

Formation of VAT groups possible as of 2022

I. The government wants to make it possible to form tax groups that will jointly settle VAT

As indicated in the draft of tax changes proposed as part of the so-called Polish Deal, as of 2022 the government will permit the formation of VAT groups. A group will be able to report VAT jointly. In addition, intra-group transactions will not be taxed. The objective of the proposed solution is to make it possible for financially, economically and organizationally related entities to jointly settle the tax on goods and services. The solution will be voluntary, allowing companies to make an independent decision whether they want to apply it. Previously, regulations on VAT groups were part of a separate draft of amendments to the VAT Act. The government has, however, decided to include this draft in the comprehensive amendments proposed as part of the Polish Deal. The same amendments that raise the tax-free limit and the second tax threshold under PIT, as well as eliminate the health premium deduction. VAT groups are already present in 18 other EU member states.

II. VAT group idea taken from EU regulations

In accordance with EU regulations, every member state may for the purposes of VAT recognize as a single taxable person those entities which have their place of establishment in the territory of the same member state and which, while being independent legally, are closely related financially, economically and organizationally. The regulations do not, however, contain any further guidelines as to what such a system should be like. In the Polish draft, the definition of VAT group is modeled directly on EU regulations. A VAT group is to be a group of financially, economically and organizationally related entities, registered as a single VAT taxable person. The VAT group's representative is to be the entity that will represent it with respect to its responsibilities. The tax organ in matters relating to the VAT group's taxation will be the head of the tax office relevant to the representative of the VAT group. Following the institution of VAT group introduced to the VAT Act, transactions performed between the entities belonging to the group (that has the status of VAT taxable persons) will be excluded from taxation, with the exception of transactions currently taxed with the tax on civil law transactions (PCC). The change is meant to maintain the current state of affairs with regard to PCC.

III. All entities belonging to a VAT group will become a single VAT taxable person

A VAT group may be described as a legal form of cooperation for the purposes of VAT. Although each member of the group maintains its legal status, the formation of the group for the purposes of VAT gives it superiority (based on the VAT Act) over legal forms provided for in civil or corporate law. And so, after joining a VAT group, the existing legal form of a group member loses its significance for the purposes of VAT, and the member becomes part of a new separate VAT taxable person – the VAT group. A VAT group may be formed by taxable persons with their place of establishment in Poland, as well as taxable persons without their place of establishment in Poland with respect to the activities they conduct in Poland through a branch located in Poland.

Under the Polish Deal, as of 1 January 2022 the government wants to make it possible to form VAT groups. This possibility will be given to financially, economically and organizationally related companies, which after signing a special agreement will become a single taxable person whose VAT is reported by a group representative.



IV. Financial, economic and organizational ties must be present

Entities comprising a VAT group must be related financially, economically and organizationally. Financial ties have been defined as the direct holding by one of the entities comprising the VAT group of more than 50% of the share or that part of the share capital of the other entities. Economic ties consist not only of the same nature of the main activities of the group's members, but also of the complementarity and interdependence of their activities, or of the performance of activities that are fully or substantially used by members of the group. This also applies to the activities of those members of the VAT group, whose activities are in whole or in part performed for the benefit of the other members, and may include cases where an entity supplies goods or services directly to another group member, even if the activities of the former are not necessarily dependent on those goods or services (e.g. administrative support services). Organizational ties consist of the full or partial sharing of management structures resulting in the making of decisions within the VAT group by a single entity that provides strategic leadership for the entire VAT group that is already viewed as a single taxable person under VAT. All three types of ties must be present throughout the period of the VAT group's existence.

V. Agreement concluded for at least 3 years necessary to form a group

Agreement is the basis for the formation of a VAT group. An agreement forming a VAT group is to be prepared in writing and should contain at least: the name of the VAT group with the additional wording of "grupa VAT" or "GV"; identifying information of the taxable persons comprising the VAT group, including information about the branches of taxable persons without a place of establishment in Poland and the share capital of each of those taxable persons; information about the VAT group's representative appointed from amongst its members; identifying information of the shareholders and the value of their interest in the share capital of the taxable persons comprising the VAT group, holding at least 50% of the share capital of those taxable persons; indication of the period for which the VAT group is being formed, no shorter than 3 years. Once the relevant agreement is signed, the VAT group cannot be expanded by other members or reduced by any member it comprises. The VAT group will acquire the status of taxable person as of the date indicated in the agreement, but no sooner than as of its registration date. To extend the period of the group's existence, the group's representative should submit a request to the head of the relevant tax office 30 days prior to the expiration of the existing agreement. The VAT group's representative is also required to notify the head of the tax office of any changes in the group's actual or legal status.



VI. No taxation with VAT of transactions performed within the group

Of fundamental significance to the operation of VAT groups is the regulation that provides that supplies of goods and services by entities comprising the group are not subject to taxation. This means tax neutrality within the VAT group. This solution results in fewer documents for analysis due to a smaller number of SAF_VAT containing VAT declarations and records, no analysis of VAT deductions within the group and no internal invoices within the group (an accounting note will be sufficient). This will be particularly favorable for those entities that do not at all deduct input VAT or only deduct a portion thereof. In addition, the split payment mechanism will not apply to intra-group transactions.

VII. Entire group to be treated as supplier of goods and services to customers

Under the new regulations, supplies of goods and services made by an entity that belongs to a VAT group to an entity that does not belong to the group are considered made by that group. This also applies in the opposite direction, which means that supplies of goods and services made to an entity from a VAT group by an entity that does not belong to the group are treated as made to that group. Similarly, supplies of goods and services by a branch that belongs to a VAT group to a taxable person without its place of establishment in Poland, who formed the branch, or another branch of that taxable person, located outside of Poland, are treated as made by the VAT group to an entity that does not belong to the group. Whereas supplies of goods and services to a branch that is a member of the VAT group, made by a taxable person without its place of establishment in Poland, who formed this branch, or to another branch of that taxable person located outside the territory of Poland, are treated as made to the VAT group by an entity from outside that group. Supplies of goods and services to a branch that belongs to a VAT group formed in another EU member state, made by a taxable person with its place of establishment in Poland, who formed this branch, are considered made to that VAT group. Supplies of goods and services made by a branch that belongs to a VAT group formed in another EU member state, to a taxable person with its place of establishment in Poland, who formed this branch, are considered made by that VAT group.



Emilia Wolnowska
Tax Advisor,
Tax Manager
of Tax Department BDO,
office Poznań
tel.: +48 61 622 57 00
Emilia.Wolnowska@bdo.pl

VIII. All group reporting will have to be performed by its representative

When it comes to joint reporting, in its declaration for the first reporting period of its operation the VAT group should include the excess of input over output tax to be carried forward to the next reporting period, resulting from the last tax declaration filed by its member as a taxable person – i.e. from before joining the VAT group. Where an excess of input over output tax to be carried forward to the next reporting period will occur in several declarations, the values will need to be totaled to be recognized in the group's declaration. The VAT group's representative will be required to fulfill the obligations of the VAT group, including the filing of declarations. If, after the VAT group ceases to exist there is a need to correct its declarations, this consistently may be performed by the group's representative. To protect the interests of the state, the regulations provide that entities comprising a VAT group are jointly and severally liable for its value added tax liabilities for the period of the VAT group's existence. This liability will continue also after the end of the VAT group's existence.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice.

BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

The last distinctions for the company are related to the Rankings:

Companies and Tax Advisors of Dziennik Gazeta Prawna for 2020:

■ 1st place The Best Tax Advisor in the category of medium-sized companies

The 2020 rankings prepared by the Rzeczpospolita and Parkiet dailies:

■ 1st Most Active Firm on the Stock Exchange

■ 3rd Best Auditor of Listed Companies

■ 5th Best Audit Firm

BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl