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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 959**

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

ORIGIN: Italy
REFERENCE: Article 11
SUBJECT: VAT grouping – adaptations

1. INTRODUCTION

The introduction of VAT groups in Italy in accordance with Article 11 of the VAT Directive¹ was subject to a VAT Committee consultation during the 109th meeting, on 1 December 2017, based on Working paper No 933. The Italian legislation on VAT groups entered into force on 1st January 2018 and the scheme will be effective as from 1st January 2019.

The Italian delegation now wishes to consult on further provisions introduced in the legislation relating to VAT groups and, more specifically, its application to “Cooperative Banking Groups” (hereinafter, “CBG”).

The text of the consultation submitted by Italy is attached in *Annex 1*, while the national legislation on CBGs features in *Annex 2*.

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 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. Moreover, following the ruling of the CJEU in *Commission vs. Ireland*⁵ and *Commission vs. Sweden*⁶, the VAT Committee agreed guidelines⁷ on the type of persons who can become VAT group members. The VAT Committee has also discussed the meaning of the "financial, economic and organisational" links that members

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, EU:C:2014:2225.

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

⁶ Judgment of 25 April 2013, *Commission vs. Sweden*, C-480/10, 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).

must have to form a VAT group under Article 11 of the VAT Directive, based on Working paper No 918, although in that regard no guidelines have been agreed so far.

3. THE NATIONAL LEGISLATION ON VAT GROUPS

3.1. Previous consultation: general provisions

During the 109th meeting, on 1 December 2017, the VAT Committee formally took note of the Italian consultation on VAT grouping in accordance with Article 11 of the VAT Directive. That consultation covered the transposition of that provision in general and, therefore, it constituted the introduction in Italy of VAT groups.

As regards the essential elements of the Italian legislation transposing Article 11 of the VAT Directive, we refer to Working paper No 933.

However, given that the current consultation relates to the application of the financial, economic and organisational links (“links test”) in VAT groups, the relevant provisions as explained at that time when first consulted are reproduced below.

- (1) 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).
- (2) The financial, economic and organisational links 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 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.
- (3) 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.

The application of the “links test” was already subject to discussion during that meeting⁸. In particular, questions were asked about the presumption set out in point (3) above, according to which once the financial link is determined, the economic and organisational links are deemed to exist.

According to the Commission services, 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 that each of them has to be assessed independently. Otherwise, the threefold test (i.e. financial, economic, and organisational links) would be reduced to a test of one condition only (i.e. the financial link).

The Italian delegation explained that the presumption that with the existence of the financial link also the economic and organisational links are given should be seen as a simplification measure, and that all three links have been defined in detail in the legislation in order to exclude abuse. It further explained that, in case of doubt, VAT group members would have to prove the existence of the three links.

3.2. New consultation: specific provisions for CBGs

The new provisions concern the application of VAT groups to CBG.

As to the reasons why such specific provisions are necessary, Italy explains in its consultation that cooperative bank groups have “expressed concerns” about the fact that they may not be seen as fulfilling the financial link requirement. That would stem from the fact that the financial link is “connected to a particular type of contract”.

As set out by Italy, a CBG⁹ is made up of a head company (referred to as “società capogruppo” in the Italian legislation) which is responsible for the management and coordination of the group as a whole, and the cooperative banks that adhere to the so-called cohesion contract. It is required that the cooperative banks constituting the group are shareholders of the head company (at least 60% of the capital of the latter must be held by those cooperative banks). The Italian delegation emphasises that the head company “controls” the cooperative banks and the whole group, under the cohesion contract.

In the English language version of the consultation by Italy, “società capogruppo” has been translated as “parent company”. However, a company is usually referred to as “parent company” when it owns capital or voting rights in another company, not when it is itself owned by others (in the latter case, the company is referred to as being the “subsidiary company”). Given that the head company must be owned by the cooperative banks (at least 60% of the capital of the head company must be held by such banks), it seems counter-intuitive to refer to it as the “parent company”. Hence, in this analysis the Commission services will use the term “head company” to refer to the concept of “società capogruppo”.

The Italian delegation believes that meeting the conditions for forming a CBG entails the existence of a financial link for the purposes of creating a VAT group, because the head company “controls” the cooperative banks. For reasons of legal certainty, it is explained that Italy will introduce specific provisions making it clear that once a CBG is formed, the

⁸ See minutes of the 109th meeting of the VAT Committee (Working paper No 939 FINAL).

