EU VAT Compass 2015/2016

Including:

- EU VAT Directives
- ECJ Case Law on VAT
- VAT Options Exercised by the Member States
Why this book?
Encompassing the most important features of the European Union’s VAT system, the EU VAT Compass 2015/2016 is an essential source of reference for all those actively working or interested in VAT. The book consists of three parts, each comprising a vital element of the EU VAT system.

Main contents
Part One presents the consolidated text of the current EU VAT Directive (No. 2006/112), as most recently amended by Directive 2013/61; it also contains the texts of several other Directives in the field of VAT. All amendments made to the basic VAT Directive under Directive 2008/8, and the text of Implementing Regulation 282/2011, as amended by Regulations 967/2012 and 1042/2013, are included.

For the interpretation of the EU VAT legislation, the case law of the Court of Justice of the European Union (ECJ) is an indispensable element. Part Two provides an overview of both the operative parts of the more than 650 ECJ judgments in VAT cases and the pending cases that are expected to lead to judgments in the course of 2015 and 2016.

The book concludes with an overview of the options laid down by the VAT Directive that have been taken up by the individual Member States. This comprehensive analysis covers all 28 Member States, including Croatia.

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TITLE I
SUBJECT MATTER AND SCOPE

Article 1

1. This Directive establishes the common system of value added tax (VAT).

2. The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.

Article 2

1. The following transactions shall be subject to VAT:

a. the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

b. the intra-Community acquisition of goods for consideration within the territory of a Member State by:

i. a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Articles 282 to 292 and who is not covered by Articles 33 or 36;

ii. in the case of new means of transport, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1), or any other non-taxable person;

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1. Under Article 2 of Implementing Regulation 282/2011, the following shall not result in intra-Community acquisitions within the meaning of point (b) of Article 2(1):

a. the transfer of a new means of transport by a non-taxable person upon change of residence provided that the exemption [zero rate] provided for in point (a) of Article 138(2) could not apply at the time of supply;
b. the return of a new means of transport by a non-taxable person to the Member State from which it was initially supplied to him under the exemption [zero rate] provided for in point (a) of Article 138(2).

iii. in the case of products subject to excise duty, where the excise duty on the intra-Community acquisition is chargeable, pursuant to Directive 92/12/EEC\(^2\), within the territory of the Member State, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1);

2. Directive 92/12 has been replaced by Directive 2008/118, with effect from 1 April 2010.

c. the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

d. the importation of goods.

2. a. For the purposes of point (ii) of paragraph 1(b), the following shall be regarded as “means of transport”, where they are intended for the transport of persons or goods:

i. motorised land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7,2 kilowatts;

ii. vessels exceeding 7,5 metres in length, with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and of vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing;

iii. aircraft the take-off weight of which exceeds 1 550 kilograms, with the exception of aircraft used by airlines operating for reward chiefly on international routes.

b. These means of transport shall be regarded as “new” in the cases:

i. of motorised land vehicles, where the supply takes place within six months of the date of first entry into service or where the vehicle has travelled for no more than 6 000 kilometres;

ii. of vessels, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;

iii. of aircraft, where the supply takes place within three months of the date of first entry into service or where the aircraft has flown for no more than 40 hours.
c. Member States shall lay down the conditions under which the facts referred to in point (b) may be regarded as established.

3. “Products subject to excise duty” shall mean energy products, alcohol and alcoholic beverages and manufactured tobacco, as defined by current Community legislation, but not gas supplied through a natural gas system situated within the territory of the Community or any network connected to such a system.

[Directive 2009/162]

**Article 3**

1. By way of derogation from Article 2(1)(b)(i), the following transactions shall not be subject to VAT:

a. the intra-Community acquisition of goods by a taxable person or a non-taxable legal person, where the supply of such goods within the territory of the Member State of acquisition would be exempt pursuant to Articles 148 and 151;

b. the intra-Community acquisition of goods, other than those referred to in point (a) and Article 4, and other than new means of transport or products subject to excise duty, by a taxable person for the purposes of his agricultural, forestry or fisheries business subject to the common flat-rate scheme for farmers, or by a taxable person who carries out only supplies of goods or services in respect of which VAT is not deductible, or by a non-taxable legal person.

