

There will be tax explanations on VAT groups

I. Formation of VAT groups possible as of 2023

1 January 2023 is to be the effective date of the regulations on VAT groups introduced under the Polish Deal. A VAT group may be described as a legal form of acting together for the purposes of VAT. As a special type of taxable person, a VAT group exists only for the purposes of VAT. Although each member of the group retains its distinctiveness and legal status, the formation of a VAT group is given primary significance (under the VAT Act) over legal forms provided for in, for example, civil or corporate law. Even though the new regulations will not go into effect for another six months, the Ministry of Finance has already prepared tax explanations on VAT groups. The explanations are quite extensive, numbering as many as 43 pages. According to the ministry, they cover regulations on the formation and operation of this new type of taxable person. Their purpose is to present a practical understanding of the provisions of the VAT Act insofar as they make it possible for several entities forming a so-called VAT group to jointly account for VAT.

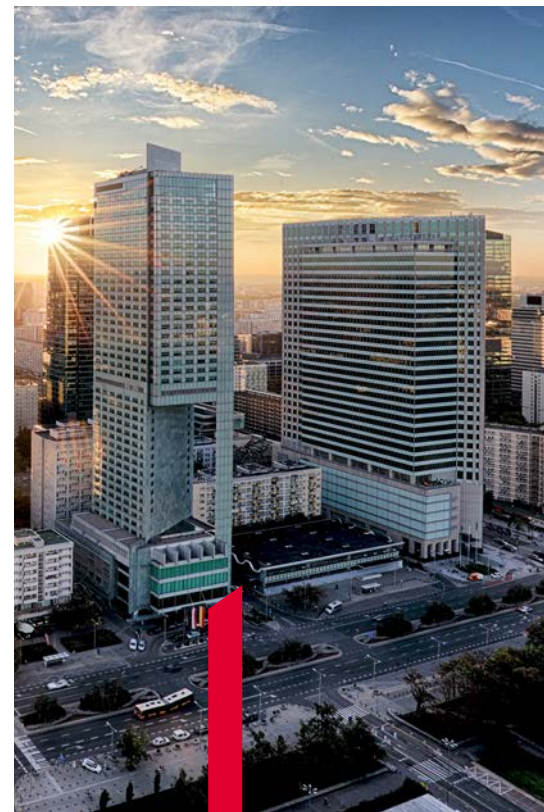
II. VAT groups only for those who conduct operations in Poland

Any taxable person can potentially become a member of a VAT group. The new structure does not limit the ability to form a group to specific organizational forms by adopting the broadest formula in this respect. It also needs to be stressed that the formation of a VAT group is voluntary, allowing traders to independently decide if they want to apply the solution. Importantly, where a VAT group is joined by a domestic entity that has a foreign branch, that foreign branch will not be part of the VAT group. This is because there is a rule that a VAT group may be formed by taxable persons insofar as they have their registered office in the territory of Poland, as well as taxable persons without their registered office in the territory of Poland insofar as they conduct business operations in the territory of Poland through a branch located in the territory of Poland.

III. Group members must have financial ties

Eligibility to obtain the status of a special taxable person that is a VAT group will only be afforded to a group of taxable persons tied to one another financially, economically and organizationally, who conclude an agreement for the formation of a VAT group. All three types of ties must be present throughout the period of the VAT group's existence. Financial ties are defined as the direct holding by one of the entities of 50% of the share capital, or more than 50% of the votes in the controlling, governing or managing bodies, or more than 50% of the right to shares of profits, of each of the other entities belonging to the group. Meeting the stipulated limit in this case, exceeding it gives certainty of the existence of financial ties.

Even before the effective date of the regulations on VAT groups the Ministry of Finance prepared tax explanations on the new regulations. In the explanations much attention was given to the VAT groups' use of pre-pro rata factors, which are applied to correctly deduct VAT in situations when purchases involve both taxable and non-taxable sales.



