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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 933**

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

ORIGIN: Italy
REFERENCE: Article 11
SUBJECT: VAT grouping

1. INTRODUCTION

The Italian authorities wish to consult the VAT Committee on the introduction of the VAT grouping scheme into their national legislation, in accordance with Article 11 of the VAT Directive¹.

The Italian provision on VAT groups will enter into force on 1st January 2018 and the scheme will be effective as from 1st January 2019.

The text of the consultation submitted by Italy is attached in annex.

2. SUBJECT MATTER

Article 11 of the VAT Directive contains the relevant provisions concerning VAT grouping within the EU:

"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 the use of this provision".

The VAT Committee has in the past discussed several issues as regards the application of this provision², and has also agreed guidelines on some of them. Those discussions should be taken into account when assessing the transposition into Italian law of Article 11 of the VAT Directive.

In particular, the VAT Committee has agreed guidelines³ as regards the territorial scope of VAT groups, following the ruling of the Court of Justice of the European Union (CJEU) in *Skandia America*⁴:

"1. The VAT Committee by a large majority agrees that in case of a legal person comprising a main establishment (hereinafter "head office") and a fixed establishment (hereinafter "branch") within different territories, only the entity (head office or branch) physically present in the territory of a Member State that has introduced the VAT grouping scheme may be considered to be "established in the territory of that Member State" for the purposes of Article 11 of the VAT Directive, and thus able to join a VAT group there.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

² See for example Working papers Nos 813, 845 and 879.

³ [Guidelines](#) resulting from the 105th meeting of 26 October 2015; Document A – taxud.c.1(2016)7465801 – 886 (p. 205).

⁴ CJEU, judgment of 17 September 2014, *Skandia America*, C-7/13, ECLI:EU:C:2014:2225.

In that respect, a large majority of the VAT Committee is of the view that the branch of a company with its head office in a third country or another Member State may, independently of its head office, become a member of a VAT group in the Member State in which the branch is established. The VAT Committee also agrees at large majority that the head office of a company with its branch in a third country or another Member State may, independently of its branch, become a member of a VAT group in the Member State in which the head office is established.

2. *The VAT Committee by a large majority confirms that by joining a VAT group pursuant to Article 11 of the VAT Directive, an entity (head office or branch) becomes part of a new taxable person for VAT purposes – namely the VAT group – irrespective of the legal person to which it belongs. The large majority of the VAT Committee also confirms that the treatment of a VAT group as a single taxable person precludes the members of the VAT group from continuing to operate, within and outside their group, as individual taxable persons for VAT purposes.*
3. *The VAT Committee, with a large majority, agrees that a supply of goods or services by one entity to another entity of the same legal person such as "head office to branch", "branch to head office" or "branch to branch", where only one of the entities involved in the transaction is a member of a VAT group or where the entities are members of separate VAT groups, shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.*

In that regard, it is the view of the large majority of the VAT Committee that for such a transaction to be taxable, it is irrelevant whether the goods or services are supplied from a third country to a Member State or vice versa, or between two Member States.

4. *The VAT Committee by a large majority agrees that a supply of goods or services between an entity of a legal person (head office or branch) established in a Member State irrespective of whether that Member State has introduced a VAT grouping scheme, and a VAT group in another Member State which includes another entity of the same legal person (branch or head office) shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met."*

Moreover, following the ruling of the CJEU in *Commission vs. Ireland*⁵ and *Commission vs. Sweden*⁶, the VAT Committee agreed the following guidelines⁷ on the type of persons who can become VAT group members:

"The VAT Committee almost unanimously agrees that although Article 11 of the VAT Directive does not preclude non-taxable persons from being included in a VAT group, a Member State availing of this option shall not be obliged to admit non-taxable persons as members of a VAT group but may restrict the application of the VAT group scheme by excluding such persons as members provided that the principle of neutrality is respected".

⁵ Judgment of 9 April 2013, *Commission vs. Ireland*, C-85/11, ECLI:EU:C:2013:217

⁶ Judgment of 25 April 2013, *Commission vs. Sweden*, C-480/10, ECLI:EU:C:2013:263

⁷ [Guidelines](#) resulting from the 101st meeting of 20 October 2014; Document C - taxud.c.1(2015)46844 – 824 (p. 181).