3. Under Article 4 of Implementing Regulation 282/2011, a taxable person who is entitled to non-taxation of his intra-Community acquisitions of goods, in accordance with Article 3, shall remain so where, pursuant to Article 214(1)(d) or (e), a VAT identification number has been attributed to that taxable person for the services received for which he is liable to pay VAT or for the services supplied by him within the territory of another Member State for which VAT is payable solely by the recipient. However, if that taxable person communicates this VAT identification number to a supplier in respect of an intra-Community acquisition of goods, he shall be deemed to have exercised the option provided for in Article 3(3).

2. Point (b) of paragraph 1 shall apply only if the following conditions are met:

a. during the current calendar year, the total value of intra-Community acquisitions of goods does not exceed a threshold which the Member States shall determine but which may not be less than EUR 10 000 or the equivalent in national currency;

b. during the previous calendar year, the total value of intra-Community acquisitions of goods did not exceed the threshold provided for in point (a).
The threshold which serves as the reference shall consist of the total value, exclusive of VAT due or paid in the Member State in which dispatch or transport of the goods began, of the intra-Community acquisitions of goods as referred to under point (b) of paragraph 1.

3. Member States shall grant taxable persons and non-taxable legal persons eligible under point (b) of paragraph 1 the right to opt for the general scheme provided for in Article 2(1)(b)(i).

Member States shall lay down the detailed rules for the exercise of the option referred to in the first subparagraph, which shall in any event cover a period of two calendar years.

**Article 4**

In addition to the transactions referred to in Article 3, the following transactions shall not be subject to VAT:

a. the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is a taxable dealer acting as such and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the margin scheme provided for in Articles 312 to 325;

b. the intra-Community acquisition of second-hand means of transport, as defined in Article 327(3), where the vendor is a taxable dealer acting as such and VAT has been applied to the means of transport in the Member State in which their dispatch or transport began, in accordance with the transitional arrangements for second-hand means of transport;

c. the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is an organiser of sales by public auction, acting as such, and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the special arrangements for sales by public auction.

**TITLE II**

**TERRITORIAL SCOPE**

**Article 5**

For the purposes of applying this Directive, the following definitions shall apply:

1. “Community” and “territory of the Community” mean the territories of the Member States as defined in point (2);
2. “Member State” and “territory of a Member State” mean the territory of each Member State of the Community to which the Treaty establishing the European Community is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of this Directive;

4. With effect from 1 December 2009, the Treaty establishing the European Community (TEC) has been renamed as the Treaty on the Functioning of the European Union (TFEU). Reference to Article 299 TEC should have been replaced by reference to, inter alia, Article 52 of the Treaty on (the) European Union and Article 355 of the TFEU.

3. “third territories” means those territories referred to in Article 6;

4. “third country” means any State or territory to which the Treaty is not applicable.

Article 6

1. This Directive shall not apply to the following territories forming part of the customs territory of the Community:

   a. Mount Athos;

   b. the Canary Islands;

   c. the French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union;

   d. the Åland Islands;

   e. the Channel Islands.

2. This Directive shall not apply to the following territories not forming part of the customs territory of the Community:

   a. the Island of Heligoland;

   b. the territory of Büsingen;

   c. Ceuta;

   d. Melilla;

   e. Livigno;

   f. Campione d'Italia;

   g. the Italian waters of Lake Lugano.
Article 7

1. In view of the conventions and treaties concluded with France, the United Kingdom and Cyprus respectively, the Principality of Monaco, the Isle of Man and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be regarded, for the purposes of the application of this Directive, as third countries.

2. Member States shall take the measures necessary to ensure that transactions originating in or intended for the Principality of Monaco are treated as transactions originating in or intended for France, that transactions originating in or intended for the Isle of Man are treated as transactions originating in or intended for the United Kingdom, and that transactions originating in or intended for the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for Cyprus.

Article 8

If the Commission considers that the provisions laid down in Articles 6 and 7 are no longer justified, particularly in terms of fair competition or own resources, it shall present appropriate proposals to the Council.

