



Italy: VAT grouping regime - Clarifications from the Tax Authority

Tax Alert

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On 31 October 2018, the Italian Tax Authority published the long-awaited Circular no. 19/E/2018 (the 'Circular'), which contains various clarifications regarding the VAT grouping regime, introduced in Italy by the 2017 Budget Law (see our [Tax Alert](#) dated 19 January 2017).

The main clarifications concern:

- i. the VAT grouping eligibility requirements,
- ii. the application to be filed electronically when opting for the VAT grouping regime, and the submissions to be made when relevant events or changes occur or when revoking the option,
- iii. the effects of the regime, (iv) the responsibilities of the participants.

Some of the most important clarifications are outlined below.

Skandia implementation - not retroactive

It was confirmed that the 'Skandia principles' (according to which a head office and branch are considered separate taxable persons if one of the two belongs to a VAT group in a different Member State) are applicable in Italy from 1 January 2018 (no retroactive application).

VAT group members

All the VAT group members must be taxable persons established in Italy and bound by financial, economic and organizational links. Therefore passive holding companies, whose sole activity is the ownership of shares, are ineligible to join; however, mixed holding companies, which not only own shares but provide additional services to their subsidiaries, can join the VAT group.

The Circular also clarifies that:

- taxable persons having a legal form that does not enable them to satisfy - in accordance with VAT grouping law - the control requirement laid down in article 2359 of the Italian Civil Code can only join a VAT group as controlling companies and not as controlled companies (as also recently clarified by the Italian Tax Authority in Legal Principle no. 4 of 15 October 2018);
- a VAT group can be set up between Italian subsidiaries of a foreign entity, as long as the foreign entity is based in a country (EU or non-EU) that has an exchange of information agreement with Italy.

Effects of the VAT group

Summarized below are the main effects of opting for the VAT grouping regime, as clarified by the Circular.

Split-payment regime

The split-payment regime will not apply to supplies made to the VAT group, even if one or more members of the VAT group (individually considered) are subject to the split-payment rules.

Habitual exporter regime

The VAT group will inherit the 'plafonds' that the participants might have accrued in the year before joining (habitual exporters are entitled to purchase VAT-free services and goods up to the amount - i.e. the 'plafond' - of the zero rated supplies made in the preceding calendar year or in the previous 12 months).

The letters of intent can be submitted by the VAT group representative or by the other members of the VAT group.

Separation of activities (article 36) and exoneration from VAT obligations (article 36-bis)

Once the VAT group becomes effective, the options available under articles 36(3) and 36-bis of the Italian VAT Act, previously exercised by its members, will expire. The VAT group may exercise these options anew, if necessary.

VIES database

Once the VAT group becomes effective, the VAT registration numbers of the members will be suspended for the duration of the VAT grouping and removed from the VIES database (if previously registered). The VAT group will obtain its own VAT number and will have to register with the VIES database in order to carry out intra-Community transactions.

The VAT Group's obligations

The main responsibilities for compliance (such as filing the annual VAT return, reporting periodical VAT settlements, and paying the output VAT on a periodic basis) rest with the VAT group representative. Other obligations, such as e-invoicing and VAT bookkeeping, can be discharged centrally by the representative or separately by each of the members.

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

Other clarifications on the VAT grouping regime

Besides the explanations given in the Circular, the Italian Tax Authority recently provided further clarifications in:

- *Legal Principle no. 5 of 15 October 2018*: the economic link between taxable persons exists if their primary activities are of the same type. The main business purpose of the companies, as emerging from their deed of incorporation, must be taken into account, whilst the ATECO code is irrelevant.
- *Legal Principle no. 7 of 19 October 2018*: newly established entities may join a VAT group provided they show that they intend to pursue an economic activity. As regards the calculation of the input VAT recoverable through the deductible proportion mechanism (known in Italian as the 'pro-rata' mechanism), for the first year of operations the percentage of recoverable VAT is estimated, based on the nature and transactions of the VAT group, and then adjusted at the end of the year.

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