



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

**taxud.c.1(2018)1616461 – EN**

Brussels, 16 March 2018

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 942**

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

**ORIGIN:** Malta  
**REFERENCE:** Article 11  
**SUBJECT:** VAT grouping

## **1. INTRODUCTION**

The Maltese 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 Directive<sup>1</sup>.

The Maltese provisions on VAT groups will enter into force on 1<sup>st</sup> June 2018, the date from which it will be possible to apply for registration under a VAT grouping scheme.

The text of the consultation submitted by Malta with the relevant national legislation 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 provision<sup>2</sup>, and has also agreed guidelines on some of them. Those discussions should be taken into account when assessing the transposition into Maltese law of Article 11 of the VAT Directive.

In particular, the VAT Committee has agreed guidelines<sup>3</sup> as regards the territorial scope of VAT groups, following the ruling of the Court of Justice of the European Union (CJEU) in *Skandia America*<sup>4</sup>:

*"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.*

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

<sup>2</sup> See for example Working papers No 813, 845 and 879.

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

<sup>4</sup> CJEU, judgment of 17 September 2014, *Skandia America*, C-7/13, 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 v Ireland*<sup>5</sup> and *Commission v Sweden*<sup>6</sup>, the VAT Committee agreed the following guidelines<sup>7</sup> 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".*

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<sup>5</sup> CJEU, judgment of 9 April 2013, *Commission v Ireland*, C-85/11, EU:C:2013:217.

<sup>6</sup> CJEU, judgment of 25 April 2013, *Commission v Sweden*, C-480/10, EU:C:2013:263.

<sup>7</sup> [Guidelines](#) resulting from the 101<sup>st</sup> 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 those wanting to be members of a VAT group must have in accordance with Article 11 of the VAT Directive based on Working paper No 918, although no guidelines have been agreed so far.

### **3. THE NATIONAL LEGISLATION ON VAT GROUPS**

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

- (1) A VAT group can be formed by two or more legal persons (whether or not taxable persons) which have their place of business or a fixed establishment in Malta and who are closely bound to one another by financial, economical, and organisational links. If the legal person has establishments in another Member State or outside the EU, these establishments are also considered to be part of a VAT group.
- (2) The Maltese law sets out other conditions to be fulfilled by the applicants in order to be able to form a VAT group as follows:
  - At least one of the applicants must be a taxable person who is licensed or recognised under specific regulations governing certain sectors as listed in the schedule put at the end of the legal text (e.g. financial institutions; lotteries and other games).
  - At the time of application, all the applicants must have submitted all returns and notices due for VAT purposes and under the income tax legislation and must have settled in full all tax liabilities, interest and administrative penalties.
- (3) The financial, economic and organisational links must exist simultaneously and are described as follows:
  - i. the financial link is deemed to exist where any or two or more of the following are, directly or indirectly, held as to more than 90%, by the same person or persons (whether a legal person or an individual):
    - the voting rights or equivalent interests;
    - the entitlement to profits available for distribution;
    - the entitlement to surplus assets available for distribution on a winding up or equivalent event;
  - ii. the economic link is deemed to exist where the activity of each of the applicants is of the same nature or falls within the same industry, or where activities of the applicants are complementary or interdependent, or where one member of the group carries out activities which are wholly or substantially for the benefit of one or more of the other members;
  - iii. the organisational link is deemed to exist where the applicants have a shared management structure wholly or in part. It is however presumed that if a financial link exists between members, the organisational link is also present.
- (4) The scheme is optional for the eligible persons. The option can be exercised from 1<sup>st</sup> June 2018.

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- (5) A person can be a member of only one VAT group. Moreover, persons bound to each other by financial, economic and organisational links may only form part of the same VAT group.
- (6) A person designated among the group members as "Group Reporting Entity" will be responsible for exercising the rights and discharging the obligations of the VAT group. However, all group members are jointly and severally liable for the payment of VAT, interest and penalties due.
- (7) Persons joining the VAT group are regarded as a single taxable person, namely, the VAT group. It follows that transactions between group members 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 "Group Reporting Entity" (including intra-Community acquisitions and importations).
- (8) As a general anti-abuse provision, the Commissioner may regard a supply made by a member of the VAT group to another member as if it had been made between separate taxable persons, where this is necessary to prevent tax avoidance or evasion through the application of the VAT grouping scheme. In such a case, the supply between group members is treated as a supply by the Group Reporting Entity to itself.
- (9) To form a VAT group an application of two or more persons shall be made electronically with the relevant information confirming the existence of the required links. A similar application can be submitted by a person who wants to join an existing group. After assessing such an application, the registration of the VAT group is notified to the Group Reporting Entity.
- (10) Once registered, the VAT group will be allocated a single VAT number and any previous individual VAT numbers of the members will be cancelled.
- (11) The input VAT credit of each member is not transferred to the VAT Group itself but it can be claimed for refund according to the Maltese VAT provisions.
- (12) Once a VAT group is formed, it cannot be dissolved on the initiative of the members earlier than 24 months after the date of its registration. The group cannot be formed once again between the same members until 24 months after its cancellation.
- (13) If a member of the VAT group no longer meets the conditions to be part of the group, the Group Reporting Entity shall inform the Commissioner who will decide about the termination of the individual membership. The Commissioner can also decide on his own initiative about the termination of a membership, unless it is proven that the conditions for being part of the group are still met.