The VAT Committee has also discussed the meaning of "financial, economic and organisational" links which VAT group members must have in accordance with Article 11 of the VAT Directive on the basis of Working paper No 918⁸, although no guidelines have been agreed so far.

3. THE NATIONAL LEGISLATION ON VAT GROUPS

The essential elements of the Italian legislation that transposes Article 11 of the VAT Directive are described as follows:

- (1) The VAT group shall comprise taxable persons established in Italy who are closely bound to one another by financial, economic and organisational links. Fixed establishments located in Italy of taxable persons who have their main establishment in another Member State or outside the EU can also join the VAT group. On the contrary, fixed establishments of Italian companies, which are located in another Member State or outside the EU, cannot be part of a VAT group.
- (2) The scheme is not limited to certain sectors.
- (3) The eligible members of a VAT group are taxable persons established in Italy and "carrying out business or crafts or professions". Persons in ordinary liquidation or subject to bankruptcy proceedings cannot be part of a VAT group.
- (4) The VAT group is formed as a result of an option exercised by all persons with close financial, economic and organisational links ("all in all out" rule). As put by Italy, forming a VAT group is optional, but it involves compulsory membership of all taxable persons to which financial, economic and organisational links apply. If a taxable person meets the conditions to be part of the VAT group but he does not exercise the option, the VAT group ceases to exist the year following that where the irregularity is ascertained, unless that person exercises the option.
- (5) Each VAT group has a group representative who is the parent company or, in the absence of that, the VAT group member with the highest turnover or revenue. Such representative must exercise the option to form the VAT group by filing a statement containing all the relevant information, such as details of the members of the group, a declaration confirming the existence of the links among them, as well as the activities of the group. The option is binding for a period of three years (automatically renewable) provided that the requirements are fulfilled during that period, and can be exercised from 1st January 2018, with effects as from 1st January 2019.
- (6) The financial, economic and organisational links must exist simultaneously and are described as follows:
 - i. the financial link is deemed to exist when, in accordance with Article 2359(1)(1) of the Italian Civil Code, there is a relationship of control, direct or indirect, between the persons of the VAT group (according to the Civil Code, that is the case when a company holds the majority of voting

⁸ Doc. taxud.c.1(2017)982178 – Working paper No 918.

- rights in another company). The link is met if the controlling company is resident in Italy, or in a country with which Italy has signed an agreement that ensures an effective exchange of information;
- ii. the economic link is deemed to exist if at least one of the following situations of economic cooperation exists: the principal activity of the group members is of the same nature, or the activities of the group members are complementary or interdependent, or one member of the group carries out activities which are wholly or substantially for the benefit of the other members;
 - iii. the organisational link is deemed to exist if there is a coordination of fact or law between the decision-making bodies of the taxable persons, even if the coordination is not carried out by the same person.
- (7) It is presumed that if a financial link exists between potential members of a VAT group, the economic and organisational links are also present. However, that presumption can be rebutted (i.e. it is possible to argue that economic and organisational links do not exist) before the Revenue Agency.
- (8) Where the acquisition of control in another company is made for the purposes of debt collection or results from the conversion of debts of companies in financial difficulties into new equity, the economic link is presumed not to exist, unless otherwise proven.
- (9) Persons joining the VAT group are regarded as a single taxable person, namely, the VAT group. It follows that the group's internal transactions are disregarded for VAT purposes while supplies by a member of the group to a third party or by a third party to a member of the group are treated as supplies carried out by or to the VAT group.
- (10) The VAT group representative is responsible for the rights and obligations of the VAT group. However, all group members are jointly and severally liable for the payment of VAT, interest and penalties due.
- (11) The input VAT credit of the individual members resulting from the annual VAT return of the year preceding the first year of their VAT group membership is not transferred to the group itself but can be claimed for refund according to the Italian VAT provisions.

4. THE COMMISSION SERVICES' OPINION

The Commission services have the following remarks concerning the Italian VAT grouping scheme subject to the present consultation.

4.1. Territorial scope of the VAT grouping scheme

Article 11 of the VAT Directive restricts the territorial scope of a VAT grouping scheme implemented by a Member State to persons established in the territory of that Member State.

