

Client Alert

8 April, 2016

UK Government consults on UK VAT Grouping Rules

Summary

The UK tax authority (HM Revenue & Customs (HMRC)) is to formally consult on proposals for changes needed to the UK VAT grouping provisions. The consultation is as a result of European Court decisions which have highlighting areas where the UK rules do not conform to European law or are at odds with the VAT grouping rules in other Member States.

Preliminary discussions have taken place during February and March between HMRC and business representative bodies. Formal policy options will be set out in a formal written consultation in April or May 2016. We will issue a further alert once the policy options are published.

Background

The EU VAT Directive allows Member States to treat two or more businesses established in the territory of that Member State as single taxable person (often called a “VAT group”) if the businesses have close economic, financial and organizational links.

The current UK legislation allows two or more companies or limited liability partnerships (LLPs) to register as a VAT group if: (i) each body is established in the UK; and (ii) they are under common control, for example, a parent company and its subsidiaries.

In the recent EU cases, the Court of Justice of the European Union (CJEU) found that Member States may only restrict VAT grouping to legal persons where those restrictions are (i) appropriate; and (ii) necessary in order to prevent abuse, avoidance or evasion. The judgments in these cases mean it is likely that the UK will have to amend its VAT grouping rules.

For more information, contact:

Kevin Conway
+44 (0) 207 551 7530
kconway@kslaw.com

Daniel Friel
+44 (0) 207 551 2110
dfriel@kslaw.com

Tom Pygall
+44 (0) 207 551 2107
tpygall@kslaw.com

King & Spalding
London
125 Old Broad Street
London
EC2N 1AR
Tel: +44 (0) 207 551 7500
Fax: +44 (0) 207 551 7575

What happens next?

During February and March 2016 HMRC met with business representative bodies to explore and develop new ideas on VAT grouping.

During April or May 2016, HMRC should publish a series of policy options. These will form part of the formal written consultation which will begin thereafter. This will provide anyone who has an interest in VAT group with an opportunity to reflect on the policy options and proposals developed to help HMRC firm up its policy on the UK VAT grouping provisions.

Comment

The CJEU cases are likely to result in the following changes to the UK VAT grouping rules:

- extending VAT grouping to non-corporate bodies (such as traditional partnerships, limited partnerships and sole traders);
- identifying new rules to determine ‘close economic, financial and organisational’ links for corporate and non-corporate bodies, replacing the current “control” test based on a company law definition of a subsidiary; and
- extending UK VAT grouping to non-UK businesses (so-called Pan European VAT grouping).

This may provide some benefit for funds that are established as limited partnerships.

While the UK will have to amend its VAT grouping rules as a result of these European cases, it is important to note that VAT grouping is optional under the EU VAT Directive so some Member States (for example, France), will not have to amend its domestic VAT legislation as it does not allow VAT grouping. Germany has already amended its rules to take account of the judgments in the European cases.

We will issue a further update when the formal policy options are published by HMRC later in the year.

* * *

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 900 lawyers in 18 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”