**4. THE COMMISSION SERVICES' OPINION**

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

#### **4.1. Territorial scope of the VAT grouping scheme**

The very wording of 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 VAT Committee guidelines on the territorial scope of VAT groups, agreed by a large majority, the notion of "*persons established*" for the purposes of Article 11 has to be 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 and also with the VAT identification requirements provided for there.

It should be noted that according to this interpretation the VAT grouping scheme also remains easy to manage and control for the tax administration given that all group members are subject to rules of the same Member State.

Under the Maltese legislation, only persons established in Malta could become members of a VAT group there. However, from the consultation of Malta, the Commission services understand that in the case of a single legal entity which has one establishment (whether head office or branch) in Malta forming part of a VAT group there, but also having other establishments outside of Malta (in another Member State or outside the EU), Malta will consider the whole entity (and therefore also foreign establishments) to form part of the VAT Group in Malta. The Maltese VAT grouping scheme therefore seems to be inconsistent with the territorial scope of VAT grouping as set out in the guidelines. Insofar as establishments are established outside the EU, it cannot be said to be in line with the outcome of *Skandia America*.

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 group<sup>8</sup>.

Furthermore, in order to avoid differences in application of the VAT grouping scheme among Member States, it is necessary that the interpretation of Article 11, despite its optional nature, is given an autonomous and uniform interpretation<sup>9</sup>.

Hence, 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 belongs to a VAT group in Malta and the head office is located in another Member State or outside the EU, the supply from the foreign head office to the Maltese branch would be treated as a supply made by a third party to the VAT group, then taxable for VAT purposes.

Moreover, the Commission services would like to know how the general anti-abuse provision set out in the Maltese law would allow the tax administration to prevent situations of tax avoidance and evasion through the use of the VAT grouping scheme (e.g. where a branch located abroad belongs to more than one VAT group).

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<sup>8</sup> See paragraphs 2 and 3 of the VAT Committee guidelines in section 2. See also *Skandia America*, paragraphs 29 and 30.

<sup>9</sup> See *Commission v Sweden*, paragraphs 34-35.

The Maltese delegation is invited to clarify this point (in conjunction with the point raised under section 4.4).

#### **4.2. Limited application of the VAT grouping scheme**

Section 3(1)(a) of the Maltese legislation states among other conditions that to form a VAT group at least one of the applicants must be a taxable person who is licenced or recognised under specific legislations listed in the law.

According to this provision the VAT grouping scheme in Malta will be available only if one of the members operates in the financial, insurance and gaming sectors whose activities are typically VAT exempt with no right to input VAT deduction. In this context, VAT grouping will provide an economic benefit for its members deriving from the fact that supplies made between members of the same group will be disregarded for VAT purposes and thus the costs of irrecoverable input VAT in that respect will be prevented.

Nevertheless, the Maltese delegation has explained in the consultation that in order to prevent avoidance and evasion through the use of the VAT grouping scheme, it has been decided to limit the possibility of forming a VAT group only to persons who are directly or indirectly under a regulatory supervision in Malta, in accordance with the second paragraph of Article 11 of the VAT Directive.

In its ruling *Commission v Sweden*<sup>10</sup>, the CJEU stated that the application of Article 11 is not, according to its wording, made subject to conditions other than those provided for therein. Nor does it enable the Member States to impose other conditions on economic operators in order to form a VAT group, such as carrying out a certain type of activity or being part of a particular sector of activity. On the other hand, in the same ruling the CJEU confirmed that according to the second paragraph of Article 11 it is permissible for Member States to restrict the application of the VAT grouping scheme in order to combat tax evasion or avoidance, assuming that the measures needed to prevent tax evasion and avoidance through the use of such a scheme are taken in compliance with the EU law.

