

# VAT grouping provisions – an overview

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Corporate Tax, Italy

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## Introduction

In accordance with Article 11 of EU Directive 2006/112/EC, Italy introduced domestic value added tax (VAT) grouping provisions in 2018 and the VAT group regime has been effective in Italy as of 1 January 2019.

The ministerial decree implementing the regulations was published in the *Official Gazette* on 18 April 2018 and on 31 October 2018 the Italian tax authorities highlighted issues concerning the application of the VAT grouping scheme (Circular 19/E/2018).

## VAT grouping scheme

The VAT grouping scheme is regulated by Articles 70bis to 70duodecies of Presidential Decree 633/72. The scope of application, conditions and implications of the VAT group scheme (ie, *Gruppo IVA*) are different from the already existing VAT consolidation scheme (ie, *IVA di Gruppo*), regulated by Article 73(3) of Presidential Decree 633/72.

Contrary to the VAT consolidation scheme, **(1)** where each entity remains not only independent from a juridical point of view, but also single taxable persons, a VAT group is considered a single VAT taxpayer **(2)** and the participating entities are jointly and severally liable for VAT (and interest and penalties) to the tax authorities.

All VAT groups have a sole VAT identification number that:

- groups members use for transactions with third parties; and
- periodically determines their VAT group position (debit or credit) and that they must submit a single VAT return and pay the VAT amount due to the tax authorities.

Pursuant to the Italian VAT grouping provisions, any taxable person established in Italy from 1 July of the previous year that is closely bound to another party by financial, economic and organisational links could be eligible to be a VAT group member (the all-in-all-out principle applies). **(3)**

The financial, economic and organisational links must exist simultaneously as follows (ie, the threefold test):

- a financial link **(4)** exists when there is a relationship of direct or indirect control among VAT group members in accordance to Article 2359(1)(1) of the Civil Code **(5)** (ie, when a company holds the majority of voting rights in another company);
- an economic link **(6)** exists when either all VAT group members perform business activities of the same nature, their activities are complementary or interdependent or the activities substantially benefit the other VAT group members; and

- an organisational link exists if there is a coordination of fact or law between the decision-making bodies of the taxable persons, even if the coordination is not carried out by the same persons.

## Eligibility

The following persons are ineligible to become members of a VAT group:

- taxable persons resident abroad;
- foreign permanent establishments of resident taxable persons;
- passive holding companies;**(7)** and
- persons under winding-up procedures or subject to bankruptcy or seizure.

A VAT group's option form, even if discretionary, must be exercised by a VAT group representative and by all taxable persons meeting the conditions to be part of a VAT group (according to the all-in-all-out rule). Thus, if one VAT group member does not exercise the option, a VAT group cannot exist.

A VAT group's option form**(8)** contains all of the relevant information (eg, details of the group members, a declaration confirming the existence of the links among them and details of the group's activities). The option is binding for three years and is automatically renewed for each subsequent year if it is not revoked.

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## Endnotes

(1) In the case of VAT consolidation (*IVA di Gruppo*), the parent company of a VAT group offsets the input and output VAT positions periodically determined by each consolidated entity that must issue and record its own invoice in order to calculate its VAT liquidation and its own VAT return.

(2) A VAT group's internal transactions (ie, among entities that belong to it) are disregarded for VAT purposes, while supplies by a member of a VAT group to a third party or by a third party to a member of a VAT group are treated as supplies carried out by or to said group.

(3) Italian permanent establishments of non-resident companies are eligible for a VAT group scheme and are subject to the all-in-all-out principle.

(4) If a financial link exists, the economic and organisational links are also presumed to exist.

(5) A VAT group can be set up between Italian subsidiaries of a foreign holding to the extent that the foreign company is based in a country that has an exchange of information agreement in force with Italy.

(6) If the acquisition of participation in another company is made for debt collection or results from the conversion of debts of companies in financial difficulty into new equity, the economic link is presumed not to exist, unless proven otherwise.

(7) However, mixed holding companies, which not only own shares but also provide additional services to their subsidiaries, are allowed to join a VAT group. Other legal entities (eg, foundations and partnerships) that carry out economic activity may also be eligible members (but only as controlling entities) – see Circular 19/E/2018.

(8) A VAT group's representative is responsible for overseeing its rights and obligations (ie, filing periodical VAT returns and paying VAT output on a periodic basis). However, all VAT group members are jointly and severally liable for VAT debts, interest and penalties.

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