



Response from ICAS

VAT Grouping - Establishment, Eligibility and Registration: Call for Evidence

19 November 2020

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

General comments

3. ICAS welcomes the opportunity to respond to the Call for Evidence: VAT Grouping - Establishment, Eligibility and Registration issued by HM Treasury on 28 August 2020.
4. Mandatory VAT grouping would be a major change for the UK. Historically, the flexibility of UK grouping provisions has been an attractive feature of the UK corporate tax regime. We question whether removing this flexibility, would be the right approach, at a time when the UK needs to remain an attractive location for international businesses in the aftermath of Brexit.
5. Similarly, for some groups, adopting 'establishment only' provisions would also make the UK less attractive – although for others there could be benefits, particularly in reducing the administrative burden for some businesses. It is important to consider the full picture – and the aim should be to avoid the VAT rules distorting commercial decisions or favouring one business model over another.
6. The consultation notes that other jurisdictions adopt a compulsory VAT grouping approach. As the UK has not historically done so, business structures have developed in line with the UK rules. Switching to compulsory grouping would mean that some existing structures could become unworkable – any changes would need to be introduced in a timeframe that allowed for necessary adjustments to be made.
7. Scottish limited partnerships (SLPs) should continue to be able to belong to VAT groups on the present terms. It is also important to ensure that SLPs continue to be treated in the same way as limited partnerships so that Scottish partnerships are not disadvantaged.

Specific issues

Chapter 1: VAT grouping and establishment provisions

8. The UK currently uses 'whole establishment' provisions for VAT grouping purposes. For some groups, adopting 'establishment only' provisions would make the UK less attractive – as indicated in the consultation this would include global groups with branches in the UK and would be particularly relevant to sectors (for example, the financial sector) where branches are widely used for regulatory reasons.
9. Conversely, it is suggested in the consultation, that there could be benefits arising from an 'establishment only' approach for some UK-based groups and a reduced administrative burden for some businesses.
10. It is essential that the full picture is considered. The aim should be to be fair to all entities whatever their size or location and whatever their business model (outsourcing/insourcing, for example) – the VAT rules should not distort commercial decisions. Paragraph 24 of the consultation refers to detriment to UK head quartered groups – but it is unclear whether the suggestion is that it would be acceptable to change the rules to the detriment of global groups with, for example, overseas shared service centres.
11. It is also important to draw a line between avoidance and genuine business structures which provide some VAT advantages. HMRC has powers to tackle avoidance; making changes only in the light of litigation with businesses in one sector could have unintended consequences for the attractiveness of the UK to multinationals.

Chapter 2: Compulsory VAT grouping

12. As set out in the consultation, VAT grouping is a facilitation measure which allows administrative efficiency for companies under the same ultimate ownership. The current UK grouping rules are very flexible; VAT grouping is optional, where the relevant conditions are met – and a VAT group does not have to include all members of the group that are eligible. Further flexibility is available through the option for divisional registration where a corporate body carries on its business through a number of self accounting units – these can be registered separately for VAT.
13. This flexibility is currently an attractive feature of the UK corporate tax regime. The consultation notes that other jurisdictions make VAT grouping compulsory for some sectors, or apply an ‘all in or all out’ model (where VAT grouping is optional, but if it is adopted for one entity, all related entities who meet the relevant conditions must also be a part of the same VAT group). We understand that in practice some of the regimes involving compulsory VAT grouping (for example, in Germany and Luxembourg) can be very difficult to operate.
14. Imposing mandatory VAT grouping in the UK would reduce the usefulness of grouping as a facilitation mechanism, making it more difficult to operate and less flexible. There will be practical problems:
 - a. Banking covenants: due to the joint and several liability attached to VAT grouping, lenders may refuse to lend to VAT group members (and there could be issues with arrangements already in place at the time of the change).
 - b. Where companies merge or where one company acquires another, immediate mandatory VAT grouping would often cause administrative complexity in dealing with returns, VAT numbers etc. Having the flexibility to decide when to add entities to a VAT group – and the ability to choose a convenient date – is very useful.
 - c. Property development: a property group may want to keep entities carrying out taxable and exempt developments separately registered to simplify VAT.
 - d. Mandatory VAT grouping would not sit well alongside the ability to opt for divisional registration referred to above.
 - e. Repayment traders filing monthly returns may not want to be part of a VAT group.
 - f. Option to tax: a company may not wish to belong to a VAT group because an option to tax covers all members of the VAT group and applies even after a member has left the group.
15. A more burdensome approach to VAT grouping will reduce the attractiveness of the UK for overseas businesses. We question whether this is the right approach at a time when the UK needs to remain an attractive location for international businesses post-Brexit.
16. We appreciate that for partially exempt groups, VAT grouping provides administrative benefits but will also result in lower amounts of VAT being paid. It is unclear from the consultation whether this is a primary factor behind the suggestion of possible mandatory VAT grouping. However, HMRC does have revenue protection powers. As set out in VAT Notice 700/2, HMRC does not normally use these powers where it considers that the revenue loss ‘follows from the normal operation of grouping’ but it can utilise them to prevent abuse. It is also unclear what has changed which means that this may no longer be considered adequate.

Chapter 3: Eligibility criteria: partnerships

17. The consultation appears to indicate that there is some doubt about whether the non-statutory approach to limited partnerships (LPs) and Scottish limited partnerships (SLPs) remains appropriate. If it is concluded that this should be changed going forward (ie the concession should be legislated), we believe that SLPs should continue to be able to belong to VAT groups on the present terms. It is also important to ensure that SLPs continue to be treated in the same way as LPs so that Scottish partnerships are not disadvantaged.
18. The consultation asks how the changes discussed in chapters one and two would affect the inclusion of partnerships in VAT groups if they were implemented. The same considerations noted above would apply to partnerships as to companies – in particular, it is helpful to have flexibility around when or whether to include a partnership in a VAT group.