It follows, in principle, that the VAT grouping scheme should be open to all sectors of economic activity in the Member State which introduces such a scheme and any restriction to the possibility of forming a VAT group would be possible only for the need to combat tax avoidance and evasion<sup>11</sup>. In this regard, it should also be noted that the objectives of administrative simplification and prevention of abuse pursued by Article 11 are not limited to certain sectors but are applicable to all economic operators regardless of the sector in which they operate<sup>12</sup>.

With that in mind, the Maltese delegation is invited to clarify why the restriction on the availability of the VAT grouping scheme only to groups in which at least one member operates in the financial, insurance or gaming sector is justified for the need to combat tax avoidance, given that other companies or sectors can also be subject to a regulatory supervision (e.g. the medical and pharmaceutical sectors) and that the practice of

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<sup>10</sup> See also CJEU, judgment of 25 April 2013, *Commission v Finland*, C-74/11, EU:C:2013:266.

<sup>11</sup> That position was already made clear in the Communication on VAT grouping (COM(2009) 325 final).

<sup>12</sup> See Opinion of Advocate General Jääskinen of 27 November 2012, *Commission v Sweden*, C-480/10, EU:C:2012:751, point 50.

multistage group structure is typical of many other sectors<sup>13</sup> (in conjunction with the point raised under section 4.4).

### **4.3. 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.

According to section 3(3)(b) of the Maltese legislation, if a financial link exists between the persons making up the VAT group, the organisational link can be presumed present. Such a presumption, moreover, seems to be general and irrefutable. It follows that the threefold condition under Article 11 of the VAT Directive does not seem to be fully implemented in the Maltese legislation, given that only the financial and economic links would *de facto* be required to be met.

Moreover, the Commission services would like to know how the financial link test would be applied in respect of those persons of a VAT group who would not be taxable persons, given that such link is defined by reference to concepts which are typical of companies (e.g. voting rights, or entitlement to profits). Article 11 of the VAT Directive simply refers to "persons" being able to join a VAT group, which the CJEU acknowledged in a series of judgments<sup>14</sup> to cover taxable persons but also non-taxable persons.

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

As set out in that paper (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. Therefore, according to the Commission services' view, it is not acceptable to set up a general presumption whereby a link is taken to be present as soon as another link exists.

It must be borne in mind that under Article 11 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 not fully implemented, VAT grouping provisions would become applicable in circumstances where the criteria laid down in the VAT Directive are not met.

The Maltese delegation is invited to clarify these points.

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<sup>13</sup> Opinion of Advocate General Jääskinen, *Commission v Sweden*, points 49-51.

<sup>14</sup> CJEU, judgment of 9 April 2013, *Commission v Ireland*, C-85/11, EU:C:2013:217; judgment of 25 April 2013, *Commission v Czech Republic*, C-109/11, EU:C:2013:269; judgment of 25 April 2013, *Commission v Denmark*, C-95/11, EU:C:2013:268; judgment of 25 April 2013, *Commission v UK*, C-86/11, EU:C:2013:267; and judgment of 25 April 2013, *Commission v the Netherlands*, C-65/11, EU:C:2013:265.



#### **4.4. Anti-avoidance measures**

It is clear that Malta has made use of the option provided for in the second paragraph of Article 11 of the VAT Directive when designing its VAT grouping scheme and has foreseen a general anti-avoidance provision in the national legislation implementing the scheme.

As stated in the 2009 VAT Grouping Communication, for the Commission services it is important that Member States make use of this option and take all necessary measures to avoid abusive practices, put into effect through the use of their national VAT grouping schemes, since no unjustified advantage or harm should arise from the implementation of the VAT grouping option.

However, considering the objectives of Article 11 and its optional nature, the discretion of Member States in using anti-avoidance provisions should not mean that they may adopt a VAT scheme in their legislation which would violate the principle of equal treatment or run counter to the principle of fiscal neutrality. A situation where the VAT group option is used to attract businesses in specific Member States, and thus be a source of fiscal competition between them, needs to be avoided.

According to sections 6(2) and (3) of the Maltese legislation, in order to prevent tax avoidance and evasion, the Commissioner may decide that supplies made by a member of a VAT group to another member should not be regarded as internal supplies disregarded for VAT purposes but as supplies made by the Group Reporting Entity, that represents the VAT group, to itself.

It is not clear how this provision would work in practice and whether it is intended to address specific situations of abuse.