⁹ Regulated by Article 73bis of legislative Decree No 385 of 1 September 1993 (see in *Annex 2*).

financial link for the purposes of VAT groups is deemed to exist between the persons participating in the CBG. Given the presumption that once the financial link exists the economic and organisational links are also present, any CBG would automatically qualify for becoming a VAT group.

4. THE COMMISSION SERVICES' OPINION

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

4.1. The existence of a financial link in CBGs

First of all, it must be examined whether the conditions to be met for forming a CBG amount to the existence of a financial link between its members for the purposes of a VAT group. To that extent, a comparison must be made between the conditions under Italian legislation for the financial link to exist, and the conditions for forming a CBG.

- On the one hand, a financial link for the purposes of VAT groups exists, according to the national legislation as explained in Working paper No 933, in the case where a person has, directly or indirectly, the majority of the voting rights of a company (and therefore is in “control” of that company). The Commission services understand that the requirement of having a majority of voting rights would entail having more than 50% of the voting rights.
- On the other hand, CBGs are subject to the condition that the capital of a head office is owned at least by 60% of the cooperative banks.

From the explanation given by Italy, it is clear that the head company of the CBG cannot be understood as being in “control” of the cooperative banks according to the definition of the financial link in the VAT grouping legislation. That is because the head company is owned by the cooperative banks and not vice versa. In other words, the head office is not holding the capital or the voting rights of the cooperative banks.

However, the cooperative banks are the ones holding shares in the head company and, therefore, they may be the ones holding more than 50% of voting rights of the latter, which is the requirement for the financial link to exist.

Therefore, the remarks below focus on the latter scenario (cooperative banks potentially holding a majority of voting rights of the head company).

At the outset, the Commission services believe that it is not entirely clear that the cooperative banks will in fact always have more than 50% of voting rights in the head company of the CBG for two main reasons, as explained below.

Firstly, being the shareholder of a company does not necessarily entail equal voting rights¹⁰. In the case at hand, owning more than 60% of the head company may not always

¹⁰ As explained in section 3.5.2.1 (ii) of Working paper No 918, while participation in the capital of a company usually encompasses participation in voting rights of that company (i.e. the shareholder of a company would usually be granted a voting right in the shareholders' meeting of that company), this may not always be the case.

lead to more than 50% of voting rights, depending on the class of shares (notably, in cases of shares departing from the “one share one vote” rule).

Secondly, even assuming that the “one share one vote” applies, there may be cases where the conditions for forming a CBG would be met even in the absence of a financial link as described above. That is, cases where none of the cooperative banks would have the majority of voting rights in the head company. This is because the 60% capital shareholding requirement for forming a CBG is applied globally for all cooperative banks (the addition of all shares owned by each and every cooperative bank in the CBG must be at least 60% as a whole). For instance, in a scenario with one head company and two cooperative banks, each of them owning 30% of the capital of the head company, the condition for forming a CBG would be met, but none of the cooperative banks would have more than 50% of the voting rights of the head office.

It seems that these aspects are acknowledged by the Italian delegation: *“As a result of the legislation governing the cooperative credit sector, the control relationship suitable for identifying the financial link for the purposes of VAT groups, cannot be identified within the CBG in the exercise of the majority vote in the shareholders’ meeting”*.

Instead, Italy explains, the “control” between the entities of a CBG would stem from the contractual obligations laid down in the cohesion contract (the head company is the one “controlling” the cooperative banks thanks to its statutory powers, regardless of it being owned by the cooperative banks). That control would replicate the control by shareholders with a majority of voting rights.

In particular, according to the explanation given by Italy, the head company is tasked with the identification and implementation of the strategic policies and operational objectives of the group, as well as is granted other powers necessary for management and coordination thereof, including ensuring the compliance by cooperative banks with prudential requirements and other banking provisions¹¹. It is even the case that a head company can exclude a cooperative bank from the CBG in some circumstances and appoint or remove the members of the bodies of administration of the cooperative banks¹².

So, the fact is that the head company *de facto* “controls” its “owners”. That is, the head company of a CBG which “controls” the cooperative banks in the group according to their contractual relationship, is the one being “controlled” (i.e. owned) in the best of circumstances by the cooperative banks from the perspective of the requirements concerning shareholding and voting rights.

