

1. Tax groups – Guidance Note	2
1.1. Overview	2
1.1.1. Short brief	2
1.1.2. Purpose of this document	2
1.1.3. Who should read this document?	2
2. Tax groups	3
2.1. Implications of grouping for VAT purposes	3
2.2. Eligibility to form a tax group	3
2.2.1. Business criteria	3
2.2.2. Legal person criteria	3
2.2.3. Establishment criteria	4
2.2.4. Related parties (and control) criteria	4
2.3. Government Entities	5
2.3.1 Additional criteria for Government Entities:	5
2.4. Forming and amending a tax group	5
2.4.1. Forming a tax group	5
2.4.2. Applying to form a tax group	5
2.4.3. Making changes to a tax group	6
2.4.4. Applying to make changes to a tax group	7
2.5. Anti-avoidance	8

2.5.1. Refusal of applications 8

2.5.2. Restrictions on tax grouping 9

2.5.3. Forced tax grouping 9

Appendix A 10

Deciding whether you may form a tax group 10

group 7

2.5.
Anti-avoidance
.....
8

2.5.1.
Refusal of applications
..... 8

2.5.2.
Restrictions on tax grouping
..... 9

2.5.3.
Forced tax grouping
..... 9

Appendix A 10

Deciding whether you may form a tax group
..... 10

1

VAT Guide | Tax Groups | VATG101

1. Tax groups – Guidance Note

1.1. Overview

1.1.1. Short brief

Tax grouping for VAT purposes is an administrative easement available to businesses and a revenue protection measure for government:

☐ Creating a tax group has the effect of registering a single taxable person. ☐ A tax group is issued one VAT Tax Registration Number (TRN) for use by all

group members, and only one tax return is required for all group members. ☐ Transactions taking place within a tax group are generally disregarded for VAT

purposes, meaning that cash-flow or absolute VAT costs that might otherwise be suffered by the businesses concerned are eliminated. Moreover, revenue risks that might otherwise arise on significant intra-group transactions are also eliminated. Strict qualifying criteria must be applied to limit the use of the measure to those for which it is designed i.e. it is an administrative simplification measure, not one designed to enable tax avoidance at any level. 1.1.2.

Purpose of this document

This document contains more detailed guidance for businesses interested in forming a tax group, adding members to or removing members from an existing tax group, and disbanding a tax group. 1.1.3. Who should read this document?

This document should be read by all persons seeking to understand whether or not they are eligible to form a tax group, how to amend a tax group, and how to disband a tax group. It should also be read by those who are part of a tax group so as to understand their associated obligations. 2

ing criteria must be applied to limit the use of the measure to those for which it is designed i.e. it is an administrative simplification measure, not one designed to enable tax avoidance at any level.

1.1.2. Purpose of this document

This document contains more detailed guidance for businesses interested in forming a tax group, adding members to or removing members from an existing tax group, and disbanding a tax group.

1.1.3. Who should read this document?

This document should be read by all persons seeking to understand whether or not they are eligible to form a tax group, how to amend a tax group, and how to disband a tax group. It should also be read by those who are part of a tax group so as to understand their associated obligations.

2

VAT Guide | Tax Groups | VATG101

2. Tax groups

2.1. Implications of grouping for VAT purposes

The effect of a tax group registration is that the members of the tax group are treated as a single taxable person for VAT purposes. This means that:

☐ Supplies made between members of the tax group will be disregarded for VAT

purposes and therefore no VAT is chargeable on intra-group transactions; ☐ Only one VAT Tax Registration Number is issued for use by the group; ☐ The tax group submits only one tax return which summarises all supplies and

purchases made by group members over the VAT period concerned; and

☐ One member of the tax group will be appointed as its 'representative member'. All of the VAT obligations of the tax group, and all supplies made and received by it, are deemed to be carried out in the name of the representative member. Important: the members of a tax group are jointly and severally liable for any and all VAT debts and other such obligations of the group for the period during which they were members. That means that even when a business has left a tax group, it remains liable for the period of membership. 2.2.

