



Newsletter



TAX INSIDER

Italian VAT Group implemented: option with effect from 2019 by 15 November 2018

Introduction

Italian Budget Law 2017 implemented the VAT Group regime provided by Article 11 of the EU VAT Directive. On 18 April 2018, the Ministerial Decree providing implementing regulations was published in the Official Gazette. In order to apply for the VAT Group regime starting from 2019, Groups shall file the option by 15 November 2018.

Under the VAT Group regime, Group members are treated as a single taxable person and supplies of goods and services between Group members are no longer relevant for VAT purposes.

LED Taxand briefly describes (1) the Italian VAT Group regime and (2) its main advantages.

1. Italian VAT Group regime

VAT taxable persons can opt for the VAT Group regime if:

- they are established for VAT purposes in Italy;
- they carry on business, artistic or professional activities;
- they are linked through a financial, economic and organizational connection;
- they file a specific option with the Italian tax authorities.

The financial link is met if a parent company directly or indirectly controls the majority of voting rights of the subsidiaries. The VAT Group regime also applies to Italian subsidiaries whose common parent company is established in a foreign country that allows an effective exchange of information with Italy.

The economic link is met if the Group members carry on activities (i) of the same nature or (ii) complementary or (iii) for the benefit of the activity of the other members of the Group.

The organizational link is met if the Group members are subject to common coordination (direzione e coordinamento) pursuant to Italian corporate law.

Once the financial link exists, the economic and organisational links are deemed to be met.

The VAT Group regime is a “all in all out” option. In order to exclude a subsidiary from the VAT Group, a ruling shall be filed with the tax authorities to prove the absence of the economic or organisational link. If a company qualifies for being part of a VAT Group (“Qualifying subsidiary”) but does not opt-in as the other members of the Group: (i) any tax advantage unduly obtained is assessed by the Italian tax authorities towards the VAT Group; (ii) the VAT Group ceases to exist with effect from the year following the one in which the invalid exercise of the option is ascertained, unless a new option including all Qualifying subsidiaries is filed.

The following entities cannot be part of an Italian VAT Group:

- foreign permanent establishments of Italian taxable persons;
- taxable persons subject to judicial seizure pursuant to Article 670 of the Civil Procedure Code;
- taxable persons subject to bankruptcy procedure;
- taxable persons subject to ordinary liquidation.

In order to opt for the VAT Group, the representative of the Group submits electronically a declaration to the Italian tax authorities signed by all the Group members. The Italian tax authorities will issue a specific declaration form for the option.

The option must be filed by September 30 of the year before the application of the regime and it has a binding effect for three years. After the first three-year period, the option is automatically renewed every year until the revocation is exercised. As a transitory rule, in order to apply for the VAT Group regime starting from 2019, the option shall be filed by November 15, 2018.

Italian VAT group regime has been amended by Italian Budget Law 2018 to implement the principles of the European Court of Justice Case Skandia (C-7/13). As a consequence, supplies of goods and services carried on between a head office and its permanent establishment are relevant for VAT purposes if the head office or its permanent establishment are part of an Italian VAT group.

2. Main advantages of the VAT Group regime

Under the VAT Group regime, Group members are treated as a single taxable person and supplies of goods and services between Group members are no longer relevant for VAT purposes. This implies: **(i)** administrative advantages; **(ii)** financial advantages and **(iii)** benefits to taxable persons with a limited or nil VAT deduction right.

The main administrative advantages deriving from the VAT Group are the following: **(i)** intragroup transactions are out of scope of VAT and therefore they are not subject to invoicing obligation; **(ii)** the VAT Group files a single VAT return.

From a financial viewpoint, the purchaser will not have to pay VAT to its intragroup supplier.

This regime will be mostly beneficial to taxable persons with a limited or nil VAT deduction right (e.g. banks, and insurance companies for the financial sectors). The setup of a VAT Group would thus lower the non-deductible VAT costs incurred by these VAT persons since VAT exempt supplies of goods and services to Group members are no longer relevant for VAT purposes.

In addition, the VAT Group regime represents an alternative to the VAT Independent Group of Persons (IGP). In this respect it must be pointed out that the European Court of Justice recently stated that the banking, financial and insurance sectors cannot benefit from the VAT exemption granted to services provided by an IGP (see ECJ C-326/15, C-605/15, C-616/15).

If further information is required, please refer to your LED Taxand contact or to galessandri@led-taxand.it or gmatraxia@led-taxand.it

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