Flash News

VAT grouping scheme in Luxembourg

On 13 April 2018, the Luxembourg Finance Minister has submitted to the Chamber of Deputies the draft law no. 7278 in order to introduce the VAT grouping scheme into the Luxembourg legislation.

The introduction of the VAT grouping is justified by the recent jurisprudence of the Court of Justice of the European Union, which has repealed the extended benefits of entering an independent group of persons ("IGP") in Luxembourg by limiting its application to public interest activities.

VAT grouping scheme – Entering into force

According to the draft law, the date of entering into force should be 31 July 2018.

As per article 11 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, the introduction of the VAT grouping scheme into the national legislation of any EU Member State could be done only after consulting the VAT Committee.

On 16 April 2018, the VAT Committee via Working Paper no 948 REV gave its opinion on the consultation regarding the VAT grouping scheme requested by Luxembourg by asking the Luxembourg delegation to clarify several points, detailed below.

By opting to implement the VAT group, Luxembourg is joining the list of 16 other EU Member States who have implemented it[1].

Nevertheless, as 31 July 2018 is fast approaching, it could be that delays will occur in the legislative process and the final vote of the law.

Aim of the VAT grouping scheme

The main effect of implementing the VAT grouping scheme is that persons who join the group cannot be treated anymore as separate taxable persons for VAT purposes but as a new single taxable person – i.e. the VAT group.

All supply of goods or services between the members of the VAT group are to be considered as belonging to one and the same legal entity and thus, outside the scope of VAT.

Therefore, no VAT would be applicable on the transactions between the members of the VAT group.

[1] Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Netherlands, Slovak Republic, Sweden, United Kingdom

Aim of the VAT grouping scheme through examples:

Example 1)

Taxable person A, having no input VAT deduction right, received services subject to VAT from the taxable person B, having a full input VAT deduction right.

Without the VAT grouping scheme, for the taxable person A, the VAT invoiced by taxable person B represents a final cost. No deduction of the VAT incurred is allowed.

By implementing the VAT grouping scheme between taxable person A and taxable person B, no VAT is due on the transactions between them. Hence, no VAT cost will be incurred by the taxable person A.

Example 2)

Taxable person A provides services to taxable person B, both having a full input VAT deduction right and being within the same group in Luxembourg.

Now, without the VAT grouping scheme, taxable person A pays the output VAT to the Luxembourg VAT Authorities and subsequently, the taxpayer B will deduct (ask the VAT Authorities to reimburse) the same amount of VAT.

Hence, at the level of the group, taxable person A is only pre-financing the VAT that will be later claimed by the taxable person B.

By implementing the VAT grouping scheme between taxable person A and taxable person B, no VAT is due on the transactions between them. Hence, a clearing of transactions is made and the pre-financing of VAT is excluded.

Summary of the main features of the VAT grouping scheme in Luxembourg

The essential elements of the VAT grouping scheme in Luxembourg, as per the proposed draft law, are summarized below as follows:

1. Any person (whether or not a taxable person from a VAT perspective, legal persons and entities without legal personality) established in Luxembourg (i.e. entities physically present therein) could be part of a VAT group.
   Entities established abroad are not eligible.

2. The VAT grouping scheme in Luxembourg is not limited to certain economic activities. Hence, it is not only for the benefit of the operators in financial and insurance sectors as commercial companies could use this vehicle as well.
   By comparison with the IGP regime, it has a broader application.

3. There must be simultaneously and cumulatively a financial, economic and organizational link between the persons that would like to become members of the VAT group.

4. A person can be part of only one VAT group. Any involvement in the VAT grouping scheme must be maintained for at least two calendar years.

5. The implementation of the VAT grouping scheme will exclude the simultaneous application of:

    (i) the small – enterprises scheme (article 57 of the Luxembourg VAT law); and
    (ii) the flat-rate taxation scheme for agriculture and forestry (articles 58 to 60 of the Luxembourg VAT law).

6. The VAT group should have a representative member, who is the member responsible with the monitoring of the group or, failing that, by default, the member with the highest turnover or income.
    Another member, with unconditional access to the fiscally relevant data of the other members and resources to perform the task on a continuing basis, could be chosen as representative. Nevertheless, justification must be given for the appointment of another representative.

7. The representative should submit a declaration in order to notify the constitution of the VAT group, which will contain, among others:
    (i) an organizational chart of all members;
    (ii) detailed explanations regarding the economic flows between the members;
    (iii) detailed statement explaining the existence of the links between the members;
    (iv) individual subscriptions of the members, etc.

8. All transactions between the members of the VAT group require the issuance of specific documents, which have to contain all the information required for invoicing, such as the nature, the value, the place of supply, and the date when the transactions took place.

9. The VAT group will be identified by an individual VAT ID, which it will use in its relationship with the Luxembourg Tax Administration.
    Each member of the VAT group will be identified by an ancillary / auxiliary VAT ID, which it will use in the relationship with its co-contracting parties.
    The ancillary / auxiliary VAT ID of a group member should be mentioned in the invoices issued to or received from third parties, where the member is either the supplier or the recipient of the transaction.

10. The VAT group should submit for each group member a separate EC Sales List mentioning the ancillary / auxiliary VAT ID of the respective member.

11. When preparing the annual VAT return, the VAT group should include an annex mentioning the total turnover relating to internal transactions of each group member.

12. All group members are jointly and severally liable for the payment of VAT, interest and penalties dues.

__Particular points requested by the VAT Committee to be further clarified by the Luxembourg delegation__

A) Head office – branch relationship

The scenario envisaged by the VAT Committee where the treatment was not clear, based on the current version of the draft law, is as follows:

- the head office is located in another member state or outside the EU;
- the branch belongs to a VAT group in Luxembourg.

The VAT Committee emphasized that under this scenario, the supply from the foreign head office to the Luxembourg branch should be treated as a supply made by a third party to the VAT group. Thus, such transaction should be subject to VAT.

In such a case, the entities become two separate taxable persons if one of them is member of a VAT group.

B) Limited partnership or foundations – eligible for the VAT grouping scheme?

The VAT Committee wanted to know if the Luxembourg law will allow to entities as limited partnership or foundations to be part of a VAT group. If so, it should be clarified how the financial link requirement could be established in the national legislation.

C) VAT group – not a single taxable person from tax administration and third parties perspectives

From the VAT Committee perspective, the VAT grouping scheme created by the Luxembourg legislation will not confer to the VAT group an external significance as a single taxable person in relations with third parties due to the following facts:

- towards external suppliers, all members of the VAT group will use their own VAT IDs;
- towards external suppliers, all members of the VAT group will act as taxable persons.

We would like to emphasize that the law is only a draft version at this point and therefore still subject to amendments. Once the law will have its final version, we will come back with an additional Tax Alert as this is potentially the most interesting change in legislation since the repealing of the extended IGP effects.

Thus, it should be closely monitored and special attention given as well to the points raised by the VAT Committee.

For further information, do not hesitate to contact one of our team members, who will be glad to assist you at any time:

Partner	**Michael Probst**	**Phone: +352 26 86 63-318**
Directors	**Christel Begué**	**Phone: +352 26 86 63-325**
	Alexia Christodoulou	**Phone: +352 26 86 63-321**
	Matthias Gutknecht	**Phone: +352 26 86 63-330**
Manager	**Ramona Seceta**	**Phone: +352 26 86 63-337**

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