TITLE III
TAXABLE PERSONS

Article 9

1. “Taxable person”⁵ shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

2. In addition to the persons referred to in paragraph 1, any person who, on an occasional basis, supplies a new means of transport, which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Mem-

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⁵ Under Article 5 of Implementing Regulation 282/2011, a European Economic Interest Grouping (EEIG) constituted in accordance with Regulation (EEC) No. 2137/85 which supplies goods or services for consideration to its members or to third parties shall be a taxable person within the meaning of Article 9(1).

(Article 2 of Implementing Regulation 1777/2005)
Article 10

The condition in Article 9(1) that the economic activity be conducted “independently” shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Article 11

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.

Article 12

1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:
   a. the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;
   b. the supply of building land.

2. For the purposes of paragraph 1(a), “building” shall mean any structure fixed to or in the ground.

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by “the land on which a building stands”.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply, or the period elapsing between the date of first occupa-
Introduction

This part sets out the judgments of the Court of Justice of the European Union ("ECJ") in VAT cases. In principle, only cases relating to the First, Second, Sixth, Eighth and Thirteenth Directives and Directives 2006/112 and 2008/9 are included, even if they relate to:

- articles that have been withdrawn, such as Article 32 of the former Sixth Directive,
- imports and exports between Member States (prior to 1993),
- taxes characterized as turnover taxes within the meaning of Article 401 of Directive 2006/112, and
- failure of Member States to transpose EU legislation into national law on time.

Therefore, not included are cases exclusively relating to:

- the European Union's Own Resources,
- Article 110 of the Treaty on the Functioning of the European Union (previously Articles 90 and 95 of the EC Treaty),
- the European Union's Customs Codes (Regulations 2913/92 and 450/2008), and

For practical reasons, references to Directives have been shortened. For example, "Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment" is presented as "Sixth Directive [...]" and "Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax" as "Directive 2006/112 [...]". "Value added tax" and "value-added tax" have been replaced with "VAT" and "Commission of the European Union" with "Commission". The names of the private parties (taxable persons) involved in the proceedings are consistently mentioned first (the symbol "霸王" indicates that the order of the parties has been reversed).

The Table of Contents lists the decided and officially published pending cases in a consecutive order indicating the case numbers, the date of the judgment, the (principal) parties involved, and several keywords or a brief description of the legal issue.

The Judgments of the Court of Justice section presents the operative parts of the ECJ’s judgments in a chronological order. Where necessary, a short summary of the facts in the main proceedings has been added. The case numbers and the main party or parties involved are highlighted in bold. Also included is the page number where the official text of the judgments is published in the European Court Reports [ECRs]. Where the full text of the judgment is not available in the ECRs in English, the reference is marked with an *.

The Index of Topics groups the judgments by issue or Article of the VAT Directive.

The Alphabetical Index presents the parties involved in the decided cases, in an alphabetical order.
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tive authority are proportionate. In the context of that examination, if the national provisions or a particular construction of them would constitute a bar to effective judicial review, in particular review of the urgency and necessity of retaining the refundable VAT balance, and would prevent the taxable person from applying to a court for replacement of the retention by another guarantee sufficient to protect the interests of the Treasury but less onerous for the taxable person, or would prevent an order from being made, at any stage of the procedure, for the total or partial lifting of the retention, the national court should disapply those provisions or refrain from placing such a construction on them. Moreover, in the event of the retention being lifted, calculation of the interest payable by the Treasury which did not take as its starting point the date on which the VAT balance in question would have had to be repaid in the normal course of events would be contrary to the principle of proportionality.

[1997] ECR I-7281

**Case C-384/95**
18 December 1997

**Landboden-Agrardienste GmbH & Co. KG – Finanzamt Calau**

On a proper construction of Articles 6(1) and 11(A)(1)(a) of the Sixth Directive [...], an undertaking given by a farmer under a national compensation scheme not to harvest at least 20% of his potato crop does not constitute a supply of services for the purposes of that Directive. Consequently, compensation received for that purpose is not subject to turnover tax.

[1997] ECR I-7387

**Case C-37/95**
15 January 1998

**Ghent Coal Terminal NV – Belgian State**

Article 17 of the Sixth Directive [...] must be construed as allowing a taxable person acting as such to deduct the VAT payable by him on goods or services supplied to him for the purpose of investment work intended to be used in connection with taxable transactions. The right to deduct remains acquired where, by reason of circumstances beyond his control, the taxable person has never made use of those goods or services for the purpose of carrying out taxable transactions. A supply of investment goods during the adjustment period, where such occurs, may give rise to an adjustment of the deduction under the conditions set out in Article 20(3) of the Sixth Directive.

