



The Irish Accounting & Tax Summit 2020

Session 12

Key VAT Issues Including COVID-19 Measures



Presenter:

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VAT UPDATE

Gabrielle Dillon – Twomey Moran

Agenda

- Covid19 VAT Measures
- Property – Issues for Landlords
- EU Update – Quick Fixes & E-Commerce
- VAT Groups

CV 19 - VAT measures

Zero-rating

- Already applies to certain supplies (certain equipment & oral medicines)
- Concessionary treatment - 9 April to 31 July 2020
- Applies to certain goods - Used for delivery of CV19 health care services
- PPE Thermometers / Hand sanitiser / Oxygen
- Medical ventilators and specialist respiratory equipment
- Applies to supplies to HSE, hospitals, nursing homes, care homes, GPs etc

CV 19 - VAT MEASURES

Zero-rating

- Supplies to other operators (even if for onward transmission to health care provider) = 23%
- Suppliers must satisfy themselves that recipients qualify for zero-rate (i.e. must be directly involved in provision of health care services & goods used for those services)
- Clear invoice descriptions
- Input VAT recovery not affected

CV 19 - VAT measures

Emergency Accommodation

- Accommodation in hotel or guesthouse contracted to a State agency
- Provided exclusively as emergency accommodation & not available for letting to the public
- Treated as an exempt letting
- Ancillary supplies also qualify for the exemption (e.g. reception/security etc)
- Catering services though are not ancillary – taxable where supplier exceeds registration threshold

CV 19 - VAT MEASURES

Emergency Accommodation

- Exemption applies to emergency accommodation provided to HSE/State/State agencies
- Where used to combat CV19
- Possible impact for suppliers that had reclaimed VAT on the acquisition or development of the accommodation
- But concessionary treatment applicable for CGS purposes
- Big swing adjustment is not applicable (for any interval that accommodation used for CV19 purposes)
- Normal CGS rules – deductible use is not based on actual use but on prior use (concession)

CV 19 - VAT measures

Debt Warehousing

- Debt collection and charging of interest on late payment suspended
- Applies to Jan/Feb and Mar/Apr 2020 VAT periods
- Extended to cover May/Jun 2020
- Still required to submit returns
- If unable to file complete return – file based on best estimate of liability
- SMEs get automatic deferment of payments – large business (on request from CGs office)
- SME = t/o less than €3m & not dealt with by LCD or MED divisions of Revenue

CV 19 - VAT measures

Debt Warehousing

- Revenue will warehouse deferred tax debts (incl unpaid VAT) – arising as a result of CV19
- Warehoused for 12 month period (after business resumes trading)
- Low interest rate of 3% applicable (on repayments after 12 month period)
- Tac clearance – not affected if debt warehousing availed of
- VAT refunds – will still be paid (can offset against liabilities)
- Legislation to issue – on admin basis until then
- 3 time periods under the scheme

CV 19 - VAT measures

Debt Warehousing

- **Period 1= CV19 restricted trading phase**
 - Debts ringfenced = when unable to trade or restricted trading + 2 months after recommencing to trade
 - Debt not collected and no interest applies – file returns though (if estimated return filed, need to file correct return before end of Period 1)
- **Period 2 = Zero interest phase**
 - Applies from end of period 1 for 12 months
 - Current tax liabilities to be paid
- **Period 3 = Reduced interest phase**
 - Applies from end period 2 until period 1 debts paid
 - Interest rate of 3% pa instead of 10%

Landlords – possible issues

Legacy Leases

- Interest of 10 years or more created pre 1/7/2008
- Specific rules for surrenders and assignments of legacy leases which occur after 1/7/2008
- Legacy lease surrendered or assigned within 20 years of grant = supply of goods
 - If tenant had recovery on acquisition of interest = VATable supply
 - If tenant had no recovery on acquisition of interest = exempt supply but **joint option to tax is permitted**
- Where VATable, formula used to calculate VAT amount
- Document to be issued by person making the disposal
- Consider implications of letting/disposal post surrender of legacy lease
- Entitlement to input credit on surrender dependent on future use

Landlords – possible issues

Sale to non-accountable person

- Disposal of reversionary interest subject to legacy lease - s93(2)(a)
- Applies where the reversionary interest was created pre 1 July 2008
- Implication = supply not chargeable to VAT & no CGS adjustment
- But only where property has not been developed “*by, on behalf of, or to the benefit of*” the landlord since the disposal of the VATable interest
- If developed since creation of legacy lease – normal VAT rules to be considered

Landlords – possible issues

Sale to VAT registered person

- Disposal of reversionary interest subject to legacy lease - Sale covered by TOB
- CGS obligation – none per se – but purchaser takes over lease obligations
- If lease surrendered to new purchaser within 20 years of grant
- VAT to be accounted for by new purchaser as landlord
- Subsequent use will determine input VAT recovery for it

