



Italy: Draft Budget Law 2017 - VAT grouping rule

Tax Alert

17 November 2016



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Italy is introducing new VAT grouping rules effective from 1 January 2018.

The summary below reflects the current draft position and may be subject to change - the final rules should be approved by end of December 2016

VAT group members must be taxable persons (not necessarily companies), established in Italy. Permanent establishments located abroad are ineligible to join. Entities in liquidation or subject to bankruptcy or asset seizure by the judiciary are excluded.

To join the VAT group taxable persons must jointly have financial, economic and organizational links:

- The financial link is one of control, that should have been satisfied as from 1st July of the calendar year before the one in which the option is made (minimum holding period). The person with control must be Italian resident or based in a country which has an exchange of information agreement with Italy.
- The economic link is activity based. Either all members do the same core business, or their activities are complementary/interdependent or the activities benefit the other members.
- The organizational link is one of legal co-ordination between the decision makers.

However in general if a financial link exists the other links are presumed to exist unless an application to the authorities to rule they do not exist is submitted.

Set up and revocation

A group is set up by all the taxable persons established in Italy who have the necessary links ('*all-in, all-out principle*') making a relevant option that is exercised electronically by the rep member. The timing of this drives the commencement date of the group. An option exercised between October and December means the group does not exist until the start of the second year thereafter - so an option made in October 2018 would mean the group being effective from January 2020 whereas an option made 30 September 2018 would mean the group becomes effective in January 2019. New members can join once the conditions are met.

This requires a declaration to be filed within 90 days of the links coming into existence - the date of joining is the year after the links started.

A failure to make this option by one or more person who should have exercised it means the tax benefit of grouping clawed back and the VAT group ceases from the year following the one when the failure to make the option is ascertained, unless the aforementioned persons exercise the option to join the group itself.

The option is binding for three years and automatically renewed annually thereafter until revoked. Revoking dissolves the whole group. Again the timing of the revocation drives the date the group is dissolved in the same way as the timing of the option drives the start date. Any member which ceases to have the necessary links or to meet the other conditions ceases to be a member.

Rep Member responsibilities

- The rep member is the controlling member or, if the controlling person is not in the group, the one with the highest turnover or revenues.
- The rep member has the main compliance responsibility but all members are jointly and severally liable for VAT debts.
- Intra group transactions are not supplies. External sales and purchases are made by and to the group.

Special FS rules

The special simplified compliance obligations for banks, insurance companies and fund managers are applied even if one of these companies is member of a VAT group.

Consolidated VAT regime

The other consolidated VAT regime provided by art. 73 of the Italian VAT Act remains in force and is alternative to the VAT group regime described above.

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Tax Alert / KPMG in Italy /17 November 2016

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