

Malta introduces VAT grouping and increases VAT registration threshold for small undertakings

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Value Added Tax (VAT) grouping

VAT Grouping was introduced in Malta with effect from 1 June 2018 via Legal Notice 162 of 2018 entitled *Value Added Tax (Registration as a Single Taxable Person) Regulations, 2018*.

The main provisions of Legal Notice 162 of 2018 relate to three main topics as summarized below.

Eligibility

In order for a person to avail itself of the option to form part of a VAT group, a number of criteria need to be satisfied (as provided for in Article 3 of the Legal Notice), as follows:

- ▶ **Regulated entity:** At least one of the applicants must be a taxable person who is licensed or recognized in terms of the Banking, Financial Institutions, Gaming, Insurance, Investment Services, Lotteries and other Games, Retirement, Pensions, or Securitization legislation (as listed in the Schedule at the end of the Legal Notice).
- ▶ **Links:** Each of the applicants must be connected to the others by financial, organizational and economic links (as defined in Article 3.3 of the Legal Notice).

- ▶ **Good standing:** At the time of application, all applicants must have filed all VAT and Income Tax Returns due (to date) and settled all amounts due with the respective authorities (except for any valid objections/appeals as provided for in Article 3c of the Legal Notice).
- ▶ **One VAT group:** No person may be a member of more than one VAT group at the same time.
- ▶ **Same VAT group:** Persons connected to each other by financial links, organizational links and economic links may only form part of the same VAT group.

Practical considerations

- ▶ **Registration:** Applications for registration are to be filed electronically indicating the effective date from when the VAT group is to be created and information on how the applicants are connected financially, organizationally and economically (applicable also to subsequent applications by persons to join an existing VAT group).
- ▶ **Group reporting entity:** VAT group members need to nominate one of them as the group reporting entity, to exercise any and all rights and discharge any and all obligations arising to the VAT group.
- ▶ **VAT Identification Number:** A VAT number is issued to the group (under Article 10 or 12 of the *VAT Act* as applicable), provided all eligibility and registration criteria are satisfied.
- ▶ **Cancellations:** The individual VAT numbers of the group members are cancelled upon joining a VAT group (no self-supplies triggered as per Art 14.2 of the Second Schedule to the *VAT Act*) with any pending VAT refunds returned to the respective members individually (cannot be utilized to offset VAT group liabilities)
- ▶ **Termination:** A VAT group cannot be dissolved and cancelled before 24 full calendar months from the effective registration date and likewise cannot be subsequently reconstituted before 24 full calendar months from effective cancellation date. Where a member of a VAT group no longer satisfies all eligibility criteria, the group reporting entity shall inform the VAT Department within 15 days in order for the membership to be terminated (self-supplies triggered as per Art 14.2 of the Second Schedule to the *VAT Act*).

VAT implications

- ▶ **Intragroup supplies:** The main VAT implication of VAT grouping is that any supply of goods or supply of services made by one member of a VAT group to another member of that VAT group shall be disregarded for Maltese VAT purposes. However such a concept of non-supply shall not apply to services made by or to an establishment situated outside Malta if that establishment is a member of a VAT group in a Member State that operates a system of VAT grouping in terms of which the establishment alone, and not the entire enterprise of which it forms part, is incorporated in a VAT group. Moreover, the VAT Department is empowered via an anti-abuse provision to treat any intra-group transactions as supplies for VAT purposes in order to prevent tax avoidance or evasion.
- ▶ **Joint and several liability:** Each member of a VAT group shall be jointly and severally liable for the payment of any tax, administrative penalties and interest, which have become due and payable by the group reporting entity.
- ▶ **Capital goods scheme:** With respect to capital goods (as defined in S.L. 406.12) which any group members may have held prior to their group membership, and in respect of which the period of reference has already started, it shall continue to run notwithstanding the cancellation of the VAT number (in order to join the VAT group). Other capital goods provisions are provided for in Article 10 of the Legal Notice.

VAT registration threshold

With effect from 1 July 2018, the VAT registration threshold for new Maltese-established businesses involved in the provision of services has increased from €14,000 to €20,000 annually. The entry threshold for existing businesses involved in the provision of services which are already registered for VAT purposes under the normal type of registration, which want to shift to the small undertaking type of registration (listed as "Exit Threshold") has been increased from €12,000 to €17,000.

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