Eligibility to form a tax group

Subject to certain criteria being fulfilled, two or more legal persons may apply to form a tax group. Details of each of the criteria that must be fulfilled by each of the members of a tax group are set out below. 2.2.1. Business criteria

Each member must be carrying on a business. Broadly, a business is defined as any activity carried on in any place (i.e. in the UAE or elsewhere) regularly (i.e. the activity is not a one-off event) and independently (i.e. by a business, not its employees). Generally, this means that a person that is not in business cannot form or join a tax group. 2.2.2. Legal person criteria

Each member of a tax group must be a legal person (i.e. they must be a company, government entity, or similar). A legal person is an entity that has legal personality formed under the relevant laws

that is capable of entering into contracts in its own name. Typically, for example, a company would be a legal person, as it is formed under companies law and can enter into contracts. However, it is also possible for other entities to be created which are similar (e.g. the companies formed by Decree under local laws in the Emirates).

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A legal person is an entity that has legal personality formed under the relevant laws that is capable of entering into contracts in its own name. Typically, for example, a company would be a legal person, as it is formed under companies law and can enter into contracts. However, it is also possible for other entities to be created which are similar (e.g. the companies formed by Decree under local laws in the Emirates).

A natural person (i.e. an individual) cannot create or join a tax group.

Each member must be resident in the UAE, either by way of having its primary business establishment or as a consequence of having a fixed establishment in the country. A business establishment is usually the place where key management decisions affecting a business are made. A fixed establishment is a place which possesses the necessary human and technical resources sufficient to carry on a business.

A foreign-owned subsidiary that has been established in the UAE can, under these criteria, qualify to be included in a tax group. A branch of a foreign-owned company can also qualify under the fixed establishment test.

2.2.4. Related parties (and control) criteria

Each member must be related to the other to a sufficient extent. In this context, "related" is taken to mean they share economic, financial and organisational ties (either in law, shareholding or voting rights). One person must be able to control the members.

...where one person, or two or more persons acting in a formal partnership arrangement¹...: ...or where each of them... | ...has any of the following:

- i) a voting interest in those companies of at least 50% when added together; or
- ii) a market value interest in each of those companies of at least 50% when added together; or
- iii) control by any other means: ...is a related party with a third Legal Person

...or where each of them...

...is a related party with a third

Legal Person

Economic ties are indicated where, for example, there is a common interest in the proceeds of the business. Financial ties are indicated where, for example, one part of the business benefits the other. Organisational ties are indicated where, for example, you share common premises.

Important: common sponsorship of two or more Legal Persons will, generally, give rise to the possibility of tax grouping but only where the control criteria can also be met in actuality. Where the sponsorship agreement is overridden by another agreement

¹ Unless a formal arrangement has been entered into between partners, evidence of the informal nature of the

arrangement and the ability for the parties concerned to exercise control will be required.

[recovered from the vector store – VAT_Guide_Tax_Groups.pdf p.6]

whereby the control criteria cannot, in actuality, be satisfied, tax grouping will not be possible.

2.3.1 Additional criteria for Government Entities

There are certain additional criteria which apply to Government Entities in respect of forming a tax group:

☐ Designated Government Bodies may only form or join a tax group with other

Designated Government Bodies;

☐ Designated Government Bodies may not form or join a tax group with other Government Bodies (i.e. those Government Bodies which are not Designated); and

☐ Government Bodies that are not Designated and are registerable in their own

right can form or join a tax group with other legal entities, subject to the usual tax grouping rules.

Once it has been determined that the prospective members are eligible to form or join a tax group, it is also necessary to establish whether that group is required to or eligible to register for VAT purposes. The VAT registration requirements can be satisfied where either –

☐ one prospective member alone satisfies the relevant registration requirements;

or

☐ if taken together, the total value of supplies made by or expenses (which are

subject to VAT), incurred by the prospective members satisfy the relevant registration requirements.