Landlords – possible issues

Sale after surrender of legacy lease

- Not the disposal of a reversionary interest under s93(2)(a)
- 2 issues for consideration
 1. VAT treatment of the surrender – see earlier slide
 2. VAT treatment of the subsequent sale
- If sale is exempt – VAT cost arises on surrender i.e. cannot recover input credit
- If sale is VATable – no issue with recovery on surrender

Landlords – possible issues

Letting after legacy lease surrender

- Lettings will be exempt from VAT
- VAT cost on surrender if letting exempt
- If landlord had a waiver of exemption which was still in place – WoE would not extend to a letting – where surrender occurs post 2008
- Landlord would have to exercise option to tax

Landlords – possible issues

New Leases

- What are implications on surrender of lease granted post 1/7/2008?
- It is not a legacy lease so rules for surrenders and assignments not applicable
- Surrender does not give rise to VAT accounting by landlord
- VAT treatment of premia payable by tenant will depend on the presence of an option to tax
- Where landlord opted to tax – payments will be VATable
- Where landlord did not opt to tax – payments will not be VATable
- Grant of new lease – opt to tax or not?

Landlords – possible issues

Other issues

- Dilapidation payments - not treated as consideration for a supply usually
- Tenant refurbishments – surrender with 10 years – claw-back for tenant or landlord agrees to take over CGS
- CGS records

EU update – quick fixes

- EU Council - 4 December 2018
- 2 Regulations (direct effect) and 1 Directive adopted to adjust VAT rules in four specific areas
- Called short-term quick fixes (pending introduction of new VAT system!)

4 QFs - Effective date = 1 January 2020

1. Call-off stock (simplified and uniform treatment)
2. VAT number (condition for zero-rating of intra-EU supplies)
3. Chain supplies (enhanced legal certainty)
4. Proof of intra-EU supply (establishment of common framework for documentary evidence)

EU update – quick fixes

1. Call-off stock relief

- Call-off stock – movement of goods cross border to be held at 3P warehouse or warehouse of purchaser
 - Purchaser's identity is known before goods transported
 - Ownership only transfers as purchaser calls off the goods
 - Absence of relief = registration, account for ICA, charge VAT
 - Relief = purchaser accounts for VAT when goods acquired (as called off)
 - New rule – relief to be applied by all EUMS
- Simplification measure but strict conditions attached

EU update – quick fixes

Call-off stock relief - Conditions

- Supplier must know identity of purchaser
- Time limit – goods can only be held for up to 1 year in destination EUMS
- Record keeping – separate record to be kept by supplier of all supplies using the relief
- Sales list (VIES) – transport must be recorded – VAT number of purchaser
- Supplier and purchaser to be VAT registered
- Supplier cannot be established in destination EUMS

EU update – quick fixes

VAT number

- Intra-Community supplies can be zero-rated where:-
 - customer's VAT number is supplied to the vendor &
 - where proof is provided that the goods have left the MS
- CJEU rulings to date – VAT number is not a substantive condition for zero-rating
- If substantive conditions met in bona fide cases, then zero-rate can apply in absence of VAT number
- New rules = obtaining VAT number and validating it will be a substantive condition
- So will filing a correct VIES return
- Failure to meet conditions – VAT of EUMS of dispatch to be charged

EU update – quick fixes

Chain supplies

- Chain supplies = supplies of goods between parties of 3 or more
- Involves one transport of the goods between EUMS (could be preceded by a number of domestic supplies)
- Numerous CJEU cases to determine which movement of the goods qualifies as an ICS (and zero-rated)
- New rules try to determine which supply link in the chain is the ICS
- New rule = the ICS is the one where the goods are supplied to an intermediary (link in the chain) that is responsible for arranging the transport

EU update – quick fixes

Proof of intra-Community supply

- Documentation required to prove an ICS supply took place (i.e. proof that goods left EUMS)
- New rules – plan is to harmonize the documentary requirements as they vary from EUMS to EUMS
- Requirement – provide 2 non-contradictory documents that prove that the goods were transported to another EUMS
- Evidentiary documents to be issued independently of each other

EU update – e-commerce

Goods - 4 key areas

1. Simplify VAT rules for start-ups/micro-businesses/SMEs selling goods online to customers in other EU MS.
2. Allow all online sellers to deal with VAT obligations in the EU through one easy-to-use online portal in their own language.
3. Make large online marketplaces responsible for ensuring VAT is collected on sales on their platforms - made by non-EU sellers to EU customers.
4. Address problem of fraud caused by VAT exemption for imported goods valued at under €22.

