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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
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Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1083**

**CONSULTATION
PROVIDED FOR UNDER DIRECTIVE 2006/112/EC**

ORIGIN: Slovenia
REFERENCE: Article 11
SUBJECT: VAT grouping

1. INTRODUCTION

The Slovenian authorities wish to consult the VAT Committee on the introduction of the VAT grouping scheme into their national legislation, in accordance with Article 11 of the VAT Directive¹.

The Slovenian provisions on VAT groups will enter into force on 1 January 2025 and the scheme will be effective as from 1 January 2026.

The text of the consultation submitted is attached in annex.

2. SUBJECT MATTER

2.1. EU legal framework

Article 11 of the VAT Directive contains the relevant provisions concerning VAT grouping within the EU:

"After consulting the advisory committee on value added tax (hereafter, the 'VAT Committee'), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision".

The VAT Committee has in the past discussed several issues as regards the application of this provision², and also agreed guidelines on some of them. The outcome of those discussions should be taken into account when assessing the transposition into Slovenian law of Article 11 of the VAT Directive.

In particular, the VAT Committee has agreed guidelines³ as regards the territorial scope of VAT groups, following the rulings of the Court of Justice of the European Union (CJEU) in *Skandia America*⁴ and *Danske Bank*⁵:

"1. The VAT Committee almost unanimously confirms that VAT grouping, a scheme by which various persons may be regarded as a single taxable person, constitutes an independent concept of EU law, whose constituent elements as set out in Article 11 of the VAT Directive have been interpreted, in respect of their meaning and scope, by the Court of Justice of the European Union.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

² See for example Working papers No 813, 845, 879 and 845.

³ [Guidelines](#) resulting from the 119th meeting of 22 November 2019; Document B – taxud.c.1(2022)2315070 – 1034 (p. 275).

⁴ CJEU, judgment of 17 September 2014, *Skandia America*, C-7/13, EU:C:2014:2225.

⁵ CJEU, judgment of 11 March 2021, *Danske Bank*, C-812/19, EU:C:2021:196.

With the VAT grouping scheme open only to persons closely bound by financial, economic and organisational links who are established within a Member State having taken up the option laid down in Article 11 of the VAT Directive, the VAT Committee is of the almost unanimous view that persons established outside the European Union who are benefitting from a VAT grouping scheme in that country, cannot be treated as a single taxable person for the purposes of EU VAT.

2. *The VAT Committee almost unanimously agrees that in case of a legal person comprising a main establishment (hereinafter "head office") and a fixed establishment (hereinafter "branch") within different territories, only the entity (head office or branch) physically present in the territory of a Member State that has introduced the VAT grouping scheme may be considered to be "established in the territory of that Member State" for the purposes of Article 11 of the VAT Directive, and thus able to join a VAT group there.*

In that respect, the VAT Committee is of the almost unanimous view that the branch of a company with its head office in a third country or another Member State may, independently of its head office, become a member of a VAT group in the Member State in which the branch is established. The VAT Committee also agrees almost unanimously that the head office of a company with its branch in a third country or another Member State may, independently of its branch, become a member of a VAT group in the Member State in which the head office is established.

3. *The VAT Committee almost unanimously confirms that by joining a VAT group pursuant to Article 11 of the VAT Directive, an entity (head office or branch) becomes part of a new taxable person for VAT purposes – namely the VAT group – irrespective of the legal person to which it belongs. The VAT Committee also almost unanimously confirms that the treatment of a VAT group as a single taxable person precludes the members of the VAT group from continuing to operate, within and outside their group, as individual taxable persons for VAT purposes.*
4. *The VAT Committee, by almost unanimity, agrees that a supply of goods or services by one entity to another entity of the same legal person such as "head office to branch", "branch to head office" or "branch to branch", where only one of the entities involved in the transaction is a member of a VAT group or where the entities are members of separate VAT groups, shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.*

In that regard, it is the almost unanimous view of the VAT Committee that for such a transaction to be taxable, it is irrelevant whether the goods or services are supplied from a third country to a Member State or vice versa, or between two Member States.

