

## VAT ALERT

### The deadline for opting in to implement VAT Group on the 1<sup>st</sup> of January 2023 is coming

The Finance Bill for 2021 introduced into French domestic law the VAT group regime provided for by the VAT Directive 2006/112/EC and already in force in 20 other Member States.

- **Operation of the VAT Group**

This regime allows to consider as a "single taxable person" all persons established in France who, although legally independent, are closely bound to one another by financial, economic and organisational links.

The VAT group makes it possible to ignore all supplies of goods and services between group entities and to report only transactions with third parties (in other words, with parties outside the VAT group). Therefore, the regime allows a single VAT return to be filed, consolidating all of those third-party transactions.

It thus goes well beyond the existing VAT payment consolidation scheme, which allows the parent company of a group to become the sole VAT payer of its group, i.e., to pay VAT instead of its integrated subsidiaries and to offset the VAT credits and debts of all entities of the group. This regime allows for cash flow gains but does not allow for VAT savings, unlike the VAT group.

The members of the VAT group will remain jointly and severally liable for VAT, but only one designated representative will be in charge of the VAT matters (return, payment, refund).

For the purpose of determining the deduction rights of the single taxable person, each member will be considered as a sector of activity of the group.

- **Formalities to be carried out to form a VAT group**

The creation of the single taxable person is optional and can only be exercised with the agreement of each member of the single taxable person.

The option for the VAT group must cover a period of three calendar years.

It must be made by 31<sup>st</sup> October of the year preceding its application and takes effect on 1<sup>st</sup> January of the year following that in which it was made. Thus, for a first application on 1<sup>st</sup> January 2023, the option must be made by 31<sup>st</sup> October 2022 at the latest.

- **Impact and interest of groups in opting**

The absence of VAT on intra-group flows limits the amounts of non-deductible VAT in member companies.

This regime should be of interest to groups where some members cannot recover all the VAT incurred on their expenses, especially in the financial and insurance sectors.

This is particularly the case given the fact that the introduction of the VAT group will be accompanied by a reduction in the scope of application of Article 261 B of the French Tax Code which exempt the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT for the purpose of rendering their members the services directly necessary for the exercise of that activity. Indeed, pursuant to the rulings of the ECJ (ECJ, 21/09/2017, C-605/15, Aviva and C-326/15, DNB Banka), only groups whose members carry out activities of general interest, benefit from this regime. From 1<sup>st</sup> January 2023, the scope of application of these groups will be limited to persons carrying out these activities.

However, the opportunity to opt for this regime must be carefully considered as not all groups have an interest in opting.

Indeed, this option has a negative impact in terms of payroll tax. Companies that are not subject to VAT on their entire turnover, which will be the case of the members of the VAT group, will be, to the same extent, subject to payroll tax on their total payroll.

The option for the VAT group therefore increases the payroll tax cost. It is thus necessary to check that the VAT gain is greater than the payroll tax cost. This is of course the case for insurance activities and generally for banking and financial activities. On the other hand, a group where all members recover 100% of the VAT should not opt for the VAT group. However, industrial and commercial groups with entities that do not recover the full amount of VAT (holding companies, central treasury offices, group banks, etc.) may opt for a partial VAT group. The determination of the scope of the VAT group is indeed free.

An impact study must then be carried out, on a case-by-case basis, before formulating a possible option.



Dominique Villemot  
Attorney at law  
[dominique.villemot@villemot-associes.com](mailto:dominique.villemot@villemot-associes.com)



Nathalie Lay  
Attorney at law  
[nathalie.lay@villemot-associes.com](mailto:nathalie.lay@villemot-associes.com)