The flowchart in Appendix A will assist to determine whether the tax group eligibility and registration tests have been met and an application can be submitted.

An application to form a tax group will, subject to the necessary checks being satisfied, be treated as effective on either –

☐ the first day of the tax period following the tax period in which the application is received; or

☐ any other date as determined by the Federal Tax Authority (FTA).

As part of the registration process it will be necessary for you to decide who you wish to appoint as the representative member of the tax group. The representative member

[recovered from the vector store – VAT_Guide_Tax_Groups.pdf p.7]

ncurred by the prospective members satisfy the relevant registration requirements.

The flowchart in Appendix A will assist to determine whether the tax group eligibility and registration tests have been met and an application can be submitted.

An application to form a tax group will, subject to the necessary checks being satisfied, be treated as effective on either –

☐ the first day of the tax period following the tax period in which the application is

received; or

☐ any other date as determined by the Federal Tax Authority (FTA).

As part of the registration process it will be necessary for you to decide who you wish to appoint as the representative member of the tax group. The representative member

can be any one of the members of the proposed group. The tax returns of the group are submitted in the name of the representative member.

Important: notwithstanding the appointment of a representative member, the members of a tax group are jointly and severally liable for all taxes and penalties due from the representative member.

None of the prospective members have been registered for VAT

purposes previously...: The prospective members have been registered for VAT purposes previously... | ...the person that wishes to be the representative member must complete a VAT registration application...: ...the person that wishes to be the representative member must complete a tax group registration application

The FTA will usually assess an application for tax grouping and issue its decision whether or not to allow the group to be formed within 20 business days of receipt of the application.

Where a prospective member of a tax group that is already registered for VAT purposes joins a new tax group, its existing VAT registration will be automatically deactivated upon the approval of their application effective from the date of joining the tax group.

Various changes can be made to the composition of a tax group including:

Members can be added to a tax group at any time, by application to the FTA by the representative member. The date of registration of the new member will, subject to the necessary checks being satisfied, be treated as effective on either –

☐ the first day of the tax period following the tax period in which the application is

received; or

☐ any other date as determined by the FTA

A member of a tax group can be removed at any time, by application to the FTA by the representative member. If, however, a member has to be removed from a tax group

Various changes can be made to the composition of a tax group including:

Members can be added to a tax group at any time, by application to the FTA by the representative member. The date of registration of the new member will, subject to the necessary checks being satisfied, be treated as effective on either –

- ☐ the first day of the tax period following the tax period in which the application is received; or
- ☐ any other date as determined by the FTA

A member of a tax group can be removed at any time, by application to the FTA by the representative member. If, however, a member has to be removed from a tax group

because it no longer meets the criteria for tax grouping, the representative member must inform the FTA within 20 business days of the member ceasing to be eligible.

The date of removal of the member will, subject to the necessary checks being satisfied, be treated as effective from –

- ☐ the first day of the tax period following the tax period in which the application is received; or
- ☐ any other date as determined by the FTA.

The departing member(s) may be required to apply for VAT registration or eligible to do so.

c) Changing the representative member of a tax group

The representative member may nominate another member of the tax group to be the new representative member, having first obtained their consent to do so. An application to change the representative member of a tax group by the existing representative member should be submitted to FTA for approval.

The date on which the new representative member will be treated as such will, subject to the necessary checks being satisfied, be treated as effective from –

- ☐ the first day of the tax period following the tax period in which the application is received; or
- ☐ any other date as determined by the FTA.

A tax group may be disbanded (i.e. cancelled) at any time, by application to the FTA by the representative member. If a group is to be disbanded because it no longer meets the criteria for tax grouping, the representative member must notify the FTA within 20 business days of ceasing to be eligible.

