Expansion of VAT Groups: HMRC informal consultation to look at options

Indirect Tax

01 May 2018

Following the publication of responses to the VAT grouping consultation in December 2017, HMRC invited respondents to meetings in March, to consider three potential options for the expansion of VAT grouping following the CJEU judgment in the joined cases of *Larentia + Minerva* (C-108/14) and *Marenave* (C-109/14). The options are limited to those that could be introduced without amending the current control test.

CIOT representatives attended the meetings and a brief summary of the main discussion points are as follows:

Option 1: Allowing a non-corporate entity (for example partnership or individual) to join a VAT group with its body corporate subsidiaries if it controls all of the members of the VAT group.

Queries were raised in the meetings as follows:

- whether the definition of partnership meant a partnership constituted under the Limited Partnership Act or a broader definition, for example parties acting in consort
- whether this option allows unincorporated associations to join a VAT group
- would joint and several liability apply in all circumstances, as HMRC accept that it does not apply for corporate pension fund trustees

HMRC will be considering these points further.

Option 2: Allowing a partnership to join a VAT group where all of the partners in the partnership are bodies corporate and all of the bodies

corporate are already in a VAT group

This option had been raised in a response to the earlier consultation in the context of real estate investment partnerships. If this option is to be implemented, HMRC clarified that the partnership would only be able to join the VAT group in the event that all of its partners were already members.

Option 3: Allowing a limited partnership (LP) to join a VAT group where the sole general partner is a body corporate and manages the LP

- LPs under English and Scottish law would be able to access this option and HMRC are considering whether this should be extended to qualifying non-UK LPs, where overseas legal provisions for LP constitution are similar to UK rules.
- This option would enable the VAT grouping position for Scottish LPs ('SLP') to be resolved, as partnerships are separate legal persons under Scottish law. Although HMRC has been operating a concession for grouping an SLP via its general partner, it was thought this option allowed the position to be resolved under legislation to provide a uniform position for LPs in the UK.
- The position for LPs which have more than one general partner was discussed. HMRC said they would consider whether, where two general partner entities were VAT grouped, the LP should be brought in to the VAT group.

Broader points

If any of the options are taken forward, the intention is that they would apply from April 2019, without retrospective effect. Whilst HMRC have concerns regarding avoidance opportunities, it was appreciated that the option(s) should have broad application to avoid more issues being created than solved.

Next step

If the government decides to make legislative changes, there will be a further technical consultation on the draft legislation later in 2018.