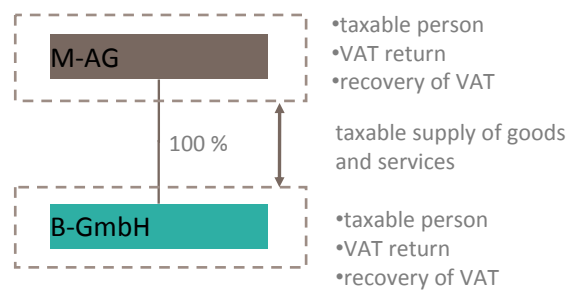


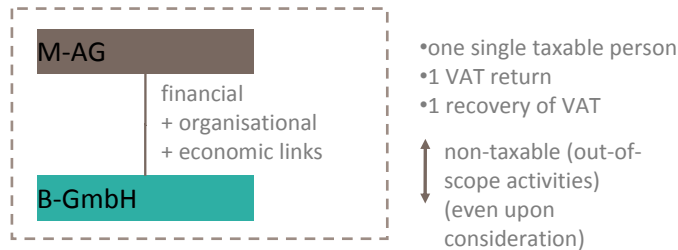
The Austrian VAT Grouping Scheme

Univ.-Prof. Dr. Tina Ehrke-Rabel

ORDINARY SCHEME



GROUPING SCHEME



Austrian VAT grouping scheme



- **§ 2 Abs 2 Z 2 UStG**

Eine gewerbliche od berufliche Tätigkeit wird nicht selbständig ausgeübt,

1. (...);

2. wenn eine natürliche oder juristische Person dem Willen eines Unternehmers derart untergeordnet ist, dass sie keinen eigenen Willen hat. Eine juristische Person ist dem Willen eines Unternehmers dann derart untergeordnet, dass sie keinen eigenen Willen hat (Organschaft), wenn sie nach dem Gesamtbild der tatsächlichen Verhältnisse finanziell, wirtschaftlich und organisatorisch in sein Unternehmen eingegliedert ist.

Die Wirkungen der Organschaft sind auf Innenleistungen zwischen den im Inland gelegenen Unternehmensteilen beschränkt. Diese Unternehmensteile sind als ein Unternehmen zu behandeln. Hat der Organträger seine Geschäftsleitung im Ausland, gilt der wirtschaftlich bedeutendste Unternehmensteil im Inland als Unternehmer."

Foundation in the Directive 2006/12/EC



• Art 11

- **Option for the MS to introduce a VAT grouping scheme**
- **Prior consultation of the VAT Committee mandatory**

„ Each MS may regard as a single taxable person any person established in the territory of that MS who, while legally independent, are closely bound to another by financial, economic and organisational links.

A MS exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.“

The criteria in detail



RECAST VAT DIRECTIVE	AUSTRIA
„any person“	<i>„<u>juristische Person dem Willen eines Unternehmers</u>“</i>
COM(2009) 325 •Only taxable persons for VAT purposes laid down by Art 9 (1) • <i>Critic: Massin/Vyncke, Int VAT Monitor 2009, 454 (458)</i>	•„parent“: every taxable person •„subsidiary“: only corporate entities
	UStR Rz 233 •Passive holdings are non taxable and therefore excluded from grouping
What about persons carrying out taxable and non-taxable activities?	

Folie 5

TE4 Tina Ehrke-Rabel; 23.04.2010

The criteria in detail



FINANCIAL LINK	
COM (2009) 325	AUSTRIA
•Actual control of one member over the others	•Control by capital and voting rights
Participation in the capital OR in the voting rights over 50 %	> 75 % participation in the capital > 50 % < 75 % in voting rights → if the economic and the organisational link are exceptionally important
	The control does not need to be direct
	A loan can't create the financial link

The criteria in detail



ECONOMIC LINK		
COM(2009) 325	AUSTRIA	GERMANY
Close economic cooperation between the members		
Principal activity of the members is of the same nature	Reasonable economic interdependence among the members	Reasonable economic interdependence, entity or cooperation
Activities of the members are complementary or interdependent		Activities which are coordinated and for the benefit for and complementary to one another
One member carries out activities which are wholly or substantially for the benefit of the other members	Economic subordination of one member to another?	The supplies of goods and services of one member to another are significantly important

The criteria in detail



ORGANISATIONAL LINK		
COM(2009) 325	AUSTRIA	GERMANY
Members of the group are subject to a shared or at least partially shared management structure	Identity of the management in all members?	Regularly: Identity of management in the members
		Managing employees in one member as head of another member

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Persons eligible for the grouping



- **Example 1**

- A local authority decides to reorganize the cleaning of its (public) schools: Instead of hiring cleaning staff itself, the cleaning is done by the staff of a ltd-company, which is entirely owned by the local authority. The local authority pays a consideration to the ltd-company.