[1998] ECR I-1

**Case C-346/95**
12 February 1998

**Elisabeth Blasi – Finanzamt München I**

Article 13(B)(b)(1) of the Sixth Directive [...] may be construed as meaning that the provision of short-term accommodation for guests is taxable, as constituting the provision of accommodation in sectors with a function similar to that of the hotel sector. In that regard, Article 13(B)(b)(1) does not preclude taxation in respect of agreements concluded for a period of less than six months, if that dura-
tion is deemed to reflect the parties’ intention. It is, however, for the national court to determine whether, in a case before it, certain factors (such as the automatic renewal of the letting agreement) suggest that the duration stated in the letting agreement does not reflect the parties’ true intention, in which case the actual total duration of the accommodation, rather than that specified in the letting agreement, would have to be taken into consideration.

[1998] ECR I-481

Case C-318/96
19 February 1998

SPAR Österreichische Warenhandels AG – Finanzdirektion für Salzburg

The Sixth Directive [...], and in particular Articles 17(2) and 33 thereof, does not preclude a levy such as the Kammerumlage, provided for in Article 57(1) to (6) of the Handelskammergesetz, which is payable by members of chambers of commerce whose turnover exceeds a certain amount, is calculated in principle on the basis of the VAT included in the price of the goods and services supplied to them, and is not deductible from the VAT payable by them on the commercial transactions which they carry out.

[1998] ECR I-785

Case C-124/96
7 May 1998

Commission of the European Communities – Kingdom of Spain

1. By providing that the exemption from VAT in respect of supplies closely linked to sport or physical education applies only to private establishments whose membership fees do not exceed a certain amount, the Kingdom of Spain has failed to fulfil its obligations under Article 13(A)(1)(m) of the Sixth Directive [...].

2-3. [...]

[1998] ECR I-2501

Case C-390/96
7 May 1998

Lease Plan Luxembourg SA – Belgian State

1. The term "fixed establishment" in Article 9(1) of the Sixth Directive [...] must be interpreted in such a way that an undertaking established in one Member State which hires out or leases a number of vehicles to clients established in another Member State does not possess a fixed establishment in that other State merely by engaging in that hiring out or leasing.

2. It is contrary to Article 59 of the EC Treaty for national rules to provide that taxable persons not established in a Member State, who apply for a refund of VAT in accordance with the Eighth Directive [...], are entitled to interest only from such time as notice to pay was served on that Member State and at a lower rate than that applied to the interest paid to taxable persons established in the territory of that State automatically on the expiry of the statutory time-limit for reimbursement.

[1998] ECR I-2553
Case C-3/97
28 May 1998
Criminal proceedings against John Charles Goodwin and Edward Thomas Unstead
On a proper construction of Article 2 of the Sixth Directive [...] VAT is payable on the supply of counterfeit perfumes.
[1998] ECR I-3257

Case C-283/95
11 June 1998
Karlheinz Fischer – Finanzamt Donaueschingen
The unlawful operation of a game of chance, in the event roulette, falls within the scope of the Sixth Directive [...]. Article 13(B)(f) of that Directive must be interpreted as meaning that a Member State may not impose VAT on that activity when the corresponding activity carried on by a licensed public casino is exempted.
[1998] ECR I-3369

Case C-361/96
11 June 1998
Société Générale des Grandes Sources d'Eaux Minérales Françaises – Bundesamt für Finanzen
1. Article 3(a) of the Eighth Directive [...] is to be interpreted as not precluding Member States from providing in their national law that a taxable person who is not established in that Member State may prove his entitlement to a refund by submitting a duplicate invoice or import document where the original has been lost for reasons beyond his control, provided that the transaction which led to the application for a refund occurred and there is no risk of further applications for a refund.
2. Where a taxable person established in a Member State may prove his entitlement to a refund of VAT by submitting a duplicate or photocopy of the invoice if the original which he received has been lost for reasons beyond his control, the principle of non-discrimination set out in Article 6 of the EC Treaty and referred to in the fifth recital in the preamble to the Eighth Directive [...] requires that the same possibility be extended to taxable persons not established in that Member State if the transaction which led to the application for a refund occurred and there is no risk of further applications for a refund.
[1998] ECR I-3495