EU update – e-commerce

Selling goods to consumers online in other EU MS

- Current position – distance selling rules
- July 2021 (deferred from Jan 2021 due to CV19)
- Thresholds in each EU MS replaced by single threshold across EU = €10,000
- €10,000 threshold applies to total value of sales to all EU customers pa
- VAT can be remitted via OSS (similar to MOSS)
- Supplies below threshold – treated as domestic supplies
- Supplies above threshold - obliged to charge VAT of customer's MS
- Advantage = reduce compliance burden
- Challenge = requirement to know VAT rates in all MS, requirement to update systems and capture data

EU update – e-commerce

Online platform/marketplaces - sales by non-EU sellers

- Current position - Sales of goods done via 3P platforms
- Future position – July 2021 onwards – online platform directly liable to charge and pay the VAT on sales
- Applies to imports up to value of €150 & intra-EU sales by non-EU suppliers
- Platform required to register for VAT & charge VAT of MS where customer based – could use OSS
- Includes goods already stored in fulfilment centres in the EU

EU update – e-commerce

Sales to EU consumers by non-EU suppliers (i.e. imports)

- Current position - VAT exemption for goods valued at under €22
- Relief applied to reduce cost but resulted in distortion of competition and undervaluing goods
- Future position - Low value relief exemption will be abolished in 2021
- New reporting mechanisms – can use OSS for goods with value <€150 (excl excisable goods)
- OSS can be used by EU & non-EU suppliers (latter will need to appoint an EU based intermediary)
- OSS hosted by own tax authority and in own language
- New payment mechanisms – charged and collected at PoS (not at importation)
- If OSS not used – VAT dealt with by entity importing and delivering to customer
- Payment on a monthly basis where value <€150 & >€150 full VAT & duty due & full customs declaration

VAT groups

- Discretion of Revenue to grant VAT group status
 - Closely bound by financial, organisational and economic links. “Control” for VAT grouping = e.g. 50% shareholding
 - Resident in Ireland
 - At least one member must be a taxable person
- Remitter – responsible for submitting all VAT returns on behalf of group (VAT3 and ARTD)
- Other non-remitter members quote own VAT numbers for other purposes e.g. for imports, ICAs, filing of VIES and Intrastat returns

VAT groups

Advantages

- Treated as single taxable person
- No VAT on inter group supplies
- No VAT invoices issued for inter group supplies
- Normal rules apply for supplies outside VAT group

Disadvantage

- Joint and several liability for all members

Property transactions

- Excluded from group provisions i.e. usual VAT rules apply

Compulsory group registration

- Revenue can impose it for efficient and effective administration of VAT or for collection of VAT

VAT groups

- TDM Updated in March 2020
- More detail provided on the 3 pillars financial, economic and organisational links
- No policy change
- Clarity added on territorial scope (CJEU cases)
- Examples added
- Read in conjunction with TDM on Holding Companies – VAT recovery

VAT groups

NB & Relevant case law

- FCE Bank (UK HQ, Italian branch, supply of services from UK HQ to IT branch - outside scope of VAT as branch not a taxable person - not independent).
- Commission v Ireland (Revenue permitted VAT groups to include non-taxable persons, challenged by EU Coms - VAT Directive refers to “persons”, so can include non-taxable persons).
- Skandia America (US HQ, Swedish branch, Swedish branch member of Swedish VAT group, third party supply of IT services to US HQ, onward supplied to Swedish branch (onward supplied to group members), branch not independent so not a taxable person but as a member of VAT group, it becomes a taxable person as group is a single taxable person. VATable transactions and reverse charge for Swedish VAT group).

Thank you.

Questions?

Temporary zero rating of supplies of personal protective equipment, ventilators and other medical products

Updated May 2020

1. Introduction

Following a request from the Minister for Finance and Public Expenditure and Reform, Revenue will allow the application of the zero rate of VAT to the supply to the HSE, hospitals and other health care settings of personal protection equipment and medical equipment for use in the treatment of patients with Covid-19. In addition, the tax treatment of the supply of emergency accommodation is clarified.

Details of this temporary concession are set out below.

2. Covid-19 temporary VAT zero-rating measure

Revenue will permit the zero rate to apply to the supply and intra-Community acquisition of the goods listed below when supplied to or acquired by the HSE, hospitals, nursing homes, care homes, GP practices and the like, for use in the delivery of COVID-19 related health care services to their patients:

- personal protection equipment (PPE)
- thermometers
- hand sanitiser
- medical ventilators and specialist respiratory equipment such as respirators for intensive and sub-intensive care and other oxygen therapy apparatus including oxygen tents
- oxygen.

The zero rate may only be applied to supplies to hospitals, nursing and care homes, GP practices and the like; supplies to any other operators even if they are intended for onward supply to a health care provider are liable at the standard rate.

3. Timeline for the Covid-19 temporary VAT zero-rating measure

This concessional treatment will apply from 9 April 2020 up to 31 July 2020, subject to review.

4. What records should suppliers maintain?

In addition to the normal record keeping requirements, suppliers of these goods will need to satisfy themselves that their customer is eligible to receive zero rated supplies. In most cases, this will be very obvious (the supply is to a hospital or nursing home, etc.), but, if there is any doubt, the supplier must ensure that the supply meets the criteria for zero rating, i.e. that the customer is directly involved in the provision of health care services to patients and that the goods are for use by the customer in the delivery of those services.