The date on which the group is to be disbanded will, subject to the necessary checks being satisfied, be treated as effective from –

- ☐ the first day of the tax period following the tax period in which the application is

received; or

☐ any other date as determined by the FTA.

The disbanding member(s) may be required or eligible to apply for VAT registration.

2.4.4. Applying to make changes to a tax group

An additional

member is to be

added to an existing

tax group...: An existing member

is to be removed

from a tax group... | ... the representative

member must complete a

tax group amendment

application: ... the representative

member must complete a

tax group amendment

application

An additional

member is to be

added to an existing

tax group...: The name of the

representative

member of the tax

group is to be

changed... | ... the representative

member must complete a

tax group amendment

application: ... the representative

member must complete a

tax group amendment

application

An additional

member is to be

added to an existing

tax group...: An existing tax group

is to be disbanded... | ... the representative

member must complete a

tax group amendment

application: ... the representative of the

member must complete a

tax group deregistration

application

As a matter of policy, the FTA may refuse any application to form, amend or disband a tax group where it considers there to be a significant risk to the public revenue arising as a result of allowing that group to be formed, amended or disbanded as the case may be. It may also take direct action to form, amend the membership of or disband a tax group for the same reasons.

Every application to form, amend or disband a tax group will therefore be considered carefully by the FTA prior to allowing the application. Where it is not satisfied that the relevant criteria have been met, it may refuse the application.

Specifically, when applying to form or add members to a tax group the FTA may refuse an application if:

☐ the applicants do not meet the criteria to be grouped; or

☐ the FTA considers there is a serious risk of tax evasion as a result of the

change; or

☐ a significant reduction in the overall tax due to the FTA will arise as a result of

[recovered from the vector store – VAT_Guide_Tax_Groups.pdf p.10]

☐ a significant increase to the administrative burden on the FTA will arise as a

When applying to remove members from or disband a tax group, the FTA may refuse your application:

☐ where any person that remain a related party when removed from the tax group would appear to be registrable, whilst no arrangements have been put in place for their registration at the time of the application for their removal being made;

or

☐ the FTA considers there is a serious risk of tax evasion if it were to approve the

application; or

☐ a significant reduction in the overall tax due to the FTA will arise if it were to

approve the application; or

☐ a significant increase to the administrative burden on the FTA will arise if it were

The FTA may also disband a tax group for any of these same reasons.

Generally, it is the policy of the Federal Tax Authority (FTA) to allow tax grouping. However, refusal will typically occur where:

☐ There are insufficient transactions between the proposed tax group members,

i.e. the proposed tax group members are not meaningfully interacting with each other;

☐ The proposed tax group will be difficult for the FTA to audit because its structure

results in no internal commonality of audit;

☐ The only benefit to the proposed tax group will be a cash offset benefit; and

☐ The proposed tax group would place an additional administrative burden on the FTA, including but not limited to the reasons outlined above.

Where you and another related party who share sufficient economic, financial and organisational ties artificially separate your business interests so as to avoid the full implications of VAT which might arise if you had not done so, the FTA may forcibly register you for VAT purposes as a tax group. Alternatively, they may elect to register you separately for VAT purposes.

[recovered from the vector store – VAT_Guide_Tax_Groups.pdf p.11]

proposed tax group will be difficult for the FTA to audit because its structure

results in no internal commonality of audit;

☒ The only benefit to the proposed tax group will be a cash offset benefit; and

☒ The proposed tax group would place an additional administrative burden on the

FTA, including but not limited to the reasons outlined above.

Where you and another related party who share sufficient economic, financial and organisational ties artificially separate your business interests so as to avoid the full implications of VAT which might arise if you had not done so, the FTA may forcibly register you for VAT purposes as a tax group. Alternatively, they may elect to register you separately for VAT purposes.

Deciding whether you may form or join a tax group

Are you eligible to register separately or jointly?

You are not allowed to form or join a VAT group

You may apply to form or join a VAT group