



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

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Brussels, 20 March 2018

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 944**

**QUESTION  
CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

<b>ORIGIN:</b>	<b>Commission</b>
<b>REFERENCE:</b>	<b>Article 11</b>
<b>SUBJECT:</b>	<b>Meaning of "financial, economic and organisational links" among VAT group members – the point of view of the VAT Expert Group</b>

## **1. INTRODUCTION**

The Commission services wish to resume discussions with the VAT Committee on the meaning of the condition that to be regarded as a VAT group, the members making up the VAT group must be bound to one another by "financial, economic and organisational links" pursuant to Article 11 of the VAT Directive<sup>1</sup>. A first exchange had been held at the 108<sup>th</sup> meeting in March 2017 on the basis of Working paper No 918. The minutes of that meeting had reflected the difficulty of discussions and the fact that no firm conclusions could be drawn at the time. Further, the Commission services had announced that the subject matter would also be discussed with stakeholders in the VAT Expert Group (VEG).

The VEG, a body set up to assist and to advise the Commission on VAT matters<sup>2</sup>, has in the meantime undertaken work on this subject and the Commission services now wish to hold an exchange of views within the VAT Committee, on the basis of the report adopted by the VEG.

## **2. SUBJECT MATTER**

Article 11 of the VAT Directive requires members of a VAT group to be closely bound by "financial, economic and organisational links". The VAT Directive does not define this threefold condition and the issue has never directly been dealt with by the Court of Justice of the European Union (CJEU), resulting in this test being understood and implemented in different ways by Member States making use of Article 11 of the VAT Directive. This creates uncertainty both for persons making use of VAT groups, or intending to do so, and for tax administrations.

With a view to promote a more uniform application of VAT grouping rules, including the "financial, economic and organisational links" requirement, the Commission issued a Communication in 2009<sup>3</sup>. Despite the guidance given in that Communication, the "links test" is however still interpreted and applied unevenly.

Moreover, several judgments by the CJEU on VAT grouping have been issued since then and, although none of them directly concerns the "links test", they could be seen as having an impact on how financial, economic and organisational links are to be interpreted.

Hence, it remains necessary to continue the examination of the meaning of the "links test". The need for a common interpretation and application of this test was also one of the key messages of the participants in the Fiscalis 2020 Seminar "Modernising VAT groups" held in Dublin in September 2016, which brought together mainly representatives of Member States in the Group on the Future of VAT (GFV) and members of the VEG. Guidance on this issue was found to be a short-term feasible goal that could increase the legal certainty

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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, p. 1).

<sup>2</sup> [http://ec.europa.eu/taxation\\_customs/taxation/vat/key\\_documents/expert\\_group/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/expert_group/index_en.htm)

<sup>3</sup> 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.

for businesses making use of VAT groups and for Member States, and the Commission's Communication was considered to be a valid starting point.

The paper by the VEG, which can be found as a separate Annex<sup>4</sup>, reflects the point of view of the experts appointed as members of the VEG and should not be taken as the position of the Commission services.

### **3. DELEGATIONS' OPINION**

Delegations are invited to express their views on the matters as outlined in the paper prepared by the VEG.

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<sup>4</sup> VEG No 070 REV1 - ref: taxud.c.1(2018)1668166 (*available in English only*).

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