The example of franchises

In order to make a case for the notion of “control” which does not refer to a majority of capital or voting rights of a company, Italy also refers to Working paper No 918¹³ and the 2009 Commission Communication¹⁴ on the interpretation of the links test. In that Working paper, the Commission services tabled the idea of a presumption according to which there

¹¹ See in particular point 3 of Article 37bis (in Annex 2).

¹² See points 3.b.2 and 3.b.3 of Article 37bis.

¹³ Section 3.5.2.3.

¹⁴ Communication from the Commission to the Council and the European Parliament 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 in particular p. 8.

would be a financial link in cases of franchise contracts (due to the fact that one company could be seen as having the actual control of the other based on contractual terms, and regardless of the participation in capital or in voting rights). That would be in line with the interpretation given in the 2009 Communication.

However, it is important also to keep in mind what was said at the end of that Working paper. The Commission services pointed out that a franchise contract could perhaps be indication of an economic and/or organisational link, rather than a financial link: “...a franchisor and a franchisee could perhaps rather be seen as closely bound from the perspective of the economic and/or the organisational links (...) If that is the view taken, a franchise contract should not necessarily be seen as a presumption for a financial link”.

It must also be recalled that no guidelines were agreed as a result of that discussion.

The notion of “control”

The question raised by the Italian delegation is closely linked to an issue already examined in Working paper No 918¹⁵, which is how to interpret the notion of “control” for the purposes of the financial link.

In that document reference was made to the judgment by the Court of Justice of the European Union (CJEU) in *Larentia + Minerva*¹⁶, which concerned a group of partnerships without legal personality. These partnerships were denied the possibility to form a VAT group (*Organschaft*) in Germany on the grounds that they did not meet the requirements established in the national legislation.

According to the German legislation, two conditions had to be met for forming a VAT group: (i) being a legal person; and (ii) being “integrated into the undertaking of the controlling company” of the VAT group, which was understood by domestic case-law as requiring a “relationship of control and subordination”. In this respect, it should be noted that the requirement of control and subordination laid down in German law referred not only to the financial link, but also to the economic and organisational links (“a legal person is integrated in financial, economic or organisational terms into the undertaking of the controlling company”).

The CJEU found that while the existence of a parent-subsidiary relationship allowed to presume the existence of control, such a relationship could not be regarded as a condition which is necessary for the constitution of a VAT group¹⁷.

As set out in that document, this can be taken to mean that while a parent-subsidiary relationship allows presuming the existence of a financial link for the purpose of a VAT group, the existence of such links cannot be dependent upon there being that parent-subsidiary relationship between two companies. In other words, as expressed by the Commission services, this requirement cannot constitute a minimum condition which must be met in order to be closely bound by a financial link.

¹⁵ Sections 3.3.1 and 3.3.2.

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

¹⁷ *Larentia + Minerva*, paragraphs 44-45.

This could be seen in line with the interpretation put forward by Italy, whereby the financial link is considered to exist in circumstances other than those entailing a majority of capital or voting rights, but apparently also involving “control”.

The effects of the legislation

From the above, it seems clear that the change in the legislation does not constitute a mere clarification about the application of VAT groups for CBGs, but an expansion of the notion of VAT groups (albeit in specific circumstances only), compared to the existing national legislation generally applicable.

That is so because it is not clear that CBGs groups would always meet the financial link condition of holding a majority of voting rights.

Question

The Commission services would like to invite the Italian delegation to clarify these points and, in particular, to explain how the head company can be seen as having the “control” for the purposes of the financial link despite not holding a majority in voting rights of another company.

4.2. The presumption

Regardless of how the financial link is defined for CBGs, the Commission services must also stress the use in the national legislation of the presumption according to which economic and organisational links can be presumed present if and when a financial link exists between the persons making up the VAT group.

That aspect was already highlighted in Working paper No 933, given that it is not strictly linked to CBGs.

The Commission services are of the opinion that the three links should be present simultaneously. With the use of the abovementioned presumption, the threefold test (i.e. financial, economic, and organisational links) is reduced to a test of one condition only (i.e. the financial link).

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

Question

Therefore, the Commission services would like to invite the Italian delegation to clarify how the existence of economic and organisational links is ensured for CBGs.

