

Luxembourg to introduce a VAT group regime as of 31 July 2018

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Executive summary

Luxembourg has proposed a Value Added Tax (VAT) group regime to be effective as of 31 July 2018. This follows the filing of draft bill n°7288 with Parliament on 16 April 2018 on the adoption of a VAT group regime in Luxembourg. The introduction of this regime comes following the decisions of the Court of Justice of the European Union on the inapplicability of the cost-sharing VAT exemption in the financial and insurance sectors.

The draft bill aims at entry into force of the regime as of 31 July 2018. It is however subject to the consultation of the Luxembourg Council of State and the European Union (EU) VAT Committee, both of which may have an impact on the adopted version and the timing.

The VAT group regime is an optional regime, meant to alleviate the VAT burden on supplies made between members of a VAT group, active in all sectors of the economy, and to help maintain Luxembourg's competitiveness as a financial center.

Detailed discussion

Background

The introduction of the VAT group in Luxembourg comes in the context of successive dismantling of the Independent Group of Persons regime (the IGP regime), sometimes also referred to as the cost-sharing VAT exemption. The IGP regime was used extensively within the Luxembourg financial and insurance sectors.

The main objective of the introduction of the VAT group is to replace the IGP regime. However, its scope of application, conditions and implications, as per the current version of the draft bill, are different.

Main advantage of the VAT group

The key advantage of the VAT group regime is that the members of the VAT group are considered as forming one taxable person and therefore any supplies of goods and services performed between its members will be treated for VAT purposes as "self-supplies," i.e., VAT-free transactions.

This feature makes the VAT group attractive for businesses formerly using the IGP regime, but also for any other businesses performing VAT-exempt supplies without a (or with limited) VAT recovery right in Luxembourg (e.g., in the private equity, real estate, banking, insurance and asset management sectors) or those that although they have a full right of deduction, aim to improve their cash-flow by reducing VAT pre-financing costs in Luxembourg intra-group transactions (e.g., operational entities).

Who can apply for a VAT group?

The VAT group will be an optional regime, which needs to be maintained for at least two calendar years, and will be available for entities with an establishment in Luxembourg and meeting a number of substantive and formal requirements.

The draft bill does not foresee the establishment of cross-border VAT groups, although Luxembourg branches of foreign-based head offices should be eligible.

The entities opting for the VAT group need to be bound by financial, economic and organizational links, as defined in the draft bill. In particular, the financial link will need to be certified by an auditor or chartered accountant.

Practical functioning of a VAT group and related administrative aspects

Opting for the VAT group regime should not have any implications for external suppliers to the entities forming a VAT group. As such, external providers would for VAT purposes, continue to carry out transactions with specific members of the VAT group using their individual VAT numbers.

As the VAT group would be considered as a single entity for VAT reporting purposes, this implies:

- ▶ Filing a common VAT return for the whole group instead of individual returns per group member (some reporting obligations remain however at the level of each group member)
- ▶ The use of a single VAT group number in communications with the VAT administration
- ▶ Joint VAT liability for group members

Implications

Any business having established in Luxembourg more than one entity may wish to consider opting to apply the regime. Businesses should consider, among other things, the following aspects when assessing the opportunity to opt for a VAT group regime in Luxembourg:

- ▶ Eligibility of group companies to be included in the VAT group and/or possibility to exclude some group companies from the VAT group
- ▶ Implications for the broader activities of the group, both at a local and a cross-border level (existence of multiple EU VAT groups, impact on head-office/branch structures, etc.)
- ▶ Practical aspects relating to implementation (e.g., meeting formal requirements, documentation (including TP documentation), set-up or adjustments of the accounting/ERP system)

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