The Maltese 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 Malta**

The Republic of Malta hereby submits draft legislation to the VAT Committee for consultation in terms of Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006) and Article 5(6) of the Value Added Tax Act (Chapter 406 of the Laws of Malta.)

Article 5(6) of the Value Added Tax Act empowers the Minister responsible for finance in Malta to make regulations, after consultation with the VAT Committee set up in accordance with Article 398 of Council Directive 2006/112/EC, to regard as a single taxable person any persons established in Malta who, while legally independent, are closely bound to one another by financial, economic and organisational links (VAT Grouping).

The Government of the Republic of Malta now intends to progress with the introduction of VAT grouping into Maltese VAT legislation by adopting the enclosed *Value Added Tax (Registration as a Single Taxable Person) Regulations* (hereinafter referred to as the “Regulations”).

The Regulations are proposed to be introduced with effect from 1 June 2018, at which time applications for registration as a single taxable person in terms of the Regulations may be made by eligible persons.

The main features of the Regulations are the following:

- (a) The formation of a VAT Group by eligible persons will be optional to those persons. The option to be registered as a single taxable person may be exercised at the earliest with effect from 1 June 2018.
- (b) A VAT Group may be formed by legal persons (taxable and non-taxable legal persons) which have established their business in Malta or who maintain a fixed establishment in Malta, and who satisfy the required links tests. In the case of a legal person which has its main establishment in one country and its fixed establishment in another country, to the extent that one of the establishments is located in Malta and an application has been made for the formation of or admission to a VAT Group, Malta will consider the whole entity to form part of the Malta VAT Group. The general anti-abuse provision in the Regulations should enable the tax administration to address situations where an undue tax advantage is achieved through the application of the Regulations.
- (c) A VAT Group can only be formed by legal persons who are closely bound to one another by the required financial, economic and organisational links. These criteria are cumulative.
- (d) Exercising the discretion granted in terms of article 11 to introduce measures necessary to prevent tax avoidance or evasion through the use of VAT Grouping, Malta has decided to restrict the possibility of forming a VAT Group to persons who are directly or indirectly under regulatory supervision in Malta. In this regard, the Regulations provide that at least one of the members of a VAT Group must be

a taxable person who is licensed or recognised in terms of the legislation listed in the Schedule to the regulations.

- (e) In addition, all of the applicants must have submitted all returns and notices due in terms of the Value Added Tax Act and in terms of income tax legislation, and must have settled in full any and all amounts due by way of tax as well as any interest and administrative penalties in order to be eligible to form a VAT Group.
- (f) The required financial links shall subsist where any two or more of the following are, directly or indirectly held as to more than 90% by the same person or persons (whether a legal person or an individual): (i) the voting rights or equivalent interests; (ii) the entitlement to profits available for distribution; (iii) the entitlement to surplus assets available for distribution on a winding up or equivalent event.
- (g) The required organisational links shall subsist where the applicants have a shared management structure, whether in whole or in part.
- (h) The required economic links shall subsist where the activity of each of the applicants is of the same nature or within the same industry, or where the activities of the applicants are interdependent or complementary, or where one member of the group carries out activities which are wholly or substantially to the benefit of any one or more of the other members.
- (i) Persons cannot be a member of more than one VAT Group.
- (j) Once registered, the VAT Group will be allocated a single VAT number, to be used by all members (if any member was previously already registered under the VAT Act, that prior registration will be cancelled upon formation of /admission to a VAT Group). All reporting obligations of a VAT Group will be discharged by one of the members, nominated to be the Group Reporting Entity. However, each member shall, pursuant to the Regulations, remain jointly and severally liable for the payment of any tax, administrative penalties and interest arising under the Value Added Tax Act which becomes due and payable by the Group Reporting Entity.
- (k) Once a VAT Group is registered:
  - All supplies made by one of the members to a person outside the VAT Group shall be treated, for Malta VAT purposes, as supplies made by the Group Reporting Entity;
  - All purchases made by one of the members from a person outside the Group shall be treated, for Malta VAT purposes, as purchases made by the Group Reporting Entity;
  - Any supply of goods or supply of services made by one of the members of a VAT Group to another member shall be disregarded for the purposes of the Value Added Tax Act.
- (l) The Regulations contemplate the introduction of a general anti-abuse provision which gives the Commissioner the power to regard a supply between group

members as a supply between separate taxable persons, where this is necessary to prevent tax avoidance or evasion through the application of the Regulations. Whilst it was, in first instance, considered desirable to have several specific anti-abuse measures (for example, those addressing particular scenarios/transactions, such as ‘entry schemes’), the introduction of a more general measure so as to enable the tax administration to address a broader spectrum of circumstances which may result in abuse through the application of the Regulations was preferred. The VAT Committee’s views on this approach, in particular in the context of practical experience and the potential effectiveness of such a measure, would be welcome.