5. *The VAT Committee almost unanimously agrees that a supply of goods or services between an entity of a legal person (head office or branch) established in a Member State irrespective of whether that Member State has introduced a VAT grouping scheme, and a VAT group in another Member State which includes another entity of the same legal person (branch or head office) shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.*

These guidelines replace those agreed on this issue at the 105th meeting (document A – taxud.c.1(2016)7465801 – Working paper No 886)."

Moreover, following the ruling of the CJEU in *Commission v Ireland*⁶ and *Commission v Sweden*⁷, the VAT Committee agreed guidelines⁸ on the type of persons who can become VAT group members:

"The VAT Committee almost unanimously agrees that although Article 11 of the VAT Directive does not preclude non-taxable persons from being included in a VAT group, a Member State availing of this option shall not be obliged to admit non-taxable persons as members of a VAT group but may restrict the application of the VAT group scheme by excluding such persons as members provided that the principle of neutrality is respected".

The VAT Committee has also discussed the condition of "financial, economic and organisational" links to be met by VAT group members under Article 11 of the VAT Directive⁹, although no guidelines have been agreed so far.

2.2. National legislation on VAT groups

The essential elements of the Slovenian legislation that is to transpose Article 11 of the VAT Directive are described as follows:

- (1) Two or more independent taxable persons who are established within Slovenia may form a VAT group and will then be regarded as a single taxable person for the purposes of VAT. Fixed establishments located in Slovenia can also join the VAT group.
- (2) To be eligible as members, taxable persons need to (continue to) be closely bound to one another by financial, economic and organisational links. To that end, each of those links is given a definition:
 - i. a financial link exists if a taxable person directly or indirectly owns more than 50% of the capital of another taxable person, or more than 50% of the voting rights of another taxable person;
 - ii. an economic link exists if taxable persons perform similar activities or activities that are mutually dependent or complementary or activities that are fully or partially performed for the benefit of other members;
 - iii. an organisational link exists if taxable persons are fully or partially under the same management or if they operate according to a single business management strategy.
- (3) The VAT grouping scheme is voluntary for taxable persons to take up and not limited to certain sectors. A VAT group cannot include taxable persons who are

⁶ Judgment of 9 April 2013, *Commission v Ireland*, C-85/11, EU:C:2013:217

⁷ Judgment of 25 April 2013, *Commission v Sweden*, C-480/10, EU:C:2013:263

⁸ [Guidelines](#) resulting from the 101st meeting of 20 October 2014; Document C – taxud.c.1(2015)46844 – 824 (p. 181).

⁹ Working paper No 918 *Meaning of "financial, economic and organisational links" among VAT group members*.

subject to insolvency proceedings. Only fully compliant taxable persons who have not been convicted of a criminal offence or penalised for a serious VAT offence may be admitted to a VAT group.

- (4) Each (future) VAT group appoints a taxable person amongst its members to act as its representative. The representative will submit the application for the VAT group to be registered as such. Once set up, the VAT group shall apply for at least the current calendar year and the following two calendar years.
- (5) A taxable person can be member of only one VAT group at a time. As members are regarded as a single taxable person, this being the VAT group, internal transactions are disregarded for VAT purposes while supplies by a member of the group to a third party or by a third party to a member of the group are treated as supplies carried out by or to the VAT group. That is also so where these supplies are made to or received from a member's (fixed) establishment located in another Member State.
- (6) Upon registration, the VAT group is allocated a VAT identification number to be used by members in transactions with persons who are not members. As of that date, previously independent taxable persons identified for VAT purposes will cease to be identified for VAT purposes *ex officio* and must fulfil all associated obligations.
- (7) Members of a VAT group shall act as a single taxable person and must in transactions with persons who are not members make use of the VAT identification number of the VAT group.
- (8) The representative is charged with fulfilling the obligations and exercising the rights of the VAT group in the field of VAT. All members of the VAT group are jointly and severally liable for the payment of VAT.
- (9) Registration of a VAT group will cease *ex officio* if:
 - i. the conditions to be met by a VAT group are no longer fulfilled;
 - ii. the representative leaves the group, and no new representative is appointed;
 - iii. all members of the group cease to exist;
 - iv. the representative does not fulfil the obligations.
- (10) Upon cessation of registration, members will be informed of the dissolution of the VAT group.