- **Example 2**

- The main target of a corporate entity is the holding of shares. Moreover this company provides the companies it holds shares in with managing and financial services.

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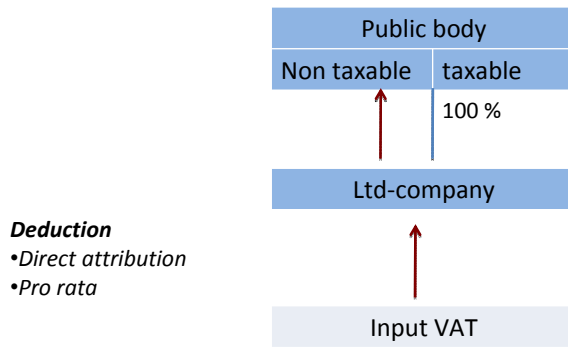
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Persons eligible

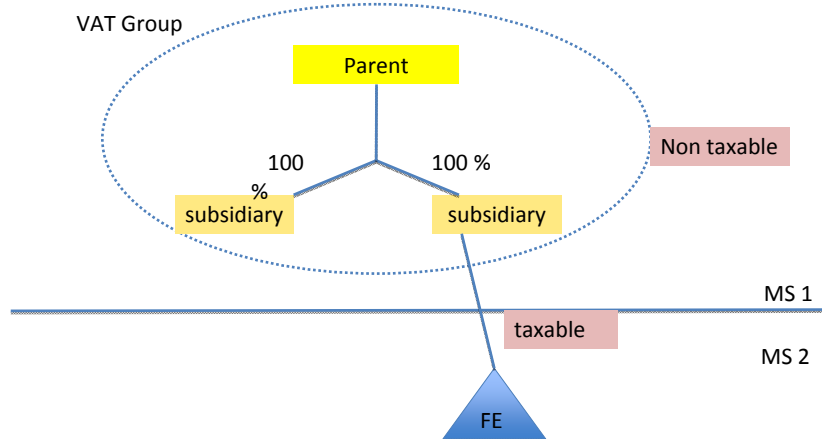


EXAMPLE 1

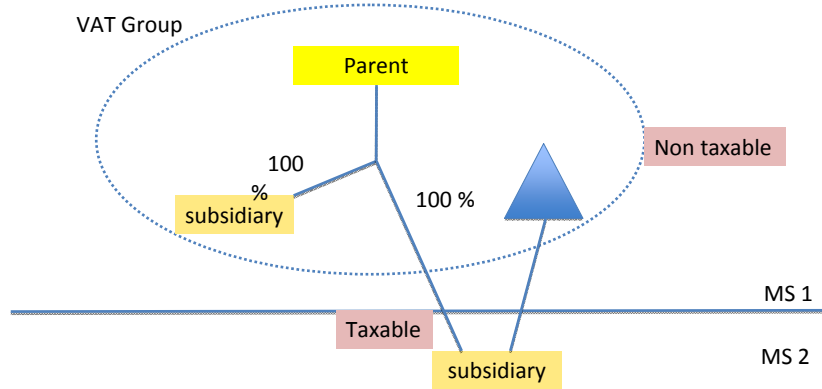


- Deduction**
- Direct attribution
 - Pro rata

Territorial scope



Territorial scope

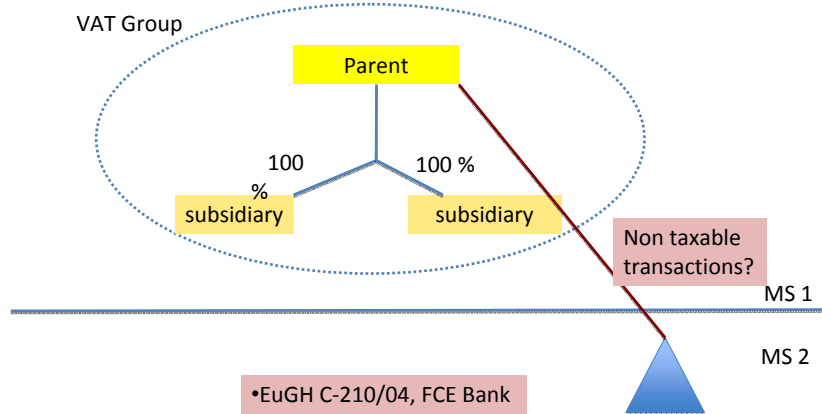


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Territorial scope



- EuGH C-210/04, FCE Bank
- COM(2009) 325
- UStR Rz 242

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