VAT groups – changes coming?

Indirect Tax

01 May 2016

CIOT provides a summary on the HMRC consultation

The judgment in *Larentia and Minerva* (Case C-109/14) concluded, inter alia, that national legislation limiting membership of VAT groups (or single taxable entities) to corporate bodies was not permitted by EU law. HMRC has recognised that this means UK legislation must be changed and has invited comments on what issues should be covered in a formal consultation to be published later this year. In addition, HMRC met interested parties and later asked for comments concerning the response to the *Skandia* (Case C-7/13) and on cost-sharing.

This article looks at issues raised or discussed with HMRC.

Inclusion of non-corporate bodies in VAT groups

We agreed that a change is necessary to allow non-corporate bodies to be included in VAT groups. The existing legislation assumes for the most part that, if someone has control of two or more entities, the necessary economic, financial and organisational links necessary under the Principal VAT Directive (PVD) to form a VAT group will be met. Thus, it would be necessary to change the criteria to ensure that individuals and other bodies could be included in groups. It is important to note that in some cases the existence of voting control of a company would not mean that the three criteria are met so the CIOT submission argued that it may be necessary to have transitional provisions to prevent new measures causing companies to be removed from groups. We noted that the European Commission has published guidance on the issue.

We also pointed out that the UK provisions on partnerships, including limited partnerships, unincorporated bodies and disaggregation, rely on the same article of the PVD for their implementation. We suggested that it may be necessary to adopt a

holistic approach and deal with all situations similarly.

We also provided views on the prevention of avoidance and abuse using VAT groups.

Skandia

HMRC asked for views about how the UK should approach the Skandia decision. There are two issues here: the first entails dealing with the problems arising from another country's adoption of Skandia. This creates difficulties in applying the UK's single entity approach to VAT grouping. HMRC has already issued guidance on this.

The second problem arises should the European Commission argue that the Skandia approach is the only valid way to deal with groups. In this regard, we suggested that the UK will need to gather the evidence of what that would do for businesses; this would include the burdens it would create and, more importantly, the impact it would have on fundamental principles of EU law including issues such as the freedom of establishment, which was raised in *FCE Bank* (although, because of the route it took, the court did not need to deal with it) but not in *Skandia*.

Overall we suggested that the government should resist any attempt to force such treatment on the UK.

Cost sharing

HMRC also asked for comments about cost-sharing, including issues that have been raised but not resolved, such as cross-border VAT groups. We suggested that, given the importance of cost-sharing in the modern business environment, the relief needs to be updated and made more effective.

Consequential issues

We pointed out that the deduction system also needs updating to cope with VAT grouping, such as the entry and exit of a person from a group.

Your input

There will be a formal consultation this year. However, you do not need to wait – we will take comments anytime and would particularly welcome examples of problems

arising from the use (or inability to use) VAT groups.