According to the discussions in the VAT Committee which led to the agreement, by a large majority, of guidelines on the territorial scope of VAT groups, the notion of "*persons established*" for the purposes of Article 11 has been interpreted as only referring to entities physically present in the Member State that has introduced the VAT grouping scheme. Thus, the territorial scope of Article 11 coincides with the VAT jurisdiction of the Member State having implemented the VAT grouping scheme.

It follows from the Italian legislation that only businesses physically present in Italy could become members of a VAT group in Italy, in line with the guidelines. In the case of a legal person comprising a main establishment (hereinafter "head office") and a fixed establishment (hereinafter "branch"), the Italian branch of a company with its head office in another Member State or outside the EU could become a member of a VAT group in Italy; whereas branches of Italian companies situated abroad (in another Member State or outside the EU) would be excluded from being eligible for a VAT group. The Italian scheme therefore seems to be consistent with the territorial scope of VAT grouping as set out in the guidelines.

However, the Commission services would like to know whether in the case of a legal person comprising a head office and a branch, where the branch is a member of a VAT group in Italy and the head office is located in another Member State or outside the EU, the supplies by the foreign head office to the Italian branch would be treated as taxable supplies for VAT purposes?

It should be recalled that one of the effects of joining a VAT group is that, for VAT purposes, a single legal entity comprising a head office and its branch which are physically present in different territories shall be dissociated and become two separate taxable persons if one of the entities is a member of a VAT group⁹.

The Italian delegation is invited to clarify this point.

4.2. The criteria for being eligible to become a member of a VAT group

According to case-law of the CJEU, "persons" being able to form a VAT group in accordance with Article 11 of the VAT Directive may cover both taxable and non-taxable persons¹⁰, as well as legal persons and entities without legal personality¹¹.

In this regard, the VAT Committee agreed that Member States which make use of the VAT grouping scheme are not obliged to recognise non-taxable persons as members of a VAT group but may restrict the application of the scheme by excluding non-taxable persons as members, provided that the principle of neutrality is respected¹².

⁹ See paragraph 2 and 3 of the VAT Committee guidelines in section 2.

¹⁰ CJEU, judgment of 9 April 2013, *Commission v Ireland*, C-85/11, EU:C:2013:217; CJEU, judgment of 25 April 2013, *Commission v Czech Republic*, C-109/11, EU:C:2013:269; CJEU, judgment of 25 April 2013, *Commission v Denmark*, C-95/11, EU:C:2013:268; CJEU, judgment of 25 April 2013, *Commission v UK*, C-86/11, EU:C:2013:267; and CJEU, judgment of 25 April 2013, *Commission v the Netherlands*, C-65/11, EU:C:2013:265.

¹¹ CJEU, judgment of 16 July 2015, joined cases *Larentia + Minerva* and *Marenave Schiffahrt*, C-108/14 and C-109/14, EU:C:2015:496.

¹² See also Doc. taxud.c.1(2014)2773566 – Working paper No 813.

Article 70-*bis* of the Italian legislation states that taxable persons carrying out business, crafts or professional activities can become a single taxable person, namely form a VAT group.

The Commission services would like to know whether non-taxable persons, such as a pure holding company, are systematically excluded as members of the VAT grouping scheme and, if so, whether that exclusion has to be regarded as a measure needed to prevent tax evasion or avoidance under the second paragraph of Article 11 of the VAT Directive?

The Commission services would also like to know whether entities other than companies, such as partnerships or foundations, could be eligible for VAT groups and, if that is the case, how these entities could be said to meet the financial requirement established in the national legislation. According to Article 70-*ter* of the Italian law, the financial link requirement is currently defined only by reference to a direct or indirect participation of one company in the voting rights of another company?.

The Italian delegation is invited to clarify these points.

4.3. The financial, economic and organisational links

Article 11 of the VAT Directive requires members of a VAT group to be closely bound by financial, economic and organisational links.

The Commission's view on the meaning of the financial, economic and organisational links can be found in the 2009 VAT Grouping Communication¹³. Those views have been further elaborated in Working paper No 918 recently discussed during the 108th meeting of the VAT Committee, although no guidelines have been drawn up.