The goods being supplied at the zero rate of VAT should be clearly identified and described on the invoice.

5. Deductibility

The VAT deductibility rights of the suppliers of this equipment will not be affected by this measure. They can continue to deduct VAT on their business input costs in the normal way.

6. Other medical products that are zero rated

There are already existing zero rates for certain types of medical products. These zero rates are provided for by VAT law and are not affected by the Covid-19 temporary VAT zero-rating measure detailed above.

6.1. Medical devices

Generally, most medical devices are liable to the standard rate of VAT. The following goods are already zero rated for VAT purposes as per paragraph 11(3)(b) and (c) of the Second Schedule to the Value-Added Tax Consolidation Act, 2010:

- Tracheostomy tube
- Endotracheal tube
- Breathing filters (that are solely or principally for use with tracheostomy or endotracheal tubes).

6.2. Human oral medicines

Human oral products which are licenced or authorised as medicines by the Health Products Regulatory Authority ('HPRA') are zero rated as per paragraph 11(1) of the Second Schedule to the Value-Added Tax Consolidation Act, 2010.

7. Emergency accommodation

The supply of temporary emergency accommodation is exempt from VAT in accordance with paragraphs 11 of Schedules 1 and 3 to the VAT Consolidation Act 2010 and Regulation 46(c) of the VAT Regulations 2010.

The exemption applies to the supply of emergency accommodation to the State/HSE/State Agencies for the purposes of being used as emergency accommodation as necessary to combat COVID-19.

Further information on the VAT treatment of the supply of emergency accommodation and ancillary services is available in the [VAT Tax & Duty manual](#).

7.1 Application of the Capital Goods Scheme to emergency accommodation

The terms for the application of this concessionary treatment must be taken as a package for the intervals involved, otherwise normal CGS rules apply. This concessionary treatment only applies to the intervals as set out below.

'Big Swing' Adjustment

As a concessionary treatment Revenue will not apply the CGS big swing adjustment in cases where the change in the proportion of deductible use is a consequence of a capital good being diverted for use as emergency accommodation. The big swing provisions should be ignored in any interval where the capital good is used for the purpose of emergency accommodation in accordance with paragraph 7.

Concessionary application of the CGS rules

First interval where the property is used for emergency accommodation

The calculation of the proportion of deductible use is to be based on the interval prior to the property being diverted for use as emergency accommodation.

Subsequent intervals where the property is used for emergency accommodation during the whole of the interval.

The calculation of the proportion of deductibility is to be based on the deductible use in the interval immediately preceding the first interval in which the capital good was used for emergency accommodation.

Proportion of deductible use in the interval immediately following the intervals during which the Capital Good was used for emergency accommodation

The proportion of deductible use can be calculated using normal CGS rules, based on actual use during the period; the proportion of deductible use applied to any period of non-use at the beginning of that interval would be deemed the same as applied in the preceding interval.

8. Donations or gifts of goods and meals

Generally, where a business donates goods free of charge, no VAT charge will arise on the donation where the value is less than €20; for goods in excess of €20 the self-supply rule applies; for goods where no VAT was reclaimed by the business on the input costs relating to those goods those supplies are considered outside the scope of VAT. Further information on the VAT treatment of the supply of gifts is available in [VAT on Gifts and Promotional Goods/Schemes](#).

Where a business donates goods as specified in Paragraph 2 free of charge to the HSE, hospitals, nursing homes, and other healthcare facilities for use in the delivery of Covid-19 related health care services to their patients, those supplies are considered to be self-supplies and liable to the temporary zero rate of VAT.

Where a business donates hot meals free of charge to charities and health care providers involved in the response to the Covid-19 crisis for distribution to vulnerable groups or for consumption by frontline staff, Revenue will concessionally disregard those supplies for the purposes of determining the business's entitlement to deductibility.

Where a business donates food products (including cold food takeaways) and non-alcoholic drinks free of charge to charities and health care providers involved in the response to the Covid-19 crisis for distribution to vulnerable groups or for consumption by frontline staff, Revenue will concessionally not require the business to apply the normal self-supply rules and will allow the business to maintain an entitlement to deductibility in respect of those donations.

This concessional treatment will apply from 9 April 2020 up to 31 July 2020, subject to review.

New “warehousing” of deferred tax debts and interest suspension arrangements

Revenue suspended debt collection and the charging of interest on late payment for the January/February and March/April VAT periods and February, March and April PAYE (Employer) liabilities. These arrangements are further extended to include May/June VAT and May and June PAYE (Employer) liabilities.

For the purposes of clarity, PAYE (Employer) liabilities include income tax, universal social charge and employees’ and employer’s PRSI due to be remitted by employers to Revenue under the PAYE system in respect of the payment of wages, salary, etc., to their employees.

