accounting practice if accounts, or accounts of a specified kind, were prepared for a person.

(3) An order under subsection (1) may also, in particular, make provision by reference to—

(a) the nature of a person;

(b) past or intended future activities of a person;

(c) the relationship between a number of persons;

(d) the effect of including a person within a group or of excluding a person from a group

(4) An order under subsection (1) may—

(a) make provision which applies generally or only in specified circumstances;

(b) make different provision for different circumstances;

(c) include supplementary, incidental, consequential or transitional provision.

2 Misuse of VAT grouping by jointly owned companies

The Value Added Tax (Groups: eligibility) Order 2004 (No. 1931)

Citation and commencement

1. This Order may be cited as the Value Added Tax (Groups: eligibility) Order 2004 and comes into force on 1st August 2004.

Modification regarding section 43A of the Value Added Tax Act 1994

2. A body corporate that is a specified body is eligible to be treated as a member of a group if, in addition to satisfying the conditions set out in section 43A(1) of the Value Added Tax Act 1994 ("the Act"), it satisfies both the benefits condition and the consolidated accounts condition.

Specified bodies

3. — (1) A body corporate to which this article applies is a specified body for the purposes of this Order if it carries on a relevant business activity and —

(a) the value of the group's supplies in the year then ending has exceeded £10 million; or

(b) there are reasonable grounds for believing that the value of the group's supplies in the year then beginning will exceed that amount.

(2) For the purposes of determining the value mentioned in sub-paragraph (b) of paragraph (1), a body that is not a member of the group shall be deemed to be a member.

(3) Subject to paragraph (4), this article applies to a body corporate which, at any time when the relevant business activity is being carried on—

(a) is not a wholly-owned subsidiary of a person who controls all of the other members of the group (or, where the person is or will be a member of the group, all of the other members apart from himself);

(b) is managed, directly or indirectly, in respect of the business activity concerned, by a third party in the course or furtherance of a business carried on by him; or

(c) is the sole general partner of a limited partnership.

(4) This article does not apply to—

(a) a body corporate that controls all of the members of the group (or, where it is a member of the group, all of the members apart from itself);

(b) a body corporate whose activities another body corporate is empowered by statute to control;

(c) a body corporate whose only activity is acting as the trustee of a pension scheme; or

(d) a charity.

(5) In this article—

(a) a body corporate is a wholly-owned subsidiary of a person if it is a wholly-owned subsidiary of his within the meaning given by section 736 of the Companies Act 1985, or would be if the person were a company;

(b) in determining whether a body corporate is a wholly-owned subsidiary of a person, the membership of any excepted individual who is not acting on behalf of another person shall be disregarded;

(c) "pension scheme" means an occupational pension scheme established under a trust and "occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993.

Relevant business activities

4. — (1) A business activity is a relevant business activity if it involves making one or more supplies of goods or services to one or more members of the group and—

(a) those supplies are not incidental to that business activity;

(b) at least one of those supplies is or would be chargeable to VAT at a rate other than zero; and

(c) the representative member is not or would not be entitled to credit for the whole of the VAT on such supplies as fall within sub-paragraph (b) as input tax.

(2) In determining for the purposes of paragraph (1) whether—

(a) a body corporate makes any supplies to any members of the group;

(b) a supply would be chargeable to VAT at a rate other than zero;

(c) the representative member would not be entitled to credit for the whole of the VAT on the supply as input tax,

a body corporate that is a member of the group shall be deemed not to be a member.

The benefits condition

5. — (1) The benefits condition is satisfied unless more than 50% of the benefits of the relevant business activity accrue, directly or indirectly, to one or more third parties.

(2) For the purposes of paragraph (1), benefits that accrue to a person in his capacity as a member of a body corporate which controls all of the other members of the group (or, where the body is or will be a member of the group, all of the other members apart from itself) shall not be regarded as accruing to a third party.

(3) The following are benefits of a business activity for the purposes of paragraph (1)—

(a) profits (whether or not distributed);

(b) charges for managing the business activity (including charges for providing staff to manage it);

(c) the amounts, if any, by which any other charges made to the body exceed the open market value F4 of the goods or services concerned.