According to Article 70-*ter* (4) of the Italian legislation, if a financial link exists between the persons making up the VAT group, the economic and organisational links can be presumed present, unless the interested person demonstrates the absence of at least one of those links.

As set out in Working paper No 918 (section 3.1.3), the Commission services are of the opinion that the three links should be present simultaneously. While a presumption could be established in respect of a particular situation being said to meet one of the three links, it is still so that the conditions are cumulative and each of them has to be assessed independently. Otherwise, the threefold test (i.e. financial, economic, and organisational links) would be reduced to one condition only (i.e. the financial link).

Therefore, setting up (a) presumption(s) whereby all other links are taken to be there as soon as one link exists was stated by the Commission services not to be possible. It must be borne in mind that Article 11 of the VAT Directive offers Member States an option which derogates from the rules contained in the VAT Directive as regards the concept of taxable person, and must therefore be interpreted strictly. The condition concerning "financial, economic and organisational links" aims at ensuring that only persons with close ties in terms of financial ownership, economic activities and management structure

¹³ Communication of the Commission to the Council and the European Parliament of 2 July 2009 on the VAT group option provided for in Article 11 of Council Directive 2006/112/EC on the common system of value added tax ([COM\(2009\) 325 final](#)), see section 3.3.4.

can benefit from VAT grouping provisions. If this threefold condition is minimized to a financial ownership link, VAT grouping provisions become applicable in circumstances where the criteria laid down in the VAT Directive are not met.

In light of these reflections, the condition that VAT group members must jointly share close financial, economic and organisational links pursuant Article 11 of the VAT Directive does not seem to be fully implemented in the Italian VAT grouping legislation, given that only the financial link is *de facto* required.

The relationship of ownership required by the Italian legislation can be considered the minimum content to presume the financial link required by the VAT Directive present. However, this element does not necessarily imply that economic and organisational links also exist among the members of the VAT group, as required by the VAT Directive.

The Italian delegation is invited to clarify this point.

4.4. Optional VAT group membership

There seems to be a disparity of criteria among Member States as to the nature of membership in VAT groups. Therefore, while some Member States are of the opinion that (i) VAT grouping provisions should leave it to potential group members to decide whether to join a VAT group (optional application) or not, others think that (ii) the group members do not have the right to choose whether to use group taxation or not (automatic application). This aspect was further examined in section 5.4.2 of Working paper No 845.

Such disparity seems to stem from the objectives of Article 11 of the VAT Directive. According to the Explanatory Memorandum¹⁴ and, as the CJEU has recalled, "*the European Union legislature intended, either in the interests of simplifying administration or with a view to combating abuses such as, for example, the splitting-up of one undertaking among several taxable persons so that each might benefit from a special scheme, to ensure that Member States would not be obliged to treat as taxable persons those whose independence is purely a legal technicality*"¹⁵.

It follows that a group of persons could be regarded automatically as a single taxable person where close financial, economic and organisational links exist between them on the grounds of combating abuses; but also that Article 11 of the VAT Directive can be used for administrative simplification purposes, as recognised by the CJEU, where it seems that the application of VAT grouping rules would not need to be automatic.

It is not clear on which grounds VAT groups are implemented in Italy and, in particular, whether VAT grouping applies as an option or is mandatory for their members.

On the one hand, it is clearly stated in Article 70-*quater* of the Italian legislation that a VAT group is created only upon request of all members with close financial, economic and organisational links (optional nature). The VAT group members should make use of the option by filing a statement containing information such as details of the members of

¹⁴ Explanatory Memorandum to the proposal which resulted in the adoption of the Sixth Directive (COM(73) 950) concerning Article 4(4) of the Sixth Directive, which was replaced by Article 11 of the VAT Directive.

¹⁵ *Commission v. Ireland*, paragraph 47.

the group, a declaration confirming the existence of the links among them, as well as the activities of the group.

However, on the other hand, the Italian legislation also allows an individual VAT group member to submit a request to the Revenue Agency to demonstrate that the economic and organisational links do not exist (the economic and organisational links are presumed, when there is a financial link), in accordance with Article 70-ter, point 5. This seems to suggest that an individual person could not exercise the option of becoming a VAT group member. Otherwise (i.e. if the VAT group is optional for their members and has to be requested by all and every one of them) it is not clear why there would be a need to contest the existence of such links.