Case C-43/96
18 June 1998
Commission of the European Communities – French Republic
1. The application1) is dismissed;
2-3. [...]
[1998] ECR I-3903

1) The Commission claimed that the exclusion of the right to deduct VAT on goods which constitute the very tool or object of a taxable person's trade was contrary to Article 17(2) of the Sixth Directive.
The French legislation provided:
VAT shall not be deductible on vehicles or machines, whatever their nature, designed for the transport of persons or for mixed use which constitute fixed assets or, if not, are not intended for resale in a new state. The basic documentation of the French tax authority states that the vehicles covered by that provision are bicycles, motorcycles, private motor cars, boats, aeroplanes and helicopters. However, the aforesaid rule does not apply to commercial vehicles such as vans, lorries, tractors and other "highly specialised vehicles". Furthermore, helicopters are not eligible for deduction even where they are used for aerial photography, publicity, pilot training, or topographical or geodesic surveys.

Case C-172/96
14 July 1998
The First National Bank of Chicago – Commissioners of Customs and Excise

1. Transactions between parties for the purchase by one party of an agreed amount in one currency against the sale by it to the other party of an agreed amount in another currency, both such amounts being deliverable on the same value date, and in respect of which transactions the parties have agreed (whether orally, electronically or in writing) the currencies involved, the amounts of such currencies to be purchased and sold, which party will purchase which currency and the value date, constitute supplies of services effected for consideration within the meaning of Article 2(1) of the Sixth Directive [...].

2. Article 11(A)(1)(a) of the Sixth Directive must be construed as meaning that, in foreign exchange transactions in which no fees or commission are calculated with regard to certain specific transactions, the taxable amount is the overall result of the transaction of the supplier of the services over a given period of time.
[1998] ECR I-4387

Cases C-308/96 and C-94/97
22 October 1998
T.P. Madgett and R.M. Baldwin (trading as The Howden Court Hotel) – Commissioners of Customs and Excise

1. Article 26 of the Sixth Directive [...] applies to a hotelier who, in return for a package price, habitually offers his customers, in addition to accommodation, return transport between certain distant pick-up points and the hotel and a coach excursion during their stay, those transport services being bought in from third parties.

2. On a proper construction of Article 26 of the Sixth Directive [...], where a trader subject to that Article effects, in return for a package price, transactions consisting of services supplied partly by himself and partly by other taxable persons, the VAT scheme under that Article applies solely to the services supplied by third parties. A trader may not be required to calculate the part of the package corresponding to the in-house services by the actual cost method where it is possible to identify that part of the package on the basis of the market value of services similar to those which form part of the package.
[1998] ECR I-6229
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2. Taxable Persons

2.1. VAT grouping

For VAT purposes, Member States may extend the concept of “taxable person”, i.e. any person who independently carries out economic activities, to groups of taxable and non-taxable persons established in the territory of their country who, while legally independent, are closely bound to one another by financial, economic and organizational links. When those conditions are properly applied, VAT group treatment neutralizes the distinction between legal form and economic substance in that, even though they are legally independent, members of a commercial group of enterprises that actually function as a unitary commercial entity are treated as a single taxable person for VAT purposes.

Logically, group treatment should entail all the joys and burdens of being a single entity, which implies, on the one hand, that intermediate supplies between the members of the group are ignored for VAT purposes, whereas, on the other hand, the tax authorities can hold each member of the group jointly and severally liable for payment of the VAT debts of the entire group.

In its judgment in Ampliscientifica, the Court of Justice of the European Union (European Court of Justice – ECJ) observed that treatment as a group precludes its members from continuing to file VAT returns separately, since the group alone is authorized to file such returns. The overview below also indicates whether or not the Member State in question allows that the members of a VAT group file their VAT returns separately.