- (m) Unless the eligibility criteria cease to be met by all of the members, once a VAT Group is formed, it cannot be dissolved before the lapse of 24 months from the date of its registration. Furthermore, once a VAT Group has been dissolved, it cannot be reformed between the same members until a further 24 months have lapsed. These provisions have been introduced as anti-abuse measures.
- (n) A person’s membership of a VAT Group will be terminated if that member ceases to meet the relevant eligibility criteria.

**Relevant national legislation**

**L.N. of 2018**

**VALUE ADDED TAX  
ACT (CAP. 406)**

**Value Added Tax (Registration as a Single Taxable  
Person) Regulations, 2018**

BY VIRTUE of the powers conferred by article 5(6) of the Value Added Tax Act, the Minister for Finance has made the following regulations:-

Citation and  
commencement.

**1.** (1) The title of these regulations is the Value Added Tax (Registration as a Single Taxable Person) Regulations, 2018.

(2) These regulations shall come into force on 1<sup>st</sup> June 2018, and shall apply only to applications, received in terms of regulation 7, which come into effect on or after such date.

Definitions

**2.** (1) In these regulations, save as provided in sub-regulation (2), all words and phrases shall have the meaning as prescribed in the Act.

(2) In these regulations, unless the context otherwise requires:

Cap. 406.

"the Act" means the Value Added Tax Act;

"economic links" has the meaning given in regulation 3(3); "Group Reporting Entity" means the member of a VAT Group

"Group Reporting Entity" means the member of a VAT Group appointed as such pursuant to regulation 4;

"established" has the meaning given in article 2 of the Act;

"financial links" has the meaning given in regulation 3(3);

"member of a VAT Group" shall mean a person who forms part of a VAT Group registered as such in terms of these regulations and shall include the Group Reporting Entity;

"organisational links" has the meaning given in regulation 3(3);

"person" means a legal person and shall not include a physical person;

"Schedule" means the Schedule to these regulations as may be amended by the Commissioner from time to time by way of notice in the Gazette;

"VAT Group" means two or more persons who, pursuant to regulation 5, are registered under the Act as a single taxable person.

Single taxable person.

**3.** (1) Two or more persons established in Malta may apply to the Commissioner to be registered as a single taxable person for the purposes of the Act if the following conditions are satisfied:

(a) at least one of the applicants is a taxable person who is licensed or recognised in terms of the legislation listed in the Schedule;

(b) each of the applicants is bound to each of the others by financial links, organisational links and economic links; and

Cap. 372.

(c) at the time of application, all the applicants have submitted all returns and notices due under articles 27 and 30 of the Act, and all returns of income due in terms of the Income Tax Management Act, and have settled in full any and all amounts due by way of tax declared in the aforementioned returns and notices, as well as any interest and administrative penalties due pursuant to the Act and the Income Tax Act and Income Tax Management Act:

Cap. 123.

Provided that, when a valid objection or appeal has been made against an assessment issued to any of the said applicants, any tax and, or administrative penalty assessed which is in dispute and which is kept in abeyance as a result of the said objection or appeal, as well as any interest accruing thereon, shall be disregarded for the purposes of this paragraph.

(2) A person established in Malta may apply to the Commissioner to be admitted as a member of an existing VAT Group, provided that the conditions set out in sub-regulation (1)(b) and (c) are satisfied.

(3) For the purposes of this regulation:

(a) the required financial links shall be deemed to exist where any two or more of the following are, directly or indirectly, held as to more than 90% by the same person or persons (whether a legal person or an individual):

(i) the voting rights or equivalent interests;

(ii) the entitlement to profits available for distribution; or

(iii) the entitlement to surplus assets available for distribution on a winding up or equivalent event;

(b) "organisational links" shall be deemed to exist where the applicants have a shared management structure, whether in whole or in part:

Provided that, where the required financial links exist, it shall be presumed that the requisite organisational links also subsist;

(c) the required economic links shall be deemed to exist where the activity of each of the applicants is of the same nature or within the same industry, or where the activities of the applicants are interdependent or complementary, or where one member of the group carries out activities which are wholly or substantially to the benefit of any one or more of the other members:

Provided that, for the purposes of determining whether the required economic links exist, the Commissioner may request such additional information and documentation as may be required to evidence such links, and the decision of the Commissioner shall be final and conclusive.