Notwithstanding the suspension of debt collection, businesses are required to file the relevant returns so that Revenue has visibility on the level of unpaid debt arising from the Covid-19 crisis. Where a business is unable to file complete returns due to, for example, the absence of key employees or an agent due to Covid-19 related illness or restrictions, the business should submit returns based on the best estimate of the liability.

The deferred payments, which amounted to €800m in March and €460m in April, have been a vital liquidity support to both SMEs (given automatically) and larger businesses (on request) that are severely impacted by Covid-19. An SME is a business with an annual turnover of less than €3million, which is not dealt with by either Revenue’s Large Corporates Division (LCD) or Medium Enterprises Division (MED). SMEs are managed from both a service and compliance standpoint by Revenue’s Business Division. Those businesses which are managed by either Revenue’s Large Corporates Division (LCD) or Medium Enterprises Division (MED) and are currently experiencing tax payment difficulties should contact the Collector-General’s Office, if they have not already done so. Such businesses can contact the Collector-General’s Office through MyEnquiries, Revenue’s secure online correspondence service, which is available in both MyAccount and ROS. Alternatively, those businesses can engage directly with their LCD or MED branch contacts.

Revenue recognises the need for clarity and certainty on how and when this level of tax debt forbearance will be gradually unwound to allow the businesses to trade their way back to profitability and repay the amounts due. In the normal course, Revenue would work closely with businesses to put in place arrangements, appropriate to the circumstances and viability of each business, to secure payment of those debts over a reasonable timeframe. However, in the current circumstances, businesses that have had to close, or have been significantly negatively impacted by the restrictions, will not be able to enter into arrangements now or in the short term to clear the Covid-19 -related tax debt, while at the same time face the challenge of paying their ongoing tax

liabilities as they arise after they reopen; pay their trade and other non-Revenue creditors; complete any necessary restructuring to deal with new trading arrangements in the context of social distancing; build up stock, etc.

On 2 May 2020, the Government announced that it will legislate to provide that Revenue will warehouse deferred tax debts associated with the Covid-19 crisis. The proposed scheme will involve the effective parking of these unpaid VAT and PAYE (Employer) tax debts, that arose from the Covid-19 crisis, for a period of 12 months after a business resumes trading and the application of a lower interest rate of 3% per annum on the repayment of such 'warehoused tax debts' after that date. The necessary legislative amendments will be brought forward in due course. Pending the enactment of the necessary legislation, Revenue will operate the arrangements on an administrative basis.

The period covered by the arrangements is the duration of time during which the business was and is unable to trade, or was and is trading at a significantly reduced level, due to the Covid-19 related restrictions and includes two months after the business re-commences 'normal' trading.

The tax debts covered are VAT and PAYE (Employer) debts from the 'Covid-19 restricted trading' period. These are the tax debts that have been subject to the suspension of debt enforcement outlined above. (Tax debts before and after this period will not be included in the warehousing arrangement.)

There will be three periods in the scheme.

Period 1 – Covid-19 restricted trading phase: The relevant tax debts built up while the business is unable to trade or was subject to restricted trading, and debts for an additional two months after the business re-commences 'normal' trading, will be 'ring-fenced'. There will be no collection of any of the debt in question during this period and no interest will apply, but the debt will have to have been quantified by the business through the filing of all the relevant returns for the restricted trading phase. If a best estimate return of liability has been made for any period, the correct return will have to be filed before the end of Period 1 to ensure that the debt benefits from the warehousing.

Period 1 may vary from sector to sector and business to business, depending on when Government restrictions are relaxed in line with the roadmap for re-opening society and business as announced on 1 May 2020.

Period 2 – Zero interest phase: This will last for 12 months after the end of Period 1. During this period no interest will be charged on the debt built up in Period 1. Businesses must pay current tax liabilities as they arise.

Period 3 – Reduced interest phase: This will last from the end of Period 2 until the Covid-19 related debts built up in Period 1 are paid. A reduced interest rate of 3% per annum will be charged on the debt from Period 1. This compares to a rate of 10% per annum normally or otherwise due on overdue VAT and PAYE (Employer) liabilities.

Tax clearance will not be affected by a business availing of tax debt 'warehousing' under this arrangement.

Refunds and repayments of tax which arise will be paid, notwithstanding that the business owes VAT and PAYE (Employer) liabilities built up in Period 1. (The business can choose to offset the repayment against the Covid-19 liabilities if it wishes.)

Full details of the arrangements for debt warehousing will be published in legislation in due course.

VAT Groups

This document should be read in conjunction with section 15 of the VAT Consolidation Act 2010 (VATCA 2010) and regulation 4 of S.I. no. 639 of 2010

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Introduction

This guidance sets out the Revenue position on VAT groups as provided for in section 15 of the VATCA 2010.