The overview below does not include the arrangements which, although they may have been introduced as “VAT grouping arrangements”, miss the essential feature of VAT grouping, i.e. the feature that supplies of goods and services between the members of the group are treated as “internal supplies” and, therefore, are ignored for VAT purposes. Although joint registration does not have a legal basis in the VAT Directive, the ECJ has accepted it in its judgment in Ampliscientifica. For the Member States that allow joint registration of legally independent entities, see 2.2.

True VAT grouping is only available in the following Member States, under the conditions and restrictions indicated below.

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4. In a highly controversial judgment of 9 April 2013 in the infringement procedure of the European Commission against Ireland, Case C-85/11, the ECJ concluded that, in view of its wording, context and objectives, Article 11 of the VAT Directive does not militate in favour of an interpretation according to which non-taxable persons cannot be included in a VAT group.


2.1.1. Austria

Under the doctrine of Organschaft, legal entities (Organgesellschaften) are not considered to be independent if they and their decision-making process are controlled by another entity (Organträger, parent company). The financial link between the Organgesellschaft and Organträger is determined in terms of the Organträger's voting rights in the Organgesellschaft, not its holding of the shares in the Organgesellschaft's capital. The Organgesellschaft is considered to be economically linked to the Organträger if its business activities are interconnected, supplementary or adjusted to those of the Organträger. The Organgesellschaft is linked to the Organträger from an organizational perspective if the Organträger's decisions are legally binding on the Organgesellschaft (its power to appoint or dismiss the Organgesellschaft's directors is not sufficient). Under those circumstances, the Organgesellschaft and the Organträger are considered to form a single entity for VAT purposes. The Organgesellschaft must be a legal entity ("GmbH" or "AG"\(^7\)), not a partnership ("OG" or "KG"\(^8\)). The Organträger may be a natural or legal taxable person or taxable association. It may even be a non-resident entity. However, in that case, the effects of the Organschaft are limited to transactions between the resident Organgesellschaften and the Austrian fixed establishment(s) of the non-resident entity, if any.

The Organschaft comes automatically into effect when the criteria of relatedness are met. It is not possible to opt for group registration.

The members of the group are neither entitled to file VAT returns separately nor jointly and severally liable for payment of the VAT debts of the group.

2.1.2. Belgium

Provided that they are established in Belgium, legally independent taxable persons that are closely bound to one another from a financial, organizational and economic perspective may choose to be treated as a single taxable person for VAT purposes. Financial links exist, if there is, directly or indirectly, a de jure or de facto relationship of control between the members of the group or, if their capital is not subdivided in shares, the majority of the assets used for the purposes of the economic activities of the members of the group is, directly or indirectly, owned by the same person. Organizational links exist if, legally or effectively, the members of the group are, directly or indirectly, under common management, they organize their activities, in part or in full, in consultation with each another, or they are, legally or effectively, directly or indirectly, under the control of the same person. Economic links exist where the most important activities of the members are of the same nature, their activities are complementary, interdependent or form part of a common economic goal, or the activities of some members are, partly or in full, for the benefit of the other members. However, once a group

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7. Gesellschaft mit beschränkter Haftung or Aktiengesellschaft.
8. Offene Gesellschaft or Kommanditgesellschaft.
has come into existence and where one of the members directly participates for more than 50% in the capital of another company, the above conditions are deemed to be fulfilled as regards the latter company and that company must be included in the group (“compulsory member”), unless the parties show that, on organizational, economic or other grounds, the companies are not or cannot be considered to be closely linked to one another.

The members of a VAT group must appoint one of them as their representative, which is entitled to exercise the rights and must fulfil the obligations laid down by the VAT Code and implementing decrees in the name and on behalf of the other members.

The members of the group are not entitled to file VAT returns separately. They are jointly and severally liable for payment of the VAT debts of the group.

2.1.3. Cyprus

Provided that they are incorporated in Cyprus, legally independent taxable persons that are closely bound to one another from a financial, organizational and economic perspective may opt to be treated as a single taxable person for VAT purposes. However, the tax authorities may refuse group treatment where the applicants have a poor record of compliance with the obligation to pay VAT, the tax authorities have reason to believe that the applicants intend to use the grouping facilities to operate a VAT avoidance scheme, or group treatment could create a distortion of competition in that supplies which themselves would be exempt become taxed under the grouping arrangements, thus positively affecting the rate of the group’s input tax recovery. Tour operators may not form part of a VAT group if one of the members has a fixed establishment or is engaged in taxed activities abroad for the purpose of the tour operator’s activities.