(4) No person may be a member of more than one VAT Group at the same time.

(5) Persons bound to each other by financial links, organisational links and economic links may only form part of the same VAT Group.

(6) In order for a group of persons to be treated as a VAT Group, or to be admitted to a VAT Group, an application shall be made in the manner specified in regulation 7.

Group Reporting Entity.

**4.** (1) The members of a VAT Group shall nominate from amongst themselves the Group Reporting Entity, which shall exercise any and all rights and discharge any and all obligations arising to the VAT Group under the Act.

(2) Any supply made by a member of a VAT Group shall be treated, for the purposes of the Act, as a supply made by the Group Reporting Entity.

(3) Any supply falling within the scope of article 4 of the Act made to a member of a VAT Group shall be treated, for the purposes of the Act, as a supply made to the Group Reporting Entity.

(4) Any intra-community acquisition falling within the scope of article 4 of the Act made by a member of a VAT Group shall be treated, for the purposes of the Act, as an intra-community acquisition made by the Group Reporting Entity.

(5) Any importation falling within the scope of article 4 of the Act made by a member of a VAT Group shall be treated, for the purposes of the Act, as an importation made by the Group Reporting Entity.

(6) For the avoidance of any doubt, notwithstanding the particular description of any of the members of a VAT Group as a taxable

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person or a non-taxable legal person, a VAT Group registered as such pursuant to these regulations shall, for the purposes of any supply, acquisition or importation referred to in sub-regulations (2), (3), (4) and (5), be regarded as a taxable person.

Notification of  
Group treatment.

**5.** (1) The Commissioner shall, following receipt of an application made in the manner prescribed in regulation 7(1), register the applicants as a VAT Group if satisfied that the eligibility conditions specified in regulation 3 have been met and shall, by notice in writing:

(a) specify the date with effect from which the applicants are to be regarded as a VAT Group for the purposes of the Act;

(b) designate the person nominated in terms of regulation 4(1), or such other person from amongst the applicants as the Commissioner may deem fit, as the Group Reporting Entity;

(c) issue a Value Added Tax identification number to the group pursuant to articles 10 or 12 of the Act, as the case may be.

The notice in terms of this sub-regulation shall be issued to the Group Reporting Entity.

(2) The rights and obligations arising in terms of the Act to a person registered under article 10 or 12, as the case may be, shall apply to the VAT Group with effect from the date referred to in sub-regulation (1)(a).

(3) The Commissioner shall, following an application made in the manner prescribed in regulation 7(2), where he is satisfied that the conditions prescribed in the said regulation are satisfied, by notice in writing to the applicant and the Group Reporting Entity, deem the applicant to be a member of the VAT Group with effect from the date specified in the said notice.

Supplies between  
members of a VAT  
Group.

**6.** (1) Notwithstanding the provisions of article 4 of the Act, and without prejudice to the powers of the Commissioner arising in terms of sub-regulation (2), any supply of goods or supply of services made by one member of a VAT Group to another member of that VAT Group shall be disregarded for the purposes of the Act.

(2) The Commissioner may, in order to prevent tax avoidance or evasion through the application of the provisions of these regulations, direct that the provisions of sub-regulation (1) shall not apply to a supply of goods or services made by one member of a VAT Group to another member of that VAT Group which supply would, had the VAT Group not existed, fall within the scope of article 4 of the Act.

(3) Where a determination is made by the Commissioner pursuant to sub-regulation (2), the supplies made by a member of the VAT Group to another member of the VAT Group shall be treated, for the



purposes of the Act, as supplies made by the Group Reporting Entity to itself.

(4) The Commissioner shall, in any direction given in terms of sub-regulation (2), provide any such instructions as may be necessary to enable the Group Reporting Entity to fulfil its obligations under the Act.

Application.

**7.** (1) An application for registration of two or more persons as a VAT Group shall be made electronically, in the format determined by the Commissioner, and shall contain, in particular, information on the manner in which the applicants are bound by financial links, organisational links and economic links, and shall indicate the date with effect from which the applicants elect to be registered as a VAT Group.

(2) An application for the admission of a person as a member of an existing VAT Group shall be made electronically in the format determined by the Commissioner, and shall contain, in particular, information on the manner in which that person is bound to the other members of the VAT Group by financial links, organisational links and economic links, and shall indicate the date with effect from which the applicant elects to be admitted to the VAT Group.

(3) The Commissioner may request any one or more of the applicants for registration as members of a VAT Group, or the applicant for admission to an existing VAT Group, as the case may be, to provide such other information and documentation as may be required.

