

# VAT Group Taxation

## Financial Services

# VAT Group

- **History**

- Art 4 (4) of the Sixth VAT Directive

- Explanatory Memorandum

- “ In the Interest of simplifying administration or of combating abusive practices (e.g. The splitting up of one undertaking among several taxable persons so that each may benefit from a special scheme) Member States will not be obliged to treat as taxable persons those whose “independence” is purely a legal technicality”

## VAT Group

- **VAT Directive 2006/112/EC (Art 119)**
  - After consulting the advisory committee on value added tax, each MS may regard as single taxable persons any persons established in the territory of that MS who, while legally independent, are closely bound to one another by financial, economic and organisational links.
  - A MS exercising the option provided for in the first para, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.

## VAT Group

- **Implementation in the MS**
  - Germany:
    - if a legal person is financially, economically or organisationally linked to the parent it has to be treated as one single person if all conditions are valid in its entirety
  - Austria:
    - Business activities are not supposed to be carried out independently if a legal person is dominated totally by a trader that it may not execute its own will.

## VAT Group

- **Now 17 MS have implemented the scheme**
  - Austria, Belgium, Check Republic, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Netherlands, Romania, Spain, Sweden, UK and now Slovakia.

## VAT Group

- **Concepts**
  - Controlling approach
    - Cyprus
    - Estonia
    - Hungary, only eligible for financial services industry
    - Ireland
  - Financially integrated
    - Denmark, requires a 100% stake
    - Finland, only financial services are eligible for groups
    - Germany

## VAT Group

- **Concepts**

- The Netherlands pursue a very flexible system in so far as the allow banks which are jointly and severally liable in a mutual umbrella agreement, to be considered as financially, economically and organisational linked.
- Sweden follows the integration concept, but restricts applications to financial services

## VAT Group

- **Concepts UK**

- Follows the controlling test (VATA 43 A (1), Notice 700/2/04)
  - One of them controls each others
    - Majority of voting rights
    - Has the right to appoint or remove a majority of its boards of directors
    - Due to a shareholder agreement a majority of the voting rights can be executed by one party

## VAT Group

- **Shared Services**

- Art 137b (COM(2007) 747 final)
  - Shall exempt services supplied by a group of taxable persons to members of the group where the following conditions are fulfilled
    - All group members are established in the Community
    - The group carries out an autonomous activity as an independent entity towards its members
    - The activity is exempt
    - Restricted to an exact reimbursement
  - Concept for banks organized vertically rather than horizontally