One of the members is appointed as the representative member and all transactions carried out by the other members are attributed to that representative member. Transactions between the members of the group are ignored for VAT purposes. The group is registered in the name of the representative member, which is the sole entity that is responsible for compliance with the VAT obligations or entitled to exercise the rights of the other members of the group. The other members of the group will have their individual VAT registration number terminated and will therefore not be able to file VAT returns separately.

The members of the group are jointly and severally liable for payment of the VAT debts of the group.

2.1.4. Czech Republic

Taxable persons having their seat, place of business and business establishment for VAT purposes in the Czech Republic may apply for registration as a single taxable person, provided that they are bound to one another by either financial or organizational links. Financial links are deemed to exist where one person or
entity holds, directly or indirectly, at least 40% of the capital or voting rights in the members. As regards the financial link, not only the members of the group must be established in the Czech Republic but also the person or entity through which the condition of financial relatedness is fulfilled. The latter condition means that two Czech subsidiaries of a non-resident parent company cannot register as a group because, from a financial perspective, they are bound to one another through the non-resident parent company, unless the subsidiaries are actually managed by the same person or persons, i.e. are bound to one another by organizational links.

Where the application is made before 31 October, group registration takes effect on 1 January of the following year. In that case, the member of the group that has been appointed as the representative of the group must already file an consolidated VAT return for the members of the group for the last tax period preceding the date on which the group comes into existence, i.e. for the fourth quarter or the month of December of the year of application. Applications made after 31 October take effect 1 year later. The same time limits apply to dissolution of the group.

The members of the group are not entitled to file VAT returns separately and they are jointly and severally liable for any VAT debts of the group.

2.1.5. Denmark

Taxable persons solely carrying out supplies subject to VAT may register as a VAT group on application. In addition, the tax authorities may grant permission to a taxable person carrying out taxable supplies to register, together with taxable persons carrying out exempt activities as well as non-taxable persons, as a VAT group. In order to register as a group in the latter scenario, one of the members (for example, the parent company) must, directly or indirectly, own all shares in the other members (for example, subsidiaries) and the members must be established in Denmark. The group comes into existence 1 month after the application for group registration was made.

The group must file a single VAT return, which means that the individual members of the group are not entitled to file VAT returns separately. The VAT returns must be filed by the member that applied for group registration.

The members of the group are jointly and severally liable for any VAT debts of the group.

2.1.6. Estonia

Parent companies may form a VAT group with their subsidiaries where they hold more than 50% of the subsidiaries’ shares or voting rights. Alternatively, companies that are connected through a franchise agreement may form a VAT group.

The VAT group is registered in the name of the representative member of the group, which must file the VAT returns for the group and claim refunds.
Supplies within the group are ignored for VAT purposes. However, services exchanged between a member of the VAT group and its fixed establishments located in another Member State are treated as taxable services.

The members of the group are not entitled to file VAT returns separately and they are jointly and severally liable for any VAT debts of the group.

2.1.7. Finland

Group registration is available only to enterprises mainly engaged in exempt financial or insurance transactions, although the group may also include enterprises carrying on activities subject to VAT, provided that the latter enterprises are controlled by the financial and insurance companies by means of a majority of the voting rights, as described in the Bookkeeping Act. The enterprises must have a domicile or a fixed establishment in Finland. An enterprise may belong to one VAT group only.

In order to be able to establish a VAT group, the members of the group must have close business, financial and administrative relations with each other.

There is a special rule for owners of reindeer. Reindeer-grazing associations and owners of reindeer belonging to these associations are treated as a single taxable person.

The group must file consolidated VAT returns and the members of the group are jointly and severally liable for payment of the VAT debts of the group.

