



Luxembourg newsflash

18 April 2018

Contacts:

Contacts:



[Bruno Gasparotto](#)
Principal, Tax Law



[Sophie Weyten](#)
Counsel, Tax Law



[Nicolas Conrad](#)
Senior Associate, Tax Law



[Claire Schmitt](#)
Senior Associate, Tax Law

Introduction of the Luxembourg VAT group regime (bill of law n°7278)

On 13 April 2018, the Luxembourg Government introduced the bill of law n°7278 before the Parliament. This bill will implement the VAT group into Luxembourg VAT law with effect from 31 July 2018.

After months of expectation, the Luxembourg Government has finally come up with a Luxembourg version of the VAT group regime. In doing so, the Luxembourg government wishes to move the shift lever of Article 11 of the Directive 2006/112/EC ("VAT Directive") which allows Member States to consider any group of persons as one single taxable person under certain conditions. While the main principle is clearly set out, Article 11 leaves room for the determination of the outline of such regime, which has led to considerable discrepancies among the Member States in its implementation and conditions.

The Luxembourg authorities were historically reluctant to implement this VAT regime, considering notably that the Independent Group of Persons ("IGP") system constituted a sufficient VAT solution for the financial and insurance sectors.

However, with recent developments at the European level as regards the scope of the IGP, the opportunity has arisen for the Luxembourg to consider an alternative.

Whereas the VAT grouping could be considered a worthy successor to the now unattractive IGP, this new Luxembourg VAT regime as foreseen in this bill of law differs from it in many respects and hardly constitutes a substitute for the IGP.

The main features of this regime in its current version can be summarised as follows:

1. Conditions governing the Luxembourg VAT group

- a) persons must be closely bound by financial, economic and organisational links (cumulative conditions);
- b) no limitation as regards the status of the person (i.e. VAT taxable or not), the nature and type of activities (e.g. VAT exempt or taxable / supply of services or goods);
- c) persons may only be members of one VAT group;
- d) members of a VAT group must be established within the same Member State (no cross-border VAT groups);
- e) optional regime but if opted, any persons fulfilling the conditions are in principle obliged to enter into the VAT group.

2. Implications of the Luxembourg VAT group

- a) constitution of one single VAT taxable person with one VAT number (and auxiliary VAT numbers for the members for transactions with third parties);

- b) internal transactions between members fall outside the scope of VAT;
- c) input VAT deduction right determined on the basis of final use;
- d) joint liability of the members for the payment of VAT and any other penalties due by the VAT group;
- e) membership for two civil years at least;
- f) reporting obligations at the level of the VAT group (VAT return and report of internal transactions) and at the level of the members (e.g. European sales listings).

In light of these elements, the VAT group may constitute an attractive solution for economic operators beyond the financial and insurance sectors (e.g. industrial sector). For instance, the cash-flow benefits derived from the absence of pre-financing of VAT on intra-group charges and of VAT on the intra-group recharge of salaries constitute undeniable advantages for economic operators.

However any possible advantages must be carefully weighed up against the potential constraints induced by the implementation of the regime (such as the administrative burden or joint liability). In addition, other constraints may arise with the implementation of this VAT regime such as the VAT treatment of transactions between a main establishment and its branch which is established in another Member State and is a member of a VAT group. Prior to the implementation of this VAT group regime, such transactions were deemed to fall outside the scope of VAT. However, with the implementation of this regime, these transactions will be deemed to fall within the scope of VAT and a VAT leakage may arise (application of the European Court of Justice case-law Skandia, C-7/13, dated 17 September 2014).

We therefore strongly recommend performing an in-depth analysis of the pros and cons on a case-by-case basis.

Your Arendt VAT team is at your disposal to provide you with further insights into this new VAT regime.

Authors: Bruno Gasparotto and Claire Schmitt

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

[Read our latest newflashes](#)

In order to be added to the mailing list, any interested person can send an email to subscribe@arendt.com

If you wish to opt-out from our mailing list, please click here: [unsubscribe](#)

LUXEMBOURG DUBAI HONG KONG LONDON MOSCOW NEW YORK PARIS www.arendt.com

[Update preferences](#) | [Forward to a friend](#)