Cancellation of prior registrations.

**8.** (1) Where any one or more of the individual applicants for registration as a VAT Group, or for admission to an existing VAT Group, are already registered under the Act, the Commissioner shall, immediately upon the issuance of a notification in terms of regulation

Provided that the provisions of item 14(2) of the Second Schedule to the Act shall not apply to any such cancellation of registration.

(2) The cancellation of the individual VAT registration of an applicant for membership of, or admission to, a VAT Group in terms of sub-regulation (1) shall not relieve that person from any liability incurred under this Act in virtue of anything done or omitted to be done before the date of the cancellation.

(3) Following the cancellation of the individual VAT registration of an applicant for membership of, or admission to, a VAT Group in terms of sub-regulation (1), any excess credit or refund entitlement which had arisen to that person in terms of article 24 of the Act in respect of a tax period which ended prior to the effective registration of, or admission to, the VAT Group shall be and remain a refund payable to that person in accordance with the provisions of article 24

of the Act, and shall not be available for set off by, or refund to, the Group Reporting Entity.

Where assets of the economic activity include capital goods. S.L. 406.12

**9.** (1) Where the assets of the economic activity of any of the applicants for membership of a VAT Group or for admission to an existing VAT Group include capital goods, as defined in the Value Added Tax (Adjustments relating to input tax on capital goods) Regulations, in respect of which the period of reference for the purposes of determining the adjustment of the initial deduction referred to in regulation 3 of the said Value Added Tax (Adjustments relating to input tax on capital goods) Regulations has already started to run, the said period of reference shall continue to run subsequent to the date referred to in regulation 5(1)(a) or (3), as the case may be, notwithstanding the cancellation of the said applicant's individual registration in terms of regulation 8(2).

S.L. 406.12

(2) If any of the events referred to in regulation 4 of the Value Added Tax (Adjustments relating to input tax on capital goods) Regulations occur in relation to the capital goods referred to in sub-regulation (1) subsequent to the date specified in regulation 5, the Group Reporting Entity shall make any adjustment required to the initial deduction adjustment in the manner prescribed in the said Value Added Tax (Adjustments relating to input tax on capital goods) Regulations.

S.L. 406.12

(3) Where the assets belonging to a person who is a member of a VAT Group include capital goods, as defined in the Value Added Tax (Adjustments relating to input tax on capital goods) Regulations, in respect of which the period of reference for the purposes of determining the adjustment of the initial deduction referred to in regulation 3 of the said Value Added Tax (Adjustments relating to input tax on capital goods) Regulations started to run or was running whilst that person was a member of the VAT Group, the said period of reference shall continue to run subsequent to the termination of that person's membership of the VAT Group, or the dissolution and deregistration of the VAT Group, in terms of regulation 11, and the provisions of the Value Added Tax (Adjustments relating to input tax on capital goods) Regulations shall continue to apply in respect of the said capital goods:

S.L. 406.12

Provided that if any of the events referred to in regulation 4 of the Value Added Tax (Adjustments relating to input tax on capital goods) Regulations occur in relation to the capital goods referred to above on or after the termination of that person's membership of the VAT Group, or the dissolution and deregistration of the VAT Group, as the case may be, that person shall make any adjustment required to the initial deduction adjustment in the manner prescribed in the said Value Added Tax (Adjustments relating to input tax on capital goods) Regulations unless such adjustment has already been made by the Group Reporting Entity.

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Joint and several liability.

**10.** (1) Each member of a VAT Group shall be jointly and severally liable for the payment of any tax, administrative penalties and interest arising under the Act, which have become due and payable by the Group Reporting Entity pursuant to the application of regulation 4.

(2) Following the termination of a person's membership of a VAT Group in terms of regulation 11, that person shall remain jointly and severally liable with the other members of a VAT Group for the payment of any tax, administrative penalties and interest arising under the Act in connection with anything done or omitted to be done prior to the termination of that person's membership of the VAT Group.

Termination of Group membership.

**11.** (1) Where a member of a VAT Group no longer satisfies or shall no longer satisfy any one or more of the conditions set out in regulation 3(1)(b), the Group Reporting Entity shall, prior to the lapse of fifteen days from the date of change in circumstances, notify the Commissioner of the change or the intended change, as the case may be. The Commissioner shall, once satisfied that any one or more of the required conditions are or shall no longer be satisfied, terminate that person's membership of a VAT Group, and shall serve notice on that person indicating the effective date of the termination of membership.