1 VAT Groups

A VAT Group is a group of two or more persons who have been approved by Revenue to operate as a single taxable person for the purposes of VAT. A VAT group is established when Revenue approves an application from two or more persons to form such a group; Revenue may also direct that specified persons are established as a VAT group where it is satisfied that it is appropriate for the efficient and effective administration of the tax to do so. In either case, a member of the group must be designated as the 'group remitter' responsible for making VAT returns on behalf of the VAT group.

Where a VAT Group has been established all transactions carried out by the individual group members are considered to have been carried out by the VAT group as a single taxable person.

Each member of a VAT group is jointly and severally liable for the VAT liabilities of the group.

2 Membership of a VAT Group

Both taxable and non-taxable persons can join a VAT group provided at least one member of the VAT group is a taxable person. A taxable person is any person who independently carries on a business.

In order to become a member of a VAT group a person must be established in the State. The type of establishment has not been specified; a person may have either a business established or a fixed establishment within the State.

3 Formation of a VAT Group

A VAT group can be formed by two or more persons, at least one of whom is a taxable person, subject to the conditions outlined in paragraph 4.

Persons that wish to form or join a VAT group must apply to Revenue using the prescribed application forms. The person applying to be the remitter of a VAT group should complete and submit a [Form VAT 52](#). The other person(s) applying to be members of the VAT group should complete and submit a [Form VAT 53](#).

If Revenue approves the VAT group application, it will take effect from a date specified by Revenue. A refusal by Revenue of an application to form or join a VAT group may be appealed to the Tax Appeal Commission.

Revenue also has the power to compulsorily VAT group persons where Revenue determines the conditions for a VAT group have been met. The compulsory

registration, by Revenue, of a group of persons as a VAT group may be appealed to the Tax Appeal Commission.

4 Conditions to be met to form a VAT Group

To be approved as a VAT group, Revenue must be satisfied that the applicants are closely bound by financial, economic and organisational links and that the granting of a VAT group application would be necessary or appropriate for the efficient and effective administration of the tax. These conditions are cumulative and to qualify to establish a VAT group all of them must be met.

4.1 Financial Link

The financial link can be demonstrated by considering common control. In this respect, one measure of demonstrating common control would be the holding of fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors.

Whilst a subordinate relationship, such as a parent and subsidiary, would clearly satisfy the common control requirements, it is not the only kind of relationship that would meet the requirements. For example, two companies could meet the common control test if they had a common shareholder who holds fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors of each company.

In addition, the holding of fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors does not have to result from a direct relationship, it can also be met indirectly. For example, Company A owns 100% of the share capital of Company B who in turn holds 60% of the share capital of Company C. Company A indirectly holds 60% of the share capital of Company C.

Whilst considering common control in terms of share capital, voting rights and power to appoint board members is an appropriate assessment of control when looking at corporate entities seeking to form a VAT group, it may not be appropriate when looking at non-corporate bodies such as partnerships, etc. In this regard other factors such as the allocation of decision-making powers under formal agreements, the level of debt funding provided to the non-corporate person or the level of capital contribution, may be taken into account on a case by case basis.

4.2 Economic Link

An economic link must exist between persons who wish to form a VAT group. The following list outlines the circumstances which Revenue will accept as satisfactorily demonstrating the existence of an economic link;

- The principal activity of the group members is of the same nature, or
- The activities of the group members are complementary or interdependent, or

- One member of the group carries out activities which are wholly or substantially to the benefit of the other members.

An example of group members having a principal activity of the same nature would be two companies that manufacture different kinds of medical devices.

An example of complementary activities would be a vehicle leasing company and a company that provides vehicle maintenance services.

A company that carries out activities which are wholly or substantially to the benefit of the other members could include a shared service centre or a group treasury company.

4.3 Organisational Link

Organisational links between persons can take different forms and are generally designed to assist the persons concerned achieve a shared purpose. The existence of a link can be determined based on whether there is a shared, or partially shared, management or corporate structure involving the persons.

In most cases, the applicants will be members of the same corporate group and this would normally satisfy the requirement for an organisational link.

5 Application of VAT group provisions

5.1 Effective date of a VAT Group

A VAT group only comes into existence upon the issuing of a notification in writing by Revenue to each person who is a member of the VAT group. The notification will specify the date from which the VAT group is effective, and this will be a date no earlier than the start of the VAT period in which the application was made.

5.2 Nominated Group Remitter

In relation to carrying out its taxable activities, the VAT group must nominate one of the members, known as the group remitter, to be responsible for fulfilling all the statutory VAT obligations of the group. The nominated remitter is responsible for submitting a single VAT return and any associated payments on behalf of the entire VAT group. This return and payment are made under the VAT number of the remitter.

The remitter may file an INTRASTAT return for transactions concerning some or all of the members of the VAT group. A VIES return must be filed under each of the group members' own VAT numbers.

5.3 VAT numbers and invoicing

While supplies by each member of the VAT group to persons outside the group are considered to have been made by the group as a single taxable person, each

member of the group must issue an invoice for its individual supplies under its own name and quoting its individual VAT number.

