

Fact Sheet

VAT Group: the application of the principles of tax consolidation to VAT Group

The 2021 Finance Act has transposed into French law the VAT Directive which allows the formation of a VAT group. Following the example of what already exists for tax consolidation, the members of a VAT group constitute a single taxable person. For the determination of the right to deduct of the single taxable person, each member is considered as a sector of activity of the group. It is therefore necessary to draw the consequences for the right to deduct and for payroll tax.

The formation of a VAT group is available to all sectors of economic activity. The exercise of this option, for a period of 3 years, must be formalised before 31 October 2022 for implementation from 1^{er} January 2023.

France has transposed Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT into Article 256 C of the CGI. **This new provision is scheduled to come into force on 1^{er} January 2023. The option must be made by 31 October 2022 at the latest.**

This new arrangement creates a **single taxable person at group level**. As a result, **transactions between members of the group remain outside the scope of VAT, but all transactions with non-members are subject to the rules of ordinary law.**

Who is affected by this scheme?

The new Article 256 C of the CGI defines the conditions for forming a VAT group.

The following are eligible:

A VAT group consists of at least 2 taxable persons.

Individually, members of a VAT group:

- **Can only belong to one group,**
- **Must have the seat of their economic activity in France.** The various French branches of a foreign company may also be members of a VAT group in France,
- **Must be closely linked to each other financially, economically and organisationally.** These links must exist at the time the option is exercised and continuously throughout the option period.

Be closely linked to each other financially

Taxable persons who are legally controlled, directly or indirectly, by the same person, including that person, are considered to be financially related to each other.

This condition is met when a taxable person or a non-taxable legal person **holds:**

- **More than 50% of the capital of another taxable person, directly or indirectly through other taxable persons or non-taxable legal persons,**
- **More than 50% of the voting rights of another taxable person** or a non-taxable legal person under the same conditions.

A presumption of financial links exists for certain entities such as mutual insurance companies or banks, members of social security organisations, AGIRC-ARRCO, HLM companies.

Be closely linked economically

The economic link is effective when the taxable persons are engaged in:

- **Or a main activity of the same nature,**
- **Either interdependent activities, complementary or pursuing a common economic objective,**
- **Or an activity carried out in whole or in part for the benefit of other members.**

Be closely linked to each other organisationally

Taxable persons are considered to be organisationally linked if they:

- Either are in law or in fact, directly or indirectly, under common management,
- Or organise their activities wholly or partly in consultation.

The following are not eligible

Permanent establishments of French companies which are not located in France cannot benefit from this new regime.

An entity that already belongs to another VAT group cannot be part of another VAT group.

What are the terms of the option?

Exercise of the option

The option for the VAT group is exercised for 3 years. It must be formalised before 31 October of the year preceding the formation of the group and for the first year of entry into force, before 31 October 2022 to be effective on 1^{er} January 2023.

The "representative", head of the group, must be freely appointed by the other members of the group. He will be responsible for the follow-up of the reporting obligations and the payment.

The declaration of option to the EIS must mention:

- The names of the member companies,
- Their individual VAT identification number assigned before they entered the VAT group,
- The agreement of each member,
- The activities of member companies,
- The name and address of the company chosen as the sole taxable person.

Evolution of the scope

The scope of the VAT group should be freely determined at the time of its establishment. The option is applied for 3 calendar years, during which time the group's scope cannot in principle change.

However, once a member no longer meets the conditions for membership, he or she must leave the group as of 1^{er} day of the month following the month in which he or she no longer meets the conditions.

Any accession or withdrawal of a member will be treated as the transfer of a totality benefiting from the VAT exemption regime of Article 257 bis of the CGI.

The VAT credit recorded by a member in respect of a period prior to the entry into force of the option will remain with him. It cannot be carried over to the return filed by the single taxable person.

How the VAT group will work

General

The VAT group will have its own VAT number.

Each member of the VAT group loses its own status as a taxable person in favour of the single taxable representative of the group.

Thus, for the duration of the scheme, the VAT group acts as a single taxable person in relation to third parties. Thus, any transactions carried out by a member of the group with a third party will be deemed to have been carried out by the group itself.

The VAT credit recorded by one of the members of the group is definitively acquired by the single taxable person.

The group representative is responsible for monitoring the reporting obligations and making payments and claims for refunds (VAT credit) of all entities in the VAT group.

The members are jointly and severally liable for the payment of VAT and any adjustments to the extent that they would have been liable in the absence of the VAT group.

Right to deduct

Each member of the group becomes a separate business sector from the single taxable person and the consequences for the right to deduct must be drawn.

The calculation and payment of regularisations (annual regularisations linked to the 1/10 rule, global regularisations at the time of transfers) are then the responsibility of the single taxpayer.

Implications for payroll tax

As it stands, the reform should also have an impact on payroll tax. Indeed, **the setting up of a VAT group should lead to an increase in the payroll tax burden of employers belonging to a single taxable person.** In fact, flows within the VAT group should, a priori, be considered for the purposes of calculating the payroll tax liability ratio as flows outside the scope of VAT.

Modification of the scope of application of Article 261 B of the CGI

Finally, Article 261 B of the CGI, which provides for a VAT exemption for services rendered to their members by autonomous groups of persons, will be amended as of 1^{er} January 2023. The exemption will only apply to the fields of health and education, as well as to services provided by non-profit organisations.

Crowe Fidelio

Smart decisions. Lasting value.

Paris 9^{ème}

22 rue de Londres
75009 Paris - France

T : +33 (0) 1 42 89 28 63
contact@crowe-fidelio.fr

www.crowe-fidelio.fr



Paris Office

We are members of Crowe Global.

Our commitment to the network and the close cooperation we develop on a daily basis with the other member firms enable us to provide our clients with global support.

Our clients are entrepreneurs, SMEs, ETIs or large companies. We are the main pivot of their business environment by mobilizing the skills they need and accompanying their thinking to help them meet their future challenges.

We are committed to making every experience unique so that our partners see us as an obvious extension of their organization.

Crowe Global

Crowe Global is the world's ninth largest audit, accounting and advisory network, with 200 independent firms operating in approximately 130 countries. Each firm has an established position in its home market.

Crowe Global member firms are committed to providing quality service through integrated processes and a common set of core values that guide their day-to-day decisions.

The member firms are recognized for their personalized services to public and private companies in all sectors of activity and have established an international reputation in the fields of auditing, accounting, taxation, consulting and risk consulting.