(2) Where it appears to the Commissioner that a member of a VAT Group no longer satisfies any one or more of the conditions set out in regulation 3(1)(b), the Commissioner shall, unless satisfactory evidence to the contrary is provided, terminate that person's membership of a VAT Group, and shall serve notice on that person indicating the effective date of the termination of membership.

(3) The date of termination of a person's membership of the VAT Group pursuant to sub-regulations (1) or (2) shall not be a date earlier than the date on which that person ceased to satisfy the requirements of regulation 3(1)(b).

(4) Where the membership of a VAT Group of the Group Reporting Entity is terminated, the remaining members shall immediately appoint from amongst themselves a new Group Reporting Entity, which shall notify the Commissioner in writing within fifteen days from the date of the notification received pursuant to sub-regulations (1) or (2):

Provided that, in such circumstances, the Commissioner may, at any time and as he shall deem fit, designate in lieu of the person so appointed, any other member of the VAT Group as the Group Reporting Entity.

(5) The cancellation of a person's membership of a VAT Group shall not relieve that person from any liability incurred under the Act in virtue of anything done or omitted to be done before the date of

the cancellation, or from the obligation of that person to make an application for a fresh registration in any of the circumstances under which a person is required to apply for registration in terms of any provision of the Act:

Provided that, where the person whose membership of a VAT Group is cancelled as aforesaid is not liable to make an application for registration under article 10 of the Act, the provisions of item 14 of the Second Schedule to the Act shall apply in respect of any goods belonging to that person, where the value added tax on those goods had been wholly or partially deducted.

(6) The members of a VAT Group may apply to the Commissioner to dissolve and cancel the registration of the VAT Group at any time after the lapse of twenty-four full calendar months from the effective date of registration of the VAT Group, and a VAT Group cannot subsequently be reconstituted with the same membership until the lapse of twenty-four full calendar months from the effective date of the cancellation thereof.

(7) When the registration of a VAT Group is cancelled pursuant to sub-regulation (6), the Commissioner shall serve notice on the Group Reporting Entity indicating the effective date of cancellation of the registration:

Provided that the cancellation of registration of a VAT Group shall not relieve the persons who were members of the VAT Group prior to the said date of cancellation from any liability incurred under the Act in virtue of anything done or omitted to be done before the date of the cancellation, nor from the obligation to make an application for a fresh registration in any of the circumstances under which a person is required to apply for registration in terms of any provision of the Act:

Provided further that where a person who was a member of the VAT Group prior to the said date of cancellation of its registration is not liable to make an application for registration under article 10 of the Act, the provisions of item 14 of the Second Schedule of the Act shall apply in respect of any goods belonging to that person, where the value added tax on those goods had been wholly or partially deducted.

References in the Act.

**12.** (1) Unless otherwise stated herein, any reference in the Act to a person registered under article 10 of the Act or a person registered under article 12 of the Act, as the case may be, shall be construed to include a reference to a VAT Group registered as such in terms of these regulations.

(2) Any reference to a "person" and "registered taxable person" in Part VI of the Act shall be construed as a reference to each of the individual members of a VAT Group and, in particular, each individual member of a VAT Group shall be required to keep full and

proper records of all transactions entered into with other members of the VAT Group and with persons not being members of the VAT Group:

Provided that the Group Reporting Entity shall, in addition, be required to keep consolidated records of all transactions which, in terms of regulation 4, are treated as carried out by the Group Reporting Entity, in the manner specified in the Eleventh Schedule to the Act.

(3) The term "supplier" in item 4(2)(b) of Part One of the Third Schedule to the Act shall, for the purposes of determining the Distance Sales Threshold referred to in item 1 of Part Three of the Sixth Schedule to the Act, be construed as referring to all the members of the VAT Group.

#### Schedule

(Regulations 2 and 3)

For the purposes of these regulations, the legislation referred to is that listed hereunder:

- the Banking Act, Chapter 371 of the Laws of Malta;
- the Financial Institutions Act, Chapter 376 of the Laws of Malta;
- the Gaming Act, Chapter 400 of the Laws of Malta;
- the Insurance Business Act, Chapter 403 of the Laws of Malta;
- the Insurance Intermediaries Act, Chapter 487 of the Laws of Malta;
- the Investment Services Act, Chapter 370 of the Laws of Malta;
- the Lotteries and Other Games Act, Chapter 438 of the Laws of Malta;
- the Retirement Pensions Act, Chapter 514 of the Laws of Malta;
- the Securitisation Act, Chapter 484 of the Laws of Malta.