3. COMMISSION SERVICES' OPINION

The Commission services have, based on the information submitted, the following remarks concerning the Slovenian VAT grouping scheme subject to the present consultation.

3.1. Territorial scope of the VAT grouping scheme

Article 11 of the VAT Directive restricts the territorial scope of a VAT grouping scheme implemented by a Member State to persons established in the territory of that Member State.

According to the discussions in the VAT Committee which led to the almost unanimous agreement of guidelines on the territorial scope of VAT groups, the notion of "*persons established*" for the purposes of Article 11 has been interpreted as only referring to entities physically present in the Member State that has introduced the VAT grouping scheme. Thus, the territorial scope of Article 11 coincides with the VAT jurisdiction of the Member State having implemented the VAT grouping scheme.

Article 5.a(1) of the Slovenian draft legislation stipulates that taxable persons established and fixed establishments in Slovenia may form a VAT group. Where a taxable person established in Slovenia becomes member of a VAT group, this is taken to mean that - in accordance with the above guidelines – none of its fixed establishments located in other Member States will join that VAT group. Nor will the main establishment of a fixed establishment located in Slovenia.

The Slovenian delegation is invited to confirm.

3.2. The criteria for being eligible to become a member of a VAT group

According to case-law of the CJEU, "persons" being able to form a VAT group in accordance with Article 11 of the VAT Directive may cover both taxable and non-taxable persons¹⁰, as well as legal persons and entities without legal personality¹¹.

In this regard, the VAT Committee agreed that Member States which make use of the VAT grouping scheme are not obliged to recognise non-taxable persons as members of a VAT group but may restrict the application of the scheme by excluding non-taxable persons as members, provided that the principle of neutrality is respected¹².

Article 5.a of the Slovenian draft legislation states that where tightly bound to one another by financial, economic, and organisational links, two or more independent taxable persons established in Slovenia or a fixed establishment located in Slovenia may form a VAT group and will then be regarded as a single taxable person for the purposes of VAT.

The question is whether entities other than companies, such as partnerships or foundations, will also be eligible as members and, if so, how these entities could be said to meet the financial requirement established in the national legislation. According to Article 5.a of the Slovenian draft law, the financial link requirement as currently defined only refers to a direct or indirect participation of a taxable person in the voting rights of another.

¹⁰ CJEU, judgments of 9 April 2013, *Commission v Ireland*, C-85/11, EU:C:2013:217; of 25 April 2013, *Commission v Czech Republic*, C-109/11, EU:C:2013:269; of 25 April 2013, *Commission v Denmark*, C-95/11, EU:C:2013:268; of 25 April 2013, *Commission v UK*, C-86/11, EU:C:2013:267; and of 25 April 2013, *Commission v the Netherlands*, C-65/11, EU:C:2013:265.

¹¹ CJEU, judgment of 16 July 2015, joined cases *Larentia + Minerva* and *Marenave Schifffahrt*, C-108/14 and C-109/14, EU:C:2015:496.

¹² See also Working paper No 813.

Further, with non-taxable persons, such as pure holding companies, apparently excluded from becoming members of a VAT group, the question is whether that exclusion is to be regarded as a measure needed to prevent tax evasion or avoidance under the second paragraph of Article 11 of the VAT Directive.