The possibility to rebut the presumption concerning the economic and organisational links rather seems to be an escape clause available for VAT group members, where they have been automatically dragged into a VAT group on the basis of there being a financial link. This could be so, for instance, if only the VAT group representative (e.g. the parent company) exercised the option to create a VAT group with all the subsidiaries, and without regard to the opinion of the other VAT group members. But it is unclear how this fits with VAT groups being optional, as otherwise indicated by the Italian legislation.

The Italian delegation is invited to clarify this point.

4.5. Consequences of joining a VAT group (VAT identification number)

The main effect of VAT groups is that, upon joining a VAT group, the group members dissolve themselves from any possible simultaneously existing legal form to become, for VAT purposes, part of a new separate taxable person, which is the VAT group itself. This is why supplies by VAT group members are regarded as having been made by the VAT group, and supplies to VAT group members are also regarded as having been made to the VAT group as a whole.

Article 70-quinquies of the Italian legislation states that VAT groups' internal transactions do not exist for VAT purposes and that transactions made by any of the group members to a recipient not belonging to the group are deemed to be performed by the group itself. In the same way, supplies of goods and services by third parties to one of the members of the group are considered to be made to the group itself. This treatment seems to be in line with the principle that the VAT group is the only existing single taxable person.

The Commission services take note that there are no particular provisions as regards the identification of the VAT group. In this respect, it remains unclear whether the members of the VAT group would still each retain their individual VAT identification number, or whether the only VAT identification number would be that of the VAT group.

The Italian delegation is invited to clarify this point.

5. DELEGATIONS' OPINION

Delegations are invited to give their opinion on the issues raised.

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Consultation by Italy

The Italian Republic has the honour to propose to the VAT Committee a consultation within the meaning of Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

1. Italy intends to apply Article 11 of the VAT Directive in order to regard as a single taxable person any persons established in the national territory, legally independent, but closely bound to one another by financial, economic and organisational links.
2. Italy also intends to exercise the option provided for in that provision by taking the measures necessary to prevent tax avoidance or evasion.
3. The provisions introduced shall apply as from 1 January 2018, the moment from when, in particular, the option for forming a VAT group may be presented. The effects of exercising this option shall be felt as from 1 January 2019. Until then, the effectiveness of the national rule shall be de facto suspended.
4. Taxable persons established in Italy and carrying out business or crafts or professions shall be able to form a VAT group provided that they jointly comply with the financial, economic and organisational links laid down by law and explained below. It is therefore stated that forming a VAT group is optional, but it involves compulsory membership of all taxable persons to which financial, economic and organisational links apply.
5. The financial link shall be deemed to be existent if a legal controlling relationship – direct or indirect – exists between the taxable persons, in accordance with Article 2359(1)(1) of the Civil Code¹; in order to form a VAT group, the taxable persons shall be controlled by a parent company resident in Italy or in a country with which Italy has signed an agreement that ensures an effective exchange of information.
6. The economic link shall be deemed to be existent if the principal activity of the taxable persons is of the same nature, or the activities are complementary or interdependent, or the activities are wholly or substantially to the benefit of one or more of the other persons being part of the Group.
7. The organisational link shall be deemed to be existent when there is an organisational coordination in fact or law between the decision-making bodies of the same, even if carried out by another person.
8. From the point of view of application, it was chosen to assume that the economic and organisational links do exist where there is a financial link. However, taxable persons shall be excluded if the lack of economic or organisational link is demonstrated.

¹ The type of control of civil nature provided for by that rule, which we add in annex, is that of a company participating in the majority of the voting rights in the general shareholders' meeting of a company.

