

September 2007

The Belgian VAT Grouping rules compared with the non-harmonised rules used in the E.U. by 13 other Member States

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Over the last few years, businesses within the European Union have had to struggle with ever-increasing international competition. Businesses in all economic sectors are being forced to optimise their core activities and support services.

One of the strategies followed in this regard is to outsource and centralise certain labour-intensive functions, as a result of which corporate groups can benefit from considerable economies of scale and concentrate on their core business.¹

With outsourcing and/or centralisation within a company group, the VAT system frequently constitutes a hurdle. The prospect of additional VAT burdens and/or more complex administration sometimes persuades company groups that it is not worth engaging in outsourcing or centralisation.

VAT grouping can offer a solution here. VAT grouping enables group undertakings that are legally independent but financially, economically and organisationally linked to be regarded as a single taxpayer for VAT purposes. One of the aims of forming a VAT group is to simplify and rationalise the group's administration.²

A number of Member States have appreciated the usefulness of VAT grouping and introduced the system. Now, since its introduction of VAT grouping on 1 April 2007, Belgium has joined the club. Belgium is the fourteenth Member State of the European Union to introduce VAT grouping. Austria, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, the Netherlands, Romania,³ Sweden and the UK had already implemented legislation. Spain will also bring in VAT grouping on January 1, 2008 and Czech Republic is planning to allow VAT grouping in practice as from January 1, 2009. Other Member States have decided not to introduce VAT grouping mainly because they fear it may have a negative impact on tax revenues even if it is questionable whether this fear is justified.⁴

Introduction of VAT grouping in combination with the notional interest deduction is an apt means of ensuring Belgium's competitiveness and future as a dynamic knowledge economy within the European Union.

To examine how useful and effective VAT grouping is, in this article we first give a brief outline of what VAT grouping means as a concept. We then look further at why these various Member States, and now Belgium, have opted to introduce it. Finally, we discuss how it has been given shape in the various countries that have introduced it. The PricewaterhouseCoopers European best-practices benchmark on VAT grouping is used to test how the Belgian system stacks up. Our aim is not to give a full-blown account of all the rules applying in Belgium but rather to view the Belgian legislation in the light of the European rules and that of other Member States. Parallel to this, we aim to give the reader a brief insight into the anti-abuse provisions affecting VAT grouping and we offer a few prognoses for the future.

I. VAT grouping as a notion

A. VAT group

A VAT group comprises persons that are classified as a single taxpayer where they are established within the territory of a Member State and are legally considered independent but are nonetheless financially, economically and organisationally linked.⁵

VAT grouping is a self-contained VAT term independent from other branches of the law (such as company law or corporation tax). All the rules governing VAT, whether based on national VAT laws or the provisions of European law and case law from the European Court of Justice, that are of direct effect (right of deduction, anti-abuse provisions, obligations, *etc.*) apply to VAT groups as the taxpayer acting in the place of the individual members of the VAT group.⁶

B. European law

At a European level, the possibility for implementing VAT grouping into national law has already existed for a number of decades.

The option was incorporated into the Second Directive of April 11, 1967,⁷ and subsequently restated in the Sixth VAT Directive of May 17, 1977⁸ and in the present Directive 2006/112/EC of November 28, 2006.⁹

Prior to introduction of the notion into European law, the Netherlands had already developed the concept of tax groups following the introduction of manufacturing taxation on January 1, 1934. When the Sixth Directive was implemented on January 1, 1979, the Netherlands included tax grouping in its legislation. Prior to implementation of the Sixth Directive, Germany, too, already had the concept of *Organschaft*, which is closely related to the concept of VAT grouping.

Article 11(1) of Directive 2006/112/EC of November 28, 2006 (article 4(4) of the Sixth Directive) offers Member States the possibility to regard persons established in their territory that are independent from a legal perspective but closely financially, economically and organisationally linked to one another as one single taxpayer.

Contrary to the concepts of, say, exemptions and cost-sharing associations, the Member States are not obliged to implement VAT grouping.¹⁰

Directive 2006/112/EC contains no further rules – and rightly so – for the treatment of these special taxpayers consisting of groups of two or more taxpayers. All VAT rights and obligations are also of undiminished application to this sort of taxpayer. Member States have made use of this to give individual shape to the relative practical procedures.

The second paragraph of article 11 of Directive 2006/112/EC of November 28, 2006 gives the Member States power to impose measures to prevent tax fraud and avoidance in connection with VAT grouping. Some States, including Belgium, have made use of this possibility to introduce a special anti-abuse provision. We look at this in greater detail below.

C. Belgium's legislation and comparison with legislation in other Member States

In 1992, the concept of VAT grouping made its first appearance in Belgium's VAT legislation.¹¹

Section 4(2) of Belgian VAT Code lays down the basis for Belgian VAT grouping and stipulates that:

“The King can, in such cases and according to such rules as he lays down, classify persons established in Belgium that, although legally speaking independent, are nonetheless closely linked to one another financially, economically and organisationally, as one taxpayer for the purposes of this Code.”

During 13 years, the King never made use of the power conferred to actually introduce VAT grouping.

On March 15, 2007, Royal Decree no. 55 was published in Belgian Official Gazette, setting up the rules for taxpayers that form a VAT group. In particular, it sets out the general conditions and more specific provisions (including the start and end of the VAT group, departure from and accession to a VAT group). The decree came into force on April 1, 2007.