The Slovenian delegation is invited to clarify these points.

3.3. The financial, economic and organisational links

Article 11 of the VAT Directive requires members of a VAT group to be closely bound by financial, economic and organisational links.

The Commission's view on the meaning of the financial, economic and organisational links can be found in the 2009 VAT Grouping Communication¹³. Those views have been further elaborated by the Commission services in Working paper No 918 discussed during the 108th meeting of the VAT Committee, although no guidelines have been drawn up.

According to Article 5.a of the Slovenian draft legislation, it appears that taxable persons may only form a VAT group if closely bound to one another by financial, economic, and organisational links (paragraph 1). Those links must exist for as long as the VAT group is in place (paragraph 6). This would seem to suggest that the links must be present simultaneously.

The Slovenian delegation is invited to confirm.

3.4. Optional VAT group membership

Any disparity between Member States leaving it to potential group members to decide whether to join a VAT group (optional application) or imposing the use of a VAT group on members without them being able to opt out (automatic application) stems from the objectives of Article 11 of the VAT Directive¹⁴. According to the Explanatory Memorandum¹⁵ and, as the CJEU has recalled, *"the European Union legislature intended, either in the interests of simplifying administration or with a view to combating abuses such as, for example, the splitting-up of one undertaking among several taxable persons so that each might benefit from a special scheme, to ensure that Member States would not be obliged to treat as taxable persons those whose independence is purely a legal technicality"*¹⁶.

It is clear from Article 5.a(1) of the Slovenian draft legislation that use of the scheme of VAT grouping is voluntary. While a VAT group, as stipulated in Article 137.h(9), shall apply the scheme for VAT groups for at least the current calendar year and the following two calendar years, it is not clear whether that requirement also extends to the taxable persons making up the VAT group or if they are free to leave at any moment of their choosing.

¹³ Communication of the Commission to the Council and the European Parliament of 2 July 2009 on the VAT group option provided for in Article 11 of Council Directive 2006/112/EC on the common system of value added tax ([COM\(2009\) 325 final](#)), see section 3.3.4.

¹⁴ This was an aspect examined in Working paper No 845, see section 5.4.2.

¹⁵ Explanatory Memorandum to the proposal which resulted in the adoption of the Sixth Directive (COM(73) 950) concerning Article 4(4) of the Sixth Directive, which was replaced by Article 11 of the VAT Directive.

¹⁶ *Commission v Ireland*, paragraph 47.

The Slovenian delegation is invited to clarify this point.

3.5. Consequences of joining a VAT group (VAT identification number)

The main effect of VAT groups is that, upon joining a VAT group, group members dissolve themselves from any possible simultaneously existing legal form to become, for VAT purposes, part of a new separate taxable person, which is the VAT group itself. This is why supplies by VAT group members are regarded as having been made by the VAT group, and supplies to VAT group members are also regarded as having been made to the VAT group as a whole.

It is noted that according to Article 137.h(6) of the Slovenian draft legislation setting out the rules of VAT groups, internal transactions are not subject to VAT while by Article 137.h(3) and (4) it is stipulated that supplies made by any of the group members to or received from a recipient not belonging to the group are deemed to be performed by the group itself. This treatment seems to be in line with the principle that the VAT group is the only existing single taxable person.

Upon submission of application for identification as required under Article 78.b(1) of the Slovenian draft legislation, the VAT group will be registered in accordance with Article 78(5) which, as set out in Article 78.b(2), results in each of the members ceasing to be identified for VAT purposes. It thus seems clear that all which remains is the VAT identification number of the VAT group.

The Slovenian delegation is welcome to comment.

4. DELEGATIONS' OPINION

Delegations are asked to express their opinion on the issues raised.

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Slovenian consultation with VAT Committee in accordance with Article 11 of Council Directive 2006/112/EC

The Republic of Slovenia wishes to consult VAT Committee on the introduction of the VAT group option based on Article 11 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive).