(4) For the purposes of paragraph (1), if there are no such benefits, the business activity shall be deemed to generate profits of £100.

The consolidated accounts condition

6. — (1) The consolidated accounts condition is satisfied if—

(a) consolidated accounts prepared for a person who controls all of the other members of the group (or, where the person is or will be a member of the group, all of the other members apart from himself) would be required by generally accepted accounting practice to include accounts for the specified body as his subsidiary; and

(b) consolidated accounts prepared for a third party would not be required by generally accepted accounting practice to include accounts for the specified body as his subsidiary.

(2) For the purpose of the application of paragraph (1) at a particular time—

(a) the reference to consolidated accounts is a reference to consolidated accounts—

(i) for a period including that time, and

(ii) insofar as they relate to that time,

(b) any principle of generally accepted accounting practice that permits accounts of a subsidiary undertaking to be excluded from a consolidation as being immaterial shall be disregarded;

(c) the reference to consolidated accounts prepared for a person is a reference to consolidated accounts of a kind that could be prepared for him in accordance with generally accepted accounting practice, for which purpose it does not matter—

(i) whether accounts are actually prepared for him (whether for a particular period or at all), or

(ii) in particular, whether he is required to prepare accounts.

(3) In this article "generally accepted accounting practice"—

(a) has the meaning given by section 50(1) of the Finance Act 2004;

(b) in relation to any time when that section does not have effect, has the meaning given by section 836A of the Income and Corporation Taxes Act 1988.

Interpretation etc.

7. — (1) In determining—

(a) the value of the supplies made by a body corporate that is the sole general partner of a limited partnership (a "general partner");

(b) whether a general partner is carrying on a relevant business activity;

(c) whether the benefits condition is satisfied in relation to a general partner;

(d) whether the consolidated accounts condition is satisfied in relation to a general partner,

articles 3(1) and (2), 4(1), 5 and 6 shall apply as if references to the body or specified body, as the case requires, are references to the limited partnership.

(2) A person is a third party for the purposes of this Order if—

(a) he does not control the body corporate and all of the other members of the group;

(b) a person who controls the body corporate and all of the other members of the group does not control him; and

(c) he is not an excepted individual.

(3) An individual is an excepted individual if he is—

(a) an employee or director of the body; or

(b) where the body is a limited liability partnership, a member of the body.

(4) Any reference in this Order to "the group" is to the group of which the body corporate is a member or to which an application under section 43B(1) or (2)(a) of the Act relates, as the case may require.

(5) Any reference in this Order to a person controlling a body corporate includes a reference to his controlling the body together with one or more other individuals with whom he is carrying on a business in partnership.

Romania

CONSULTATION

For the purposes of this consultation:

- references to the Tax Code are to Law No 571/2003 on the Tax Code, published in Part I of Romanian Official Gazette No 927 of 23 December 2003, with subsequent amendments and additions;

- references to the implementing rules are to the implementing rules for Title VI of Law No 571/2003 on the Tax Code, approved by Government Decision No 44/2004, published in Part I of Romanian Official Gazette No 112 of 6 February 2004, with subsequent amendments and additions;

- references to the Directive refer to Council Directive 2006/112/EEC [sic] on the common system of value added tax.

1. "Tax group"

Romania has transposed the provisions of Article 11 of the Directive, which concern "single tax groups", by way of Article 127(8) of the Tax Code, which states that, under the conditions and subject to the limitations laid down by law, taxable persons established in Romania who, while legally independent, are closely bound to one another by financial, economic and organisational links are to be regarded as a "single tax group".

In addition, point 4 of the implementing rules lays down the following procedure for establishing a "single tax group":

"4. (1) Within the meaning of Article 127(8) of the Tax Code, taxable persons established in Romania that are closely bound to one another by financial, economic and organisational links may opt to be treated as a single tax group subject to the following conditions:

a) a taxable person may not form part of more than one tax group;

b) the option must refer to a period of at least two years;

c) all the taxable persons in the group must apply the same tax period.

(2) The tax group may comprise between two and five taxable persons.

