Call for evidence on VAT grouping: CIOT response

Indirect Tax

02 February 2021

HM Treasury's call for evidence on VAT grouping (see tinyurl.com/ y6cjk8y2) raised questions around business establishments, eligibility conditions and compulsory VAT grouping.

In advance of preparing our written submission (see tinyurl.com/yyfthknr), several volunteers from the CIOT's Indirect Taxes Committee attended a virtual meeting with representatives from HMT and HMRC to discuss examples experienced in practice. HMT stressed that at this initial stage of the consultation process, the questions in the call for evidence did not necessarily mean that the proposals would all be taken forward; this was a period to consider all options, including outcomes where some rules may remain the same.

Here are the main points that were raised in the CIOT's response:

Establishment: whole establishment provisions vs establishment provisions

The consultation set out the current rules in the UK that allow overseas branches of group members to still be part of the UK VAT group, called the 'whole establishment provisions'. The exception to this is where the overseas branch is already in a local VAT group with a connected party in that country (changed as a result of the Court of Justice of the European Union decision in Skandia America Corporation (Case C-7/ 13)). The alternative 'establishment' provisions' exclude any overseas fixed establishments from being included in the UK VAT group.

The CIOT's view on these alternatives was that although in principle the establishment provisions could simplify the position by having a single reverse charge rule for all businesses in the UK VAT group, this would be significantly outweighed by additional costs, increased bureaucracy and uncertainty, hence our

preference for the current whole establishment provision rules.

Compulsory VAT grouping

In the virtual meeting, some of our volunteers had practical experience of similar rules for clients in Germany, and they were able to highlight that they can be complicated to administer not only for the group itself but for the tax authority, particularly for very large groups that have regular changes with share ownership.

The CIOT do not currently support a change to compulsory VAT grouping and would prefer that any avoidance identified by HMRC is targeted by changes to legislation to capture the small number of businesses behaving this way. The UK's mature VAT grouping rules provide certainty for the majority of compliant businesses, and certainty is one of the CIOT's core objectives for the tax system.

Eligibility to join a VAT group

The CIOT set out in their written submission that they would like to see the admission position considered for other types of legal entities; for example, trusts, joint ventures, local government and similar bodies listed in Value Added Tax Act 1994 s 33. However, it was noted that the joint and several liability position would have to be considered concurrently as there could be no access to client funds held by the entity to pay any group member debts. The CIOT are also cautious about the introduction of beneficial ownership tests.

Next steps

Once HMT has reviewed all submissions on this initial call for evidence, there will be further consultation on VAT grouping in due course.