5.4 Section 56 authorisations

If a VAT group or a member of a VAT group applies for a [section 56 authorisation](#), the turnover of the entire VAT group must be considered when assessing whether the conditions for a section 56 authorisation have been met. Provided the group meets the qualifying criteria, each member must obtain an individual section 56 authorisation to present to suppliers.

6 Consequences of a VAT Group

6.1 Joint and several liability

Each member of the VAT group is jointly and severally liable for ensuring that the VAT group, a single taxable person, complies with the requirements of the VATCA 2010. This includes the requirement of the group to pay tax.

6.2 Intra-Group transactions

Internal transactions between members of the VAT group do not constitute taxable supplies by the VAT group and are therefore outside the scope of VAT. Please see paragraph 9 for exceptions to this general rule.

6.3 Supplies to and from third parties

The members of a VAT group form a single taxable person and therefore, even though the members of the VAT group are required to quote their individual VAT numbers on invoices issued, supplies made by the individual member are deemed to be made by the VAT group. Similarly, supplies received by individual members of the group from third parties are deemed to have been received by the VAT group as a single taxable person rather than by the individual members of the group.

6.4 Non-taxable persons joining a VAT Group

The place of supply of services received by a non-taxable person can change on becoming a member of a VAT group. In general, where a non-taxable person receives a service from outside the State the place of supply is the place where the supplier is established.

However, when a non-taxable person joins a VAT group, the services received by that person, are now received by the VAT group for VAT purposes. Where a taxable person including a VAT group, receives a service from outside the State the place of supply is where the recipient is established. The VAT group must therefore account for VAT on all services received by each member of the group.

6.5 Registration within a VAT Group

Unregistered non-taxable persons or VAT exempt entities within a VAT group may be required to register for VAT.

Some examples of when a non-taxable person or VAT exempt person in a VAT group will need to register for VAT include:

- If they receive services from a non-Irish supplier to which the reverse charge applies;
- If they make an Intra-Community acquisition of goods.

Further information on VAT registration and VAT thresholds can be found on [Revenue's website](#).

VAT thresholds for registration apply on a group wide basis; the turnover from all of the supplies of goods and services by VAT Group members to persons outside the group must be taken into account.

6.6 Outstanding returns or liabilities upon joining a VAT Group

Specific provisions apply where two or more persons have formed a VAT group and one or more members of the VAT group have outstanding returns or have not remitted all tax payable prior to the group formation. In this case, if one or more of the other group members have VAT refund claims that arose prior to the formation of the VAT group, Revenue may defer payment of the refundable VAT until such time as the outstanding obligations of the other group members have been satisfied.

7 VAT Deductibility for a VAT Group

Entitlement to deductibility for costs incurred by a VAT group is subject to the same conditions as would apply to any other taxable person, in that the costs must be used for the purposes of the Group's activities which give rise to an entitlement to deductibility.

The entitlement of a VAT group to a deduction for costs incurred by any person within the group will depend on establishing a link, whether a direct and immediate link or a link as a general cost of the economic activity of the VAT group. As the members of the group are no longer taxable persons in their own right and as transactions between members of the group are deemed not to take place for VAT purposes, the matter of consideration between members of the group is not relevant for the purposes of determining the existence of that link.

The CJEU has confirmed in the *European Commission v Ireland (C-85/11)* that normal VAT deductibility rules must continue to apply while considering the VAT group's overall position. As a result, VAT grouping should produce the same VAT deductibility outcome as that which would apply in a situation where all of the activities of the VAT group are carried out by a single legal entity.

Also, the Advocate General in this case recognised that VAT grouping may result in economic advantages accruing to group members. It was stated that **“In certain situations members of a VAT group may gain economic benefits from belonging to the group. This, in my opinion, is simply an inevitable consequence flowing from the basic fiscal policy choice of a Member State to permit VAT grouping.”** An example of such an economic advantage is an increase in VAT deductibility.

Revenue will not challenge cases where legitimate economic advantages arise from VAT grouping. However, Revenue will be alert to situations that may arise where VAT grouping is utilised as part of a series of transactions whose main purpose is to generate a tax advantage that is contrary to the purposes of the VAT Directive. In such circumstances, Revenue will take appropriate action to challenge such cases.

Specific examples of VAT deductibility for VAT groups that contain a holding company can be found in the [VAT Deductibility for Holding Companies guidance](#).

8 Cancelling membership of a VAT Group

8.1 Exiting a VAT Group

It is the responsibility of the VAT group members to ensure that the conditions for a VAT group continue to be met.

Where a member of a VAT group ceases to meet the conditions for inclusion as a member of a VAT group, Revenue should be informed so that the member can be removed from the VAT group.

Where a member is to be removed from a VAT group, in circumstances where the VAT grouping conditions for that member are still met, Revenue should be contacted setting out the reasons to remove that member. It should be noted that it is at the discretion of Revenue to remove a member from a VAT group in circumstances where the VAT grouping conditions are still met.