(3) Until 1 January 2009, the tax group may comprise only taxable persons who are considered to be large taxpayers.

(4) In accordance with paragraph (1), taxable persons are considered to be closely bound to one another by financial, economic and organisational links if over 50% of their capital is directly or indirectly held by the same shareholders.

(5) An application for treatment as a tax group must be submitted to the competent tax authority signed by all the members of the group. This application must comprise the following:

a) the name, address, object and VAT registration code of each member;

b) evidence that the members are closely bound to one another within the meaning of paragraph (2);

c) the name of the member appointed as the representative.

(6) The competent tax authority will take an official decision to approve or reject the application for consideration as a tax group and will notify this decision to the group representative and to each tax authority within the jurisdiction of which the members of the tax group fall within 60 days from the date of receipt of the application referred to in paragraph (3).

(7) Application of the tax group enters into force on the first day of the second month following the date of the decision referred to in paragraph (4).

(8) The group representative will notify the competent tax authority of the following events:

a) if the option to form a single tax group referred to in paragraph (1) is to be discontinued, at least 30 days in advance;

b) if the taxable person can no longer be deemed to be a tax group because it no longer meets the conditions laid down in paragraphs (2) – (4), within 15 days;

c) the appointment of another representative of the tax group, at least 30 days in advance;

d) if a member leaves the tax group, at least 30 days in advance;

e) if a new member joins the tax group, at least 30 days in advance.

(9) In the situations referred to in (8)a) and b), the competent tax authority will annul the treatment of the taxable persons as a tax group as follows:

a) in the case referred to in (8)a), from the first day of the month following the one in which the option ceases;

b) in the case referred to in (8)b), from the first day of the month following the one in which the event giving rise to this situation occurred.

(10) In the situations referred to in (8)c) – e), the competent tax authority will take an official decision within 30 days of the date of receipt of notification and will notify this decision to the representative and to each competent tax authority responsible for the members of the tax group. This decision will enter into force with effect from the first day of the month following the one in which it was notified to the representative. Until receipt of the decision, the taxable persons who have applied for a member to leave or join the group are treated as a single tax group consisting of the members who submitted the initial application to be treated as a single tax group and which was granted by the competent tax authority. If the group applies for the appointment of another representative, the competent tax authority cancels the appointment of the representative of the tax group and, in the same notification, appoints the new representative proposed by the group members.

(11) After carrying out the related checks, the competent tax authority may:

a) annul the treatment of a person as a member of a tax group if those persons no longer meets the criteria for eligibility as a member laid down in paragraph (1). This annulment will enter into force with effect from the first day of the month following the one in which this situation was notified to the competent tax authorities;

b) annul the treatment of taxable persons as members of a tax group if that person no longer meets the criteria for eligibility as members of a tax group. This annulment will enter into force with effect from the first day of the month following the one in which this situation was notified to the competent tax authorities

(12) From the date of application of the single tax group in accordance with paragraph (7):

a) each member of the tax group, except for the representative:

1. will report in the tax return referred to in Article 156 of the Tax Code any supply of goods, any supply of services, any importation or intra-Community acquisition of goods or any other transaction carried out by or for the member during the tax period;

2. will send this tax return to the representative, with a copy to the competent tax authority;

3. will not pay any of the tax payable or request reimbursement in accordance with his tax return.

b) the representative:

1. will report in his own tax return referred to in Article 156 of the Tax Code any supply of goods, any supply of services, any importation or intra-Community acquisition of goods or any other transaction carried out by or for the member during the tax period;

2. will report in a consolidated return the results of all the VAT returns received from other members of the tax group and those of his own tax return for the tax period in question;

3. will submit to the competent tax authority all the tax returns of the members and the consolidated tax return form;

4. will pay or, as appropriate, request repayment of tax on the basis of the consolidated tax return.

(13) Each member of the tax group must:

a) submit the summary return for the intra-Community supplies and acquisitions referred to in Article 156 of the Tax Code to the competent tax authority;

b) undergo inspections by the competent tax authority;

c) be jointly and severally liable for any tax payable by himself or any member of the tax group for the period during which he belongs to that group."

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 2nd 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.

Director