Ongoing consultation with HMRC on VAT grouping

Indirect Tax

01 October 2018

Following on from our article in the May issue of *Tax Adviser* looking at the potential options for the expansion of VAT grouping arising from the joined cases *Larentia + Minerva* (C-108/14) and *Marenave* (C-109/14), the CIOT was represented at the technical consultation meeting with HMRC to discuss the draft legislation, published on 6 July 2018, along with a policy paper and explanatory notes.

The legislation would allow a non-corporate entity to join a VAT group with its corporate body subsidiaries if it controls all of the members in that group. The specific focus of the meeting held in August was looking at the position for individuals and partnerships.

Examples

HMRC wanted to hear about real examples and the anticipated demand given the issues arising from the joint and several liability rules, so that the challenges could be explored. Examples offered included:

Example 1: An individual provides loans to the companies they own and incurs input VAT.

When considering whether individuals can join a VAT group, clarification was required on whether they needed to be making taxable supplies or simply carrying on economic activities.

Example 2: A partnership provides financial services to the corporate group and incurs input VAT.

It was envisaged by HMRC that there would likely be more demand for partnerships joining VAT groups than individuals.

Challenges

HMRC and attendees discussed arising challenges for further consideration:

(a) Place of establishment or residence

The question of ascertaining where the business was established for the partnership or where the place of residence or ‘establishment’ was for the individual were the main challenges discussed at the meeting and the meaning of ‘has a business establishment in the UK’ set out in the draft legislation. Partnerships could have partners that were both UK and non-UK resident, and have regular changes as new partners joined and existing partners left. Would a partnership that had UK business premises with entirely non-resident partners be eligible? HMRC’s initial view was that it would, provided it retained a physical presence of some kind in the UK (for example through staff of its own).

The VAT grouping rules in Luxembourg and Ireland were discussed. In Luxembourg, there is less focus on establishment in the latest legislation but many more rules and conditions surrounding economic and fiscal links. A question was raised as to whether the Luxembourg authorities anticipated that individuals would join VAT groups and if so, under what conditions and with what rules about local establishment and taxable person status.

(b) Continuing eligibility to remain in the VAT group and ongoing monitoring

There is also the ongoing challenge of how the physical presence test is monitored and policed.

Where an individual or partnership satisfied the entry criteria from the date of application to join the UK VAT group, how would HMRC or the individual/partnership themselves know that they remained compliant? Points discussed included:

- Should there be an annual declaration or tick box on the VAT return to encourage regular self-assessment?

- Would HMRC cross reference the VAT grouping establishment position with the partnership or sole trader tax return?
- For a non-resident individual holding a UK Unique Tax Reference (UTR), would HMRC monitor the tax return to see if they remained eligible?
- Could the partnership and sole trader tax registration details be used to tag and monitor which partnerships or sole traders were within a VAT group (both for HMRC administration and for taxpayers' reference when dealing with such entities and checking VAT registration)?

(c) Benefiting from VAT free supplies

HMRC had concerns where an individual or partnership was in the VAT group and had the ability to benefit from VAT free intra-group supplies, where they may normally not be able to recover input VAT, if charged by a non-grouped supplier, due to the private use rules. Participants thought that the self-supply rules should be able to capture this situation adequately already and a VAT charge would in the appropriate case simply need to be declared in the VAT return. There should be no distinction in the treatment on this between a VAT group and, for example, a sole trader VAT registration.

(d) Joint and several liability

The position on working out any limits joint and several liability on personal assets for individuals was discussed, particularly around residential property – that is what is held in a private capacity outside the economic activity and the VAT group?

(e) Option to tax and other consequential amendments

An example was discussed if an individual had an opted property which was brought into the group, if that person retired and left the group but subsequently started a new business, what would be the position with the option to tax? The point was flagged that there would be consequential impacts and amendments needed in a number of other parts of the VAT legislation to deal with the future involvement of individuals and partnerships.

HMRC agreed to give the challenges further consideration and requested submissions with specific examples to aid this.

Limited partnerships

Although limited partnerships were not the focus of the meeting, it was suggested that they should be subject to their own consultation as the current VAT grouping concession was important in the funds sector and any change would require discussion and preparation.

If you have any comments in respect of the VAT grouping consultation, please contact technical@ciot.org.uk.