



UK VAT groups are no longer recognized after Brexit

Tax & Legal Alert
9 May 2023

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On 9 May 2023, the Italian Tax Authority (“ITA”) published Ruling no. 314/2023, which states that, from 1 January 2021, the effects of UK VAT groups should no longer be recognized for Italian VAT purposes. This ruling reverses ITA’s previous position, expressed in Ruling no. 756/2021, which stated that UK VAT groups should still be recognized post-Brexit.

The VAT grouping provision in Italian VAT law

Article 11 of EU Directive 2006/112/EC (the “*Principal VAT Directive*”) lays the foundation for the VAT grouping provisions introduced into the national legislation of EU Member States. Italian VAT grouping provisions have implemented the principles laid down by the ECJ Skandia and Danske Bank cases (C-7/13 and C-812/19), according to which head-office-to-branch charges are no longer disregarded for VAT purposes when the head office or the branch belongs to a VAT group in Italy or in another EU jurisdiction.

The application of the Italian VAT grouping provisions to UK VAT groups

The above provisions also applied to UK VAT groups while the UK was an EU Member State. However, following the UK's exit from the EU as a result of the Brexit referendum, the question arose as to whether UK VAT groups should still be considered 'VAT groups' according to article 11 of the Principal VAT Directive.

On 4 November 2021, in response to a request filed by KPMG's Italian VAT team, ITA published Ruling no. 756/2021 on the VAT treatment of transactions between an Italian branch and a UK head office belonging to a UK VAT group. In the ruling ITA confirmed that UK VAT groups should still be recognized after Brexit; therefore, following the principles established in the ECJ Skandia and Danske Bank cases, a UK VAT group created a separate taxable person for Italian VAT purposes, and services between a fixed establishment (head office or branch) located in Italy and a fixed establishment (head office or branch) belonging to a UK VAT group were relevant for Italian VAT purposes.

The new ruling on UK VAT groups

Ruling no. 314/2023 states that the previous Ruling no. 756/2021 should no longer be considered valid and that, from 1 January 2021, the effects of UK VAT groups should no longer be recognized for Italian VAT purposes.

Thus, an Italian fixed establishment and a UK fixed establishment are the same legal entity, even if the latter is in a UK VAT group, and should be treated as a single taxable person for VAT purposes: transactions between the two revert to the treatment established under the 'FCE Bank' case (C-210/04), i.e. are disregarded for Italian VAT purposes.

This new ruling is very significant as it reverses the previous ruling on the applicability of the Skandia and Danske Bank principles also in relation to UK VAT groups and it brings back the application of the FCE Bank principles from 1 January 2021. Italian fixed establishments which, by following ITA's previous position in Ruling no. 756/2021, were not able to fully deduct reverse charge VAT on charges from UK fixed establishments/head offices belonging to a UK VAT group could therefore apply for a refund of the reverse charge VAT incorrectly accounted for.

How to apply for a refund of reverse charge VAT

Ruling no. 314/2023 explains how a refund of the reverse charge VAT incorrectly accounted for should be requested. In particular, ITA rejects the possibility of submitting a supplementary VAT return and states that the Italian taxable person should:

- issue credit notes within one year of the period in which the transaction took place;
- submit a refund request under article 30-ter of Presidential Decree no. 633/72 (the "*Italian VAT Decree*") within two years of the date the relevant VAT was paid.

It is important to note that, according to the ITA ruling, it is only possible to claim back the incorrectly paid VAT within 24 months of the date the relevant VAT was paid; therefore, the matter is very urgent, as some monthly VAT payments already fall outside the 24-month window for the refund claim. It would be advisable to immediately file advance claims to secure this refund opportunity. The KPMG's Italian VAT team is ready to provide any clarifications in relation to the ruling and the refund process.

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Tax & Legal Alert / KPMG in Italy / 9 May 2023

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