2.1.8. Germany

Under the doctrine of Organschaft, a legal entity (Organgesellschaft) is not considered independent if it and its decision-making process are controlled by another entity (Organträger, parent company). The financial link between Organgesellschaft and Organträger is determined in terms of the Organträger's voting rights in the Organgesellschaft, not its holding of the shares in the Organgesellschaft’s capital. The Organgesellschaft is considered to be economically linked to the other members of the group if its business activities are interconnected, supplementary or adjusted to those of the other members. The parties are linked to one another from an organizational perspective if the Organträger's decisions are legally binding on the Organgesellschaft (its power to appoint or dismiss the Organgesellschaft's directors is not sufficient). Under those circumstances, the Organgesellschaft and Organträger are considered to form a single entity for VAT purposes. The Organgesellschaft must be a legal entity (GmbH or AG9), not a partnership (“OHG” or “KG”10). The Organträger may be a natural or legal taxable person or taxable association. It may even be a non-resident

9. Gesellschaft mit beschränkter Haftung or Aktiengesellschaft.
10. Offene Handelsgesellschaft or Kommanditgesellschaft.
entity. However, in that case, the effects of the Organschaft are limited to transactions between the resident Organgesellschaften and the German fixed establishment(s) of the non-resident entity, if any.

The Organschaft comes automatically into effect when the criteria of relatedness are met. It is not possible to opt for group registration.

The members of the group are not entitled to file VAT returns separately. They are jointly and severally liable for payment of the VAT debts of the group.

2.1.9. Hungary

Resident taxable entities and fixed establishments of non-resident taxable entities closely linked to one another in financial, economic and organization respect are entitled to opt for group registration. Those conditions are deemed to be fulfilled if the members of the group are controlled by a resident or non-resident holding company that holds at least 50% of the shares or voting rights in the other members. The group does not necessarily include all closely related entities. Transactions between the members of the group are considered to be outside the scope of VAT. The tax authorities may refuse any member that has tax arrears exceeding HUF 6 million (EUR 20,100) to be included in the group.

The members of the group are not entitled to file VAT returns separately.

Not only the members of the group but also entities connected with them are jointly and severally liable for payment of the VAT debts of the group, even if the connected parties do not form part of the group.

2.1.10. Ireland

Where the Revenue Commissioners are satisfied that two or more persons established in Ireland are closely bound by financial, economic and organizational links and that it would be expedient in the interest of the efficient administration of the tax, they may deem, on application or otherwise, the activities relating to such persons to be carried on by any one of the persons.

The members of the group are not entitled to file VAT returns separately. However, they must file separate recapitulative statements (see 11.4.).

Transactions between the members of the group are disregarded for VAT purposes, with the exception of supplies of immovable goods.

The members of the group are jointly and severally liable for payment of the VAT debts of the group.
2.1.11. Latvia

Companies and fixed establishments of non-resident companies that, under the criteria laid down by the Law on Business Groups, form part of the same commercial group can apply for group registration on the condition that, for the 12-month period preceding the date of application, the turnover of one of the members of the group was at least EUR 355,700. The members of the VAT group must conclude a contract establishing the VAT group and designating the member that is authorized to represent the group. The members of the group must actually be located at their statutory address.

The members of the group are not entitled to file their (periodic and annual) VAT returns separately. However, they must separately file other reports, such as recapitulative statements (see 11.4.). The members of the group are jointly and severally liable for payment of the VAT debts of the group.

2.1.12. Netherlands

Where two or more persons established or having a fixed establishment in the Netherlands are closely bound to one another by financial, economic and organizational links, those persons are treated as a single taxable person for VAT purposes at their own request or on the initiative of the tax administration. Financial links exist if more than 50% of the shares of the members are directly or indirectly held by the same person(s). Organizational links exist if the members are under common management or where the management of one member is actually subordinate to that of another. Economic links exist where the activities of the members are mainly aimed at achieving the same economic goal or carried out for the benefit of the other members.

Only taxable persons can form part of a VAT group but the tax authorities do not exclude “pure” holding companies if they actually control the decision-making process of the commercial group. Under certain conditions, also foundations that qualify as taxable persons can form part of a VAT group.

If they wish, the members of the group may file VAT returns separately. They are jointly and severally liable for payment of the VAT debts of the group.

2.1.13. Slovak Republic

Taxable persons established in the Slovak Republic, including fixed establishments of non-resident taxable persons, can form a tax group, provided that they are connected by financial, organizational and economic links. Taxable persons can only be a member of a single VAT group. The members of the group are treated as a single taxable person and act under a single VAT identification number. Transactions between the members of the group are not subject to VAT.
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