Slovenia intends to transpose the provisions regarding the establishment of groups for VAT as derived from Article 11 of the VAT Directive into the national legislation. The provisions related to the implementation of groups for VAT shall enter into force on 1 January 2025 and shall be applied from 1 January 2026. Attached is a draft of the legal provisions, which has not yet been in public consultation.

The general summary of the relevant provisions of the draft legislation to be implemented is as follows:

- 1) Two or more independent taxable persons established in the territory of the Republic of Slovenia who are closely bound to one another by financial, economic, and organizational links may be regarded as a single taxable person for the purposes of VAT (hereinafter: VAT group).
- 2) A financial link exists if the taxable person directly or indirectly owns more than 50% of the capital of another taxable person, or more than 50% of the voting rights of another taxable person.
- 3) An economic link exists if taxable persons perform:
 - a) similar activities or
 - b) activities that are mutually dependent or complementary or
 - c) activities that are fully or partially performed for the benefit of other members.
- 4) An organizational link exists if the taxpayers are fully or partially under the same management or if they operate according to a single business management strategy.
- 5) Forming a VAT group is optional and voluntary with no restrictions to economic sectors.
- 6) VAT group is identified for VAT purposes with a new identification number.
- 7) Members of the VAT group are no longer considered independent taxable persons for VAT purposes and their individual VAT identification number ceases.
- 8) Transactions between taxable persons who are registered as a VAT group are out of scope for VAT purposes.

- 9) A transaction between a member of a VAT group and a person outside the VAT group is considered a transaction between a VAT group and a person outside the group.
- 10) The representative of the VAT group is responsible for fulfilling the obligations related to the establishment of the VAT group; the obligations that arise from the identification of VAT group for the purposes of VAT and for the exercise of rights of the VAT group in the field of VAT. All members of the VAT group are jointly and severally liable for the payment of VAT.

Draft amendments to the national legislation

In Value Added Tax Act (Official Gazette of the Republic of Slovenia, no. 13/11 – official consolidated text, 18/11, 78/11, 38/12, 83/12, 86/14, 90/15, 77/18, 59/19, 72/19, 196/21 – ZDOsk, 3/22, 29/22 – ZUOPDCE, 40/23 – ZDavPR-B and 122/23) following Article 5 new Article 5.a is inserted as follows:

Article 5.a
(Definition of VAT group)

- (1) Two or more independent taxable persons established in the territory of the Republic of Slovenia or a fixed establishment in the territory of the Republic of Slovenia who are tightly bound to one another by financial, economic, and organizational links may be regarded as a single taxable person for the purposes of VAT (hereinafter: VAT group).
- (2) A financial link exists if the taxable person directly or indirectly owns more than 50% of the capital of another taxable person, or more than 50% of the voting rights of another taxable person.
- (3) An economic link exists if taxable persons perform:
 - a) similar activities or
 - b) activities that are mutually dependent or complementary or
 - c) activities that are fully or partially performed for the benefit of other members.
- (4) An organizational link exists if the taxpayers are fully or partially under the same management or if they operate according to a single business management strategy.
- (5) A taxable person under the compulsory settlement procedure according to the act governing insolvency proceedings cannot be a member of the VAT group.
- (6) The financial, economic, and organizational links referred to in this article must exist continuously throughout the entire period of existence of the VAT group.
- (7) The members of the VAT group exercise their rights and obligations under this act as one taxable person.

Following Article 78.a, new Article 78.b is inserted as follows:

Article 78.b
(Obligation for identification of the VAT group)

- (1) The representative of the VAT group shall submit application for identification of the VAT group in accordance with paragraph 5 of Article 78 of this Act.
- (2) From the date of identification of the VAT group, previously independent taxable persons identified for VAT purposes cease to be identified for VAT purposes ex officio. The taxable person must fulfil all obligations according to this Act as if he had ceased to exist.