Where Revenue no longer considers the existence of a VAT group to be appropriate, whether on the request of the members of the group or otherwise, it may cancel the group.

The date of cessation of VAT group membership or cancellation of a VAT group will be notified in writing by Revenue. Until the date of cessation is specified by Revenue the group is not cancelled and all transactions must continue to be treated under VAT grouping rules.

8.2 Consequences of exiting or cancelling a VAT Group

Once a member of a VAT group is notified by Revenue of the date that their VAT group membership ceases, any VAT that becomes chargeable or reclaimable by that member from that date must be included on their own individual VAT return with effect from that date.

Where a person leaves a VAT group during a VAT period, any VAT chargeable or deductible that arose prior to the date of exit must be included in the VAT return of the VAT group.

Where a former member of a VAT group is under Revenue audit and unreported liabilities are discovered from a period when they were a member of the VAT group, assessments to tax will be raised on the VAT group as the liabilities are the responsibility of the group.

Where a former VAT group member discovers input tax that has not been claimed relating to a period when they were a member of the VAT group, it is the VAT group that must submit a claim for repayment of the input tax as it was incurred by the VAT group.

9 Transactions excluded from VAT Grouping provisions

9.1 Supply of property

The supply of immovable goods between members of a VAT group is subject to VAT under the normal rules as if those persons were not members of the VAT group.

9.2 Transfer of business relief

The provisions relating to VAT grouping will not apply to a transfer of goods between two members of a VAT group, where transfer of business provisions would have applied to that transfer if the transferor and transferee were not members of the group. This restriction in the application of VAT grouping provisions does not apply where all the members of the VAT group would, themselves, be accountable persons if they were not members of the VAT group.

10 The territorial scope of VAT Groups

The Court of Justice of the European Union in the FCE Bank case¹ confirmed that a Head Office and a Branch, not being independent of each other, are part of the same person. If a person has either a fixed or business establishment in Ireland and applies to join an Irish VAT group, it is the entire person, including any overseas Head Office or Branches, that must join the Irish VAT Group.

The consequence is that any transactions between the overseas establishments of the person and members of the Irish VAT group being intra-group transactions are outside the scope of VAT, subject to the exclusions in section 15 of the VATCA 2010.

Revenue is aware that some Member States have introduced VAT grouping rules that restrict VAT group membership to the establishment in that Member State only. Businesses should take account of the potential implications of transactions with persons established in such jurisdictions.

¹ Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v FCE Bank plc (C-210/04)

11 Double taxation

If the interaction of Ireland's VAT grouping rules and the VAT grouping rules of another Member State results in double taxation for a taxpayer, please contact your Revenue Branch.

12 Further information

Any issue arising for a taxpayer from this guidance should be raised with the Revenue Branch responsible for the taxpayer's affairs.

13 Examples

Example 1 – deductibility

Company A is a company that makes taxable supplies of staff to Company B, a Bank. There is no VAT group in place. Company A charges VAT on its supplies to Company B and is generally entitled to full VAT recovery on its input costs.

Company A and Company B decide to form a VAT group. The outputs of the VAT group are VAT exempt banking activities. No VAT recovery is available for any costs incurred by the VAT group as the outputs of the VAT group are exempt from VAT.

Example 2 – deductibility

Company A is an insurance company that underwrites risks for a related Company B, a fully taxable entity. There is no VAT group in place. Company A is not entitled to any VAT deductibility as its activities are exempt from VAT.

Company A and Company B decide to form a VAT group. The only outputs of the VAT group are fully taxable. VAT recovery is available for the costs incurred by the VAT group on the basis that the outputs of the VAT group are fully taxable.

Example 3 – conditions for grouping

Company A, an airline, and Company B, a medical facility, apply to join a VAT group. Both entities are 100% subsidiaries of Company C and, as such, meet the financial and organisational link conditions to form a VAT group. However, it is clear they do not meet the economic link condition and, therefore, cannot be VAT grouped.

Example 4 – territorial scope

Company A and Company B form a VAT group. Company A has a branch in another EU Member State. Company B supplies services directly to the branch of Company A.

The supplies by Company B are outside the scope of VAT as the entirety of Company A is a member of the VAT group, including the branch. It is a person that joins a VAT group and the FCE Bank decision confirmed that a Head Office and a branch are the same person.

Any supplies by the branch of Company A to the Head Office or to Company B are also outside the scope of Irish VAT.

Example 5 – territorial scope

Company A and Company B form a VAT group. Company A has a branch in another EU Member State. The branch in the other Member State is in a local VAT group with Company C, a company established only in the other EU Member State. Company C makes a supply of administration services to the Irish VAT group.

The supply is subject to Irish VAT in the normal manner and the Irish VAT group is required to self-account for Irish VAT on the supplies received from Company C.