IV. There must be economic ties

Economic ties are situations where the areas of activity of group members are of the same or complementary nature and are interdependent, or when a member of the group performs an activity that is wholly or substantially used by other members of the group. An economic tie is present if the activities performed by members of the VAT group are of the same type, even if conducted in different sectors of the economy (e.g. audit services). Complementary and interdependent activities of the members may include cases when the goods or services produced by a member of the VAT group are essential to the activities of other members of the group (e.g. company that manufactures parts for the manufacturer of a good), as well as cases where the goods or services are consumed jointly. For example, one entity handles supplies of electronic equipment, whilst another services the equipment acquired from the first entity. The last case is a situation where a member of the group supplies goods or services directly to another, even if the activities of the latter are not necessarily dependent on that (e.g. advisory, forwarding services or administrative support).

V. Members must be tied organizationally

The last type of ties are those of an organizational nature. Fully or partially shared management structures result in the making of decisions within the VAT group by a single entity that provides strategic leadership for the entire VAT group, which is already a single taxable person for VAT purposes. The existence of such a management entity operating across the entire VAT Group may be determined based on its place in the hierarchy. The entity should be able to impose its will on others. In this case, it is also possible to organize one's actions based on contractual arrangements that guarantee that the VAT group will coordinate its decisions in consideration of the joint wishes of its members. In such cases a situation may take place where it is necessary to first come to an agreement on such management matters as the appointment of management staff or other key positions, conclusion of major contracts, pricing of goods and services.

VI. Pre-pro rata factors used by members to be applied in the year of group formation

Prior to the formation of a VAT group it is important to determine whether the entities forming the VAT group apply the so-called pre-pro rata factors, i.e. make purchases that will be used in both business operations and operations that remain outside of the scope of VAT, and therefore deduct VAT in accordance with the pre-pro rata factor set for them. Where each member of the VAT group applied a pre-pro rata factor before the group's formation, and will continue to make purchases for both business and non-business operations after the group is formed, the VAT group will use the pre-pro rata factors applied by its various members in the year of the VAT group's formation. The method of determining this pre-pro rata factor is generally chosen by the taxable person.

VII. First pre-pro rata factor realignment necessary in 2024

A VAT group will be able to apply to its individual members the pre-pro rata factors used by those members in the year of the group's formation, i.e. the pre-pro rata factor used by each member from the beginning in 2024. If, however, it turns out that the pre-pro rata factor is not representative, it may be re-agreed with the head of the tax office for each of the group members. The VAT group will be required to adjust the pre-pro rata factor applied by its individual members in the return filed for January 2024 (a so-called pre-pro rata factor realignment). Where purchases (of goods and services) are to be used in activities outside the scope of VAT, and it is not possible to directly attribute all of those purchases to business activities and not possible to attribute the purchases to a particular member of the group, a pre-pro rata factor determined for the entire VAT group will apply.



VIII. Pre-pro rata factor determination method chosen by taxable person

Each year after the formation of the VAT group, to make deductions at each member of the group and for the deduction for purchases attributed to the entire group, the group may choose a pre-pro rata factor determination method selected for the specific nature of the activities performed by the group member/group, attributed directly to that group member/group, providing, however, that it guarantees the most accurate calculation of deductible input VAT. The method used to determine this pre-pro rata factor is generally selected by the taxable person as the most adequate to the area of activities of each group member separately, or for the entire group.

IX. Pre-pro rata factor to be adjusted after the year-end

After the end of the tax year, in the first reporting period of the following year (i.e. January or 1st quarter), the VAT group must perform an appropriate adjustment of the deduction (of the pre-pro rata factors of its individual members and the pre-pro rata factor for the entire VAT group) based on actual data for the adjusted tax year. For purchases relating to real properties, the adjustment will be made over a 10-year period, for purchases of property, plant and equipment with an initial value in excess of PLN 15 000 – over a 5-year period, and for property, plant and equipment with an initial value of no more than PLN 15 000 – over a period of 12 months.



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