5. DELEGATIONS' OPINION

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

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Consultation by Italy (unofficial translation)

In July 2017, Italy proposed a consultation to the VAT Committee pursuant to Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The consultation ended with its acknowledgment by the VAT Committee during the 109th meeting on 1 December 2017.

On that occasion, Italy indicated that, in identifying the three financial, economic and organisational links, it had tried to stick to simple and easily assessable situations, while not precluding the possibility of future extensions to further cases for which a simple ascertainment of the existence of the three links could be made.

The financial link was therefore identified in the existence of a legal control relationship between taxable persons, *i.e.* the case in which a person has, directly or indirectly, the majority of the voting rights at the ordinary general meeting of a company; to form a VAT group, the taxable persons will need to be controlled by a parent company resident in Italy or in a State with which Italy has signed an agreement that ensures an effective exchange of information.

The economic link was deemed to exist 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 the other members of the Group.

The organizational link is deemed to exist if there is an organizational coordination on a *de jure* or *de facto* basis between their decision-making bodies, even though carried out by another person.

It was also pointed out that, from an application point of view, for the sake of simplification, a mere presumption had been assumed with regard to the economic and organisational links, once the existence of the financial link had been established.

During subsequent talks with the economic operators, the latter expressed concerns about the fact that the specific case of the cooperative banking group might not fall precisely within the definition of financial link, as outlined above, because it is rather connected to a particular type of contract, while the existence of the economic and organisational links is evident.

This is the case of the cooperative banking group governed by the *Testo unico delle leggi in materia bancaria e creditizia* (“Consolidated act on banking and credit law”) which is formed among *banche di credito cooperativo* (“cooperative credit banks”) that adhere to the contract and have adopted the related statutory clauses holding a majority of at least 60% in the capital of a company limited by shares authorized to carry out banking activities which will operate as a parent company exercising management and coordination activities on the group companies on the basis of a *contratto di coesione* (“cohesion contract”). The group also includes the banking, financial and instrumental companies controlled by the parent company, as well as any territorial subgroups belonging to another bank set up as a company limited by shares subject to management and coordination of the parent company and consisting of cooperative credit banks and banking, financial and instrumental companies.

According to Article 37bis of legislative decree No. 385, 1 September 1993 (in annex) a *contratto di coesione* identifies:

- a) *the parent bank, which is responsible for management and coordination of the group;*
- b) *the parent company's powers that, in compliance with the mutual purpose and the local character of cooperative credit banks, include:*
 - 1) *the identification and implementation of the strategic guidelines and operational objectives of the group, taking into account the provisions of paragraph 3-bis, as well as the other powers necessary for management and coordination, proportionate to the riskiness of the member banks, including controls and powers of influence on participating banks to ensure compliance with prudential requirements and other banking and financial provisions applicable to the group and its members;*
 - 2) *the cases, however motivated and exceptional, in which the parent company may, respectively, appoint, oppose the appointment of or revoke one or more members, up to the majority, of the management and control bodies of the companies joining the group, and the methods for exercising these powers;*
 - 3) *the exclusion of a bank from the group in case of serious infringements of the obligations laid down by the contract and the other sanctions commensurate to the seriousness of the infringement;*
- c) *the compensation criteria and a balanced distribution of the benefits deriving from the common activity;*
- d) *the criteria and conditions of membership, denial of membership and exclusion from the group, according to non-discriminatory criteria in line with the principle of solidarity between the banche cooperative a mutualità prevalente (“prevalently mutual cooperative banks”).*

It appears clear that the *contratto di coesione* as outlined above is suitable for identifying a financial link between the parties participating in the cooperative banking group, making it appropriate to comprise, also for VAT purposes, the VAT group's representation in the parent bank as identified by the *contratto di coesione*, even if it cannot be regarded as a controlling entity.

For reasons of legal certainty, Italy therefore intends to modify the rules governing the VAT group on which it has already carried out the consultation in order to provide also for the financial link in the presence of a *contratto di coesione* as outlined above, and identifying in this case the VAT group's representation in the parent company pursuant to the rules governing the sector.

This is a minor adjustment that Italy introduces for reasons of legal certainty, allowing the exercise of the option by 31 December 2018 and the application of the related legislation starting from 1 January 2019, in view of the fact that the case in point is extremely simple to check and verify.

Although we believe that the changes that will be made by the attached provision still in draft form constitute a mere specification of the consultation already carried out, we deem it prudent to consult again the VAT Committee in advance, asking the Commission to possibly proceed according to Article 8 of the VAT Committee's Rules of Procedure, in recognition of the urgency of the matter.

Extension of VAT Group regulations to Cooperative banking groups

Article

1. Presidential Decree No 633 of 26 October 1972 shall be amended as follows:

a) The following shall be added at the end of Article 70-ter(1):

The financial link shall also be deemed to exist between the taxable persons, established in the Italian territory, participating in the Banking Group referred to in Article 37-bis of the consolidated act referred to in Legislative Decree No 385 of 1 September 1993".

b) The following shall be added at the end of Article 70-septies(2): "For the VAT Groups established among the parties referred to in the last sentence of Article 70-ter(1), the representative of group is the parent company referred to in Article 37-bis(1)(a) of the consolidated act referred to in Legislative Decree No 385 of 1 September 1993".

2. For the year 2019, the declaration for forming the VAT Group by the participants in a Banking Group referred to in Article 37-bis of the consolidated act referred to in Legislative Decree No 385 of 1 September 1993, shall take effect if it is submitted by 31 December 2018 and if at that date the financial, economic and organisational links referred to in Article 70-ter of Presidential Decree No 633 of 26 October 1972 exist. The financial link shall be deemed to exist if at that date the contratto di coesione ("cohesion contract") referred to in Article 37-bis(3) of the consolidated act referred to in Legislative Decree No 385 of 1 September 1993 has been signed".

Explanatory memorandum

The provision is intended to regulate the criteria for the control relationship pursuant to which the financial link is integrated, which is needed for applying the rules governing the VAT Group, provided for by Title V-bis of Presidential Decree No 633 of 1972, in relation to Cooperative Banking groups.

According to current legislation, the formation of the VAT group presupposes the existence of a financial link consisting in a direct or indirect legal control relationship pursuant to Article 2359(1)(1) of the Italian Civil Code, which requires the parent company to hold the majority of the voting rights at the ordinary general meeting of the subsidiary company.

The Cooperative Banking Group (GBC), established pursuant to the law reforming the cooperative credit sector (Decree Law No 18 of 2016, converted by Law No 49 of 8 April 2016), is characterized by special rules for its formation laid down in the Consolidated Banking Act (TUB).

In fact, the specific legislation for the cooperative credit sector requires cooperative banks to join the GBC on the basis of the *contratto di coesione*, under penalty of refusal of authorization for newly-established BCC-CRs (pursuant to Article 33(1-bis) of the TUB) and withdrawal of authorisation to perform banking activities (pursuant to Article 2(3) and (4) of Legislative Decree No 18 of 2016, converted by Law No 49 of 2016).

In particular, Article 37-bis of Legislative Decree No 385 of 1 September 1993, as amended during the reform of BCCs, provides that the parent company exercises management and coordination on the banks joining the group on the basis of the aforesaid contract. According to the aforementioned law, the Parent Company needs to be in the form of a company limited by shares authorized to carry out banking activities, whose capital is held in majority by the cooperative credit banks belonging to the group. The same *contratto di coesione* must ensure, among other things, in addition to the existence of a situation of control as defined by the international accounting standards adopted by the European Union, the identification and implementation of the strategic policies and operational objectives of the group as well as the other powers necessary for management and coordination by the parent company, including controls and influence powers on participating banks to ensure compliance with prudential requirements and other banking provisions.

As a result of the legislation governing the cooperative credit sector, therefore, the control relationship, suitable for identifying the financial link for the purpose of forming the VAT group, cannot be identified within the GBC in the exercise of majority vote in the shareholders' meeting, pursuant to Article 2359(1)(1) of the Italian Civil Code, but rather in the exercise of the powers exercised by the parent company as a result of the contractual conditions laid down by the distinctive *contratto di coesione*.

The EU Commission, in its communication to the Council and European Parliament of 2 July 2009, provided guidelines on how to implement the VAT Group, with the aim of ensuring its uniform implementation, in compliance with the fundamental principles of the Community system. In particular, as far as the identification of the financial link is concerned, the Commission on that occasion considered that reference could be made to a percentage interest in the capital or in voting rights (over 50%) or on the basis of a contractual relationship consisting in the signing a franchising agreement, making it clear that this would ensure that one company actually has control over another.

The provision, in order to provide a specific case of control based on the contractual relationship, complements the provisions of Title V-bis of Presidential Decree No 633 of 26 October 1972, amending Article 70-ter, concerning the definition of the financial, economic and organisational links, and Article 70-septies, concerning obligations.

In particular, paragraph 1 of the provision envisages: a) in paragraph 1 of Article 70-ter, a provision is inserted according to which, for participants in the cooperative banking group, the financial link is deemed to exist on the basis of the *contratto di coesione* signed pursuant to Article 37-bis of the consolidated act referred to in Legislative Decree No 385 of 1 September 1993; b) in paragraph 2 of Article 70-septies, a provision is inserted according to which in the cooperative banking group the group's representative is the parent company referred to in Article 37-bis(1)(a) of the consolidated act referred to in Legislative Decree No 385 of 1 September 1993.

Paragraph 2 lays down rules for the transitional period. Considering that the rules governing the VAT Group shall enter into force on 1 January 2019, subject to an option to be exercised by 15 November 2018 and with the financial, economic and organisational links existing from 1 July 2018, the rule to include GBCs within the relevant scope from the beginning identifies 31 December 2018 as the date on which the declaration for forming a VAT group must be presented and the financial, economic and organisational links must exist.

As provided for by Article 1(31) of Law No 232 of 2001, which introduced the rules governing the VAT Group, the Ministry of Economy and Finance shall consult the Advisory Committee on value added tax (hereinafter the “VAT Committee”). Article 11 of Directive 2006/112/EC provides, in fact, that each Member State may introduce the rules governing the VAT Group – according to which 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 are regarded as a single taxable person – after consulting the aforementioned Advisory Committee. It follows that a consultation must also be carried out with reference to changes to the rules governing the VAT group.

Relevant national legislation on cooperative bank groups

Legislative Decree No 385 of 01/09/1993 —

Consolidated text of the banking and credit laws.

Published in Official Gazette No 230 of 30 September 1993 — ordinary supplement

Article 37a —

Operational Bancario group (1).

In force from 26/07/2018

Amended by: Decree-Law No 91 of 25/07/2018, Article 11

- 1 The cooperative banking group shall be composed of:
 - (a) a parent company set up in the form of a joint stock company authorised to carry on a banking activity, the capital of which is owned at least 60 % by the cooperative banks belonging to the group, which carries out managerial and coordination activities on the companies of the group on the basis of a contract in accordance with paragraph 3 of this Article. The same contract ensures the existence of a control situation as defined by the international accounting standards adopted by the European Union; the minimum equity capital requirement for the parent company and EUR 1 billion;
 - (b) the cooperative banks which become party to the contract and have adopted the corresponding statutory provisions;
 - (c) the banking, financial and ancillary services companies controlled by the head of the group, as defined in Article 59;
 - (c-bis) any territorial subgroups belonging to a bank set up in the form of a joint stock company and coordinating the group leader referred to in point (a) and composed of the other companies referred to in points (b) and (c).
- 1-bis. Cooperative credit banks having their head offices in the Autonomous Provinces of Trento and Bolzano may respectively constitute autonomous cooperative banking groups composed solely of banks established and operating exclusively in the same autonomous province and which in any case have no more than two points of contact in neighbouring provinces, including the corresponding parent bank, which takes one of the forms referred to in Article 14 (1)(a); The minimum capital and reserves requirement laid down by the Bank of Italy in accordance with paragraph 7-bis.
2. The status of a parent shall indicate the maximum number of voting shares which may be held by each member, whether directly or indirectly, pursuant to Article 22 (1).
- 2-bis. The terms of reference of the group leader shall lay down that the members of the administrative body representing the cooperative banks belonging to the group shall be equal to two of the total number of directors.
3. The cohesion contract governing the direction and coordination of the group leader shall indicate:
 - (a) the parent bank, who is allocated management and coordination of the group;

- (b) the powers of the group leader who, with due regard for the mutual benefit and the localism of cooperative banks, include:
 - 1) the identification and implementation of the group's strategic guidelines and operational objectives, taking account of the provisions of paragraph 3-bis, as well as other powers necessary for the management and coordination, proportionate to the risk of participating banks, including controls and powers of influence over member banks to ensure compliance with the prudential requirements and other banking and financial provisions applicable to the group and its members;
 - 2) cases in which the head of group may, respectively, appoint, object to the appointment or withdraw one or more components up to a limit of the majority, of the management and control bodies of the companies belonging to the group and the arrangements for the exercise of those powers;
 - 3) the exclusion of a bank from the group in the event of serious breaches of the contract's obligations and other graduated sanctions in relation to the seriousness of the breach;
 - (c) the criteria for compensation and balance in the distribution of the benefits accruing from the joint activity;
 - (d) the criteria and conditions of accession, of refusal of membership and of withdrawal from the contract, and of exclusion from the group, in accordance with non-discriminatory criteria in line with the principle of solidarity between the predominant mutual benefit cooperative banks.
- 3-bis. With the act of the group leader and governed the consultation process of the cooperative credit banks which are members of the group in relation to strategies, commercial policies, collection of savings and provision of, and the pursuit of, mutual funds. In order to take account of the specific areas of the areas concerned, consultation shall be carried out by means of the regional assemblies of cooperative credit banks, the opinions of which shall not be binding on the head of a cooperative bank.
- 3-ter. Banks in the group which, on the basis of the risk rating system adopted by the parent, are in the best risk classes: (a) define their strategic and operational plans independently, in the framework of the addresses given by the group leader and on the basis of the methodologies defined by the latter; (b) notify such plans to the parent company, who shall check whether the plans are consistent with those addresses; (c) nominate the members of their administrative and control bodies and, in the event of failure to support the head of the group, submit them to a list of three candidates, other than those already mentioned in the appointment procedure, for the purpose of replacing any not welcomed component, without prejudice to the requirements laid down in the Decree of the Minister for Economic Affairs and Finance adopted pursuant to Article 26. Each act of the group leader specifying the risk classification system provided for in the cohesion contract shall be subject to prior approval by the Bank of Italy.
- 4 The contract referred to in paragraph 3 shall provide for the joint and several liability of the obligations assumed by the parent and other participating banks in accordance with the prudential rules of the banking groups and individual participating banks.

5. Accession, rejection of requests for membership, withdrawal and exclusion of a cooperative credit bank are authorised by the Bank of Italy, having regard to the sound and prudent management of the group and of the individual bank.
6. The participation in the capital of the parent of the cooperative banks and of the banks referred to by the territorial sub-groups shall not be subject to Articles 2359-bis, 2359-ter, 2359-quater and 2359-quinquies of *código civile*.
7. By decree of the President of the Council of Ministers, at the proposal of the Minister for Economic Affairs and Finance, after consulting the Bank of Italy, a threshold may be set for the participation of cooperative credit banks in the capital of the parent company other than that referred to in paragraph 1 (a), taking into account the needs of the Group. In order to ensure the firm and organisational adequacy of the cooperative banking group, the Minister for Economic Affairs and Finance may establish by decree, after consulting the Bank of Italy:
 - (a) The minimum number of cooperative credit banks of a cooperative banking group;
 - (b) deleted from: Article 11 of Decree Law No 91 of 25/07/2018 [a threshold for the participation of cooperative credit banks in the capital of the parent company other than that referred to in paragraph 1 (a), taking into account the needs of the group in question;]
 - (c) the procedures and criteria for ensuring the recognition and maintenance of the special linguistic and cultural arrangements of the cooperative banks established in the regions with special status and in the autonomous provinces of Trento and Bolzano.
- 7-bis. The Bank of Italy shall, with a view to ensuring sound and prudent management, competitiveness and efficiency of the cooperative banking syndicate, in compliance with the applicable prudential rules and the principle of mutual benefit, lays down provisions for the implementation of this Article and Article 37-ter, with particular reference to:
 - (a) the minimum organisational and operational requirements of the group leader;
 - (b) the minimum content of the contract referred to in paragraph 3, the characteristics of the security referred to in paragraph 4, the proceedings for setting up and membership of the group;
 - (c) specific requirements, including the group leader's minimum equity requirement, relating to cooperative banking groups as provided for in paragraph 1-bis.
8. The provisions of Title III, Chapter II shall apply *mutatis mutandis* to the cooperative banking group.