9. Since the persons established in the national territory may participate, the taxable persons being part of the VAT group shall include the fixed establishments located in Italy of persons having established their seat abroad. Conversely, fixed establishments located abroad of persons having established their seat in Italy shall be excluded.
10. The group representative shall fulfill its obligations and exercise its rights as to VAT in the ordinary manner; the group representative shall be identified within the parent company; should the person not be able to exercise the option to participate in the VAT group (for example, it is not established in the national territory), the group representative shall be the person being part of it with the highest turnover or amount of revenue in the period preceding the establishment of the group.
11. The group representative shall be responsible for fulfilling the obligations relating to the establishment of the VAT group; the other persons being part of the VAT group will be jointly and severally liable with the group representative for the amounts due as tax, interest and penalties.
12. There is no limit to the economic activity that can be carried out by those persons being part of a VAT group. Persons whose company is subject to seizure or bankruptcy proceedings or persons under ordinary liquidation cannot be part of the VAT group.
13. For anti-elusive purposes, those persons that do not carry out any economic activity shall not be eligible to be part of the VAT group.
14. On the other hand, even persons such as individuals or entities shall be eligible to join a VAT group if they anyhow carry out an economic activity although their sole or main object is not an economic activity. With respect to those persons, the effects following the establishment of the VAT group shall be limited to the economic activity carried out.
15. Upon expiration of the first three years, the VAT group may be terminated or extended with the possibility of termination at the expiry of each subsequent year.
16. The option to form a VAT group may be exercised from 1 January 2018, anyhow with effect from the year 2019.
17. As a result of the exercise of the option, members of the group – as long as they exercise the right of option – shall lose their subjective autonomy for the purposes of value added tax with respect to the tax administration by which they shall be regarded as a single tax subject, the VAT group. Consequently, supplies of goods and provision of services within the group shall not be considered for the purposes of applying value added tax; supplies of goods and provision of services carried out by a person being part of the group to a third party shall be deemed to have been made by the VAT group; in parallel, supplies of goods and provision of services in favour of a person being part of the VAT group by a person that is not part of it shall be deemed to have been made to the VAT group.

18. The provision is included in a specific rule that is herewith attached (Article 24 of Law No 232 of December 11, 2016) and shall be further specified by internal rules of implementation.

Relevant national legislation

24. The following Title is inserted after Article 70 at the Decree of the President of the Republic no. 633 of 26 October 1972:

«TITLE V-*bis*

VAT GROUP

Art. 70-bis (Subjective requirements to form a VAT group). – 1. Taxable persons established in the territory of the State and carrying out business or crafts or professions provided that they jointly comply with the financial, economic and organisational links laid down in Article 70-*ter*, may be regarded as a single taxable person, hereinafter referred to as “VAT group”.

2. The following persons cannot be part of a VAT group:

- a) seats and fixed establishments located abroad;
- b) persons whose company is subject to seizure pursuant to Article 670 of the Code of Civil Procedure; in the event there are several companies, the provision also applies if even only one of them is being seized;
- c) persons being subject to bankruptcy proceedings pursuant to Article 70-*decies*(3)(3);
- d) persons under ordinary liquidation.

Art. 70-ter (Financial, economic and organisational links). – 1. The financial link shall be deemed to be existent between taxable persons established in the territory of the State when, in accordance with Article 2359(1)(1) of the Civil Code, and at least from 1 July of the preceding calendar year:

- a) there is, directly or indirectly, a controlling relationship between those persons;
- b) those persons are directly or indirectly controlled by the same person resident in the territory of the State or in a country with which Italy has signed an agreement that ensures an effective exchange of information.

2. The economic link shall be deemed to be existent between taxable persons established in the territory of the State on the basis of at least one of the following forms of economic cooperation:

- a) carrying out a principal activity of the same nature;
- b) carrying out a complementary or interdependent activity;
- c) carrying out an activity that is wholly or substantially to the benefit of one or more of the other persons.

3. The organisational link shall be deemed to be existent between taxable persons established in the territory of the State when, between those persons, there is an organisational coordination in law pursuant to the Fifth Book, Title V, Chapter IX of the Civil code, or in fact between the decision-making bodies of the same, even if coordination is carried out by another person.

4. Without prejudice to the provision in paragraph 5, if the financial link referred to in paragraph 1 arises between the taxable persons, the economic and organisational links referred to in paragraphs 2 and 3 shall also be deemed to be existent between the same.

5. In order to demonstrate that the economic or organisational link does not exist, a questioning (*istanza di interpello*) is submitted to the Agenzia delle entrate pursuant to Article 11(1)(b) of Law No. 212 of 27 July 2000.

6. In any event, the economic link is deemed to be non-existent with respect to those persons for which the financial link referred to in paragraph 1 applies following holdings acquired in connection with the recovery of receivables or arising from the conversion into newly issued equity shares to companies in temporary financial difficulties referred to in Article 113(1) of the Italian income tax consolidation act, as provided for in the decree of the President of the Republic no. 917 of 22 December 1986. In order to demonstrate that the economic link exists, a questioning (*istanza di interpello*) is submitted to the Agenzia delle entrate pursuant to Article 11(1)(b) of the above Law No. 212 of 2000.

Art. 70-quater (Establishment of the VAT group). – 1. The VAT group is formed as a result of an option exercised by all taxable persons established in the territory of the State provided that they jointly comply with the financial, economic and organisational links laid down in Article 70-ter. Should the option not be exercised by one or more of the persons referred to in the previous period:

- a) the actual tax advantage earned is recovered from the VAT group;
- b) the VAT group is terminated the year following the one in which it is ascertained that the option is not exercised unless the aforementioned persons exercise the option to participate in the same group.

2. The option referred to in paragraph 1 shall be exercised by the group representative by electronically submitting the return referred to in Article 70-duodecies, paragraph 5, where there are indicated:

- a) the name of the VAT group;
- b) the identification data of the VAT group representative, hereinafter referred to as "group representative", and of the persons participating in the same group;
- c) the declaration of the existence, among the persons being part of the group, of the links referred to in Article 70-ter;
- d) the activity or activities that shall be carried out by the VAT group;
- e) the election of domicile at the group representative by each person being part of the group, for the purpose of notifying the acts and measures relating to the tax periods

for which the option is exercised; the domicile is irrevocable until the end of the period for forfeiture of the assessment action or imposition of penalties relating to the last year of validity of the option;

- f) the subscription of the group representative, that submits the return, and of the other persons referred to in this paragraph.

3. If the return referred to in paragraph 2 is submitted from 1 January to 30 September, the option referred to in paragraph 1 shall take effect from the following year. If the return referred to in paragraph 2 is submitted from 1 October to 31 December, the option referred to in paragraph 1 shall take effect from the second following year.

4. By maintaining the links referred to in Article 70-ter, the option is binding for a period of three years as from the year in which it has effect. After the first three years, the option is automatically renewed for each subsequent year, until the repeal referred to in Article 70-novies is exercised. The provisions of paragraph (1)(b) remain unchanged.

5. If during the years of validity of the option referred to in paragraph 1, the economic and organisational links referred to in Article 70-ter, paragraphs 2 and 3, are established for those persons that had been excluded from the VAT group in accordance with paragraph 5 of the same Article, or if the financial link referred to in Article 70-ter(1) applies to taxable persons established in the territory of the State for which there was no entitlement to exercise the option, the aforesaid persons participate in the VAT group starting from the year following the one in which such links have been established. In such a case, the return referred to in paragraph 2 must be submitted by the ninetieth day following that in which such links have been established. In case of failure to include a person – referred to in the first period – in the VAT group, the provisions of the second period of paragraph 1 shall apply.

Article 70-quinquies (Transactions carried out by the VAT group and with it). – 1. The supplies of goods and the provision of services by a person being part of a VAT group to another person being part of the same VAT group shall not be regarded as supplies of goods and provision of services for the purposes of Articles 2 and 3.

2. The supplies of goods and the provision of services by a person being part of a VAT group to a person that is not part of it shall be deemed to have been made by the VAT group.

3. The supplies of goods and the provision of services to a person being part of a VAT group by a person that is not part of it shall be deemed to have been made to the VAT group.

4. The obligations and rights deriving from the application of the rules on value added tax shall, respectively, be borne by and in favour of the VAT group.

Article 70-sexies (Excess credit positions prior to the participation in the VAT group). –

1. The deductible tax surplus resulting from the annual return for the year preceding the first year of participation in the VAT group shall not be transferred to the group, but may be either claimed for reimbursement, even in the absence of the conditions referred to in Article 30 of this decree, or compensated pursuant to Article 17 of Legislative Decree No. 241. The provision referred to in the first period shall not apply to the portion of the

deductible surplus amount equal to the payments of value added tax made in respect of that preceding year.

Article 70-septies (Fulfilments). – 1. The group representative fulfills the obligations and exercises the rights referred to in Article 70-quinquies, paragraph 4, in the ordinary manner.

2. The group representative is the person who exercises the control referred to in Article 70-ter, paragraph 1. If the aforementioned person cannot exercise the option, the group representative is the person being part of it with the highest turnover or amount of revenue in the period preceding the establishment of the group.

3. If the group representative ceases to be part of the VAT group without eliminating the effect of the option for the other participants, another person being part of the VAT group, identified pursuant to paragraph 2, with reference to the latest return submitted, shall take over as the group representative. The replacement shall take effect on the day following the termination of the former group representative and shall be communicated by the new group representative with the return referred to in Article 70-duodecies, paragraph 5, within thirty days.

Art. 70-octies (Responsibility). – 1. The group representative is responsible for fulfilling the obligations associated with the exercise of the option.

2. The other persons being part of the VAT group are jointly and severally liable with the group representative for the amounts due as tax, interest and penalties following liquidation and control activities.

Article 70-novies (Provisions on options and revocations). – 1. The repeal of the option exercised pursuant to Article 70-quater shall be communicated by the group representative with the return referred to in Article 70-duodecies, paragraph 5, signed also by the other persons being part of the VAT group.

2. The repeal of the option applies to all persons being part of the VAT group. If the return referred to in paragraph 1 is submitted from 1 January to 30 September, the repeal shall take effect from the following year. If the return referred to in paragraph 1 is submitted from 1 October to 31 December, the repeal shall take effect from the second following year.

3. The provisions of the regulation referred to in the Decree of the President of the Republic No 442 of 10 November 1997 shall not apply to the options and repeals provided for in this title.

4. The exercise by a person of the option referred to in Article 70-quater shall result in the elimination of the effects of the options in the field on value added tax exercised by such person, even if the minimum period of permanence in the particular regime chosen has not elapsed.

Art. 70-decies (Exclusion from participation in the VAT group). – 1. The option referred to in Article 70-quater, paragraph 1 by a person for which the requirements referred to in Article 70-bis are not fulfilled, shall be without effect for that person.

2. Each person being part of a VAT group ceases to be part of the same group if one of the following cases occurs:

- (a) the financial link with such person no longer exists;
- (b) the fact that the economic or organisational link with such person no longer exists is recognized, pursuant to Article 70-ter, paragraph 5;
- (c) such person is subject to seizure of the company pursuant to Article 670 of the Code of Civil Procedure;
- (d) such person is subject to bankruptcy proceedings;
- (e) such person is subject to ordinary liquidation.

3. Participation in the VAT group shall terminate as from the date on which the events referred to in letters (a), (c), (d) and (e) of paragraph 2 occur, and shall have effect for the transactions conducted and for the purchases and imports recorded as from that date. In the case referred to in paragraph 2, letter (b), the participation in the VAT group terminates from the year following the year in which it is recognized that the link no longer exists. For the purpose of identifying the date on which the event occurs, in the cases referred to in letters (c), (d) and (e) of paragraph 2, reference is made to the date of effectiveness of the measure providing for the seizure, at the date of the judgment declaring bankruptcy, at the date of the decree of admission to a settlement procedure with creditors (*procedura di concordato preventivo*), at the date of the measure ordering the compulsory administrative liquidation, at the date of the decree imposing the extraordinary administration procedure (*procedura di amministrazione straordinaria*) of large firms in crisis or at the date in which the shareholders' meeting resolution of ordinary liquidation is adopted.

4. The VAT group terminates when the plurality of the persons being part of it no longer exists. In such a case, the deductible surplus resulting from the VAT group's return not submitted for reimbursement shall be deducted by the person being part of the VAT group that acted as a group representative in its liquidations or annual return.

5. The discontinuance referred to in paragraphs 2 and 4 shall be communicated by the group representative within 30 days of the date on which the events have occurred, with the return referred to in Article 70-duodecies, paragraph 5.