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In Article 79 in paragraph one following the point e) new point f) is inserted as follows:

- f) A taxable person as defined in Article 5.a.

In paragraph three following the point c) a new point d) is inserted.

- d) List of individual members of VAT group with names or titles, addresses, tax numbers, dates of entry or exit from VAT group.

In Article 80 following paragraph one, new paragraphs 1.a and 1.b is inserted as follows:

- (1.a) The tax authority ceases identification of the VAT group after receiving a request from the representative of the VAT group or ex officio if:

- a) the conditions referred to in Article 5.a and Article 137.h of this Act are no longer fulfilled,
- b) the representative leaves the VAT group, and no new representative has been appointed,
- c) all members of the group cease to exist or
- d) the representative of the VAT group does not fulfil the obligations under this Act.

- (1.b) The tax authority informs the members of the VAT group about the cessation of the identification number of the VAT group.

New subchapter 9 is inserted following Article 137.g and new Articles from 137.h to 137.k are inserted:

"9. VAT groups"

Article 137.h
(Rules for VAT group)

- (1) A taxable person can be a member of only one VAT group at a time.
- (2) The VAT group appoints a taxable person from among its members to represent the VAT group (hereinafter: the VAT group representative).
- (3) If a member of a VAT group has supplied goods or provided a service to a person who is not a member of that VAT group, the supply of goods or services is considered to have been made by the VAT group.
- (4) If a person who is not a member of this VAT group supplies goods or provides a service to a member of the VAT group, it is considered that the goods were supplied, or the service was provided to the VAT group.
- (5) Members of the VAT group use the VAT group's VAT identification number in transactions with persons who are not members of the VAT group.

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- (6) Transactions between VAT group members are not subject to VAT.
- (7) The preceding paragraph does not apply to transactions between the member of the VAT group in the Republic of Slovenia and their places of establishment or fixed establishment in another country.
- (8) Each taxable person in order to join the VAT group shall meet the following conditions:
 - has submitted all VAT returns which they have been required to submit and has paid all VAT liabilities due;
 - has not been convicted of a criminal offence or has not been punished for a serious VAT offence prior to joining the VAT group;
 - is not subject to insolvency proceedings.
- (9) The VAT group shall apply the scheme for VAT group for at least the current calendar year and the following two calendar years.

Article 137.i
(records VAT groups)

- (1) The tax authority shall keep records of taxable persons referred to in Article 5.a.

Article 137.j
(Inclusion and exclusion of members from the VAT group)

- (1) The tax authority includes a member in the VAT group based on the application of the representative of the VAT group with the consent of the member who is joining the group.
- (2) The tax authority excludes a member from the VAT group:
 - a) ex officio, if it no longer meets the conditions referred to in Article 5.a and Article 137.h of this Act,
 - b) based on the application of the VAT group representative.
- (3) If a member of the group wishes to withdraw or no longer meets the conditions for membership in the group for VAT, as derived from Article 5.a and Article 137.h, the representative of the group for VAT shall notify the tax authority prior to change.
- (4) An appeal against a decision on the exclusion of a member from the VAT group or against a decision by which the tax authority refuses the entry of a new member into the VAT group does not suspend its execution.
- (5) If the representative of the group ceases to exist or withdraws from the group, the members of the VAT group appoint a new representative from among themselves.

Article 137.k
(Calculation and payment of VAT)

- (1) For the VAT group, the tax period is a calendar month.

- (2) The representative of the VAT group submits VAT statement and claims for the refund of overpaid VAT.
- (3) VAT group members are jointly and severally liable for the payment of VAT obligations that arise from their membership in the VAT group.
- (4) Overpaid amounts of value added tax are returned to the representative of the VAT group.

Transitional provision

xx. Article
(Validity and application)

The provisions related to the implementation of groups for VAT enter into force on 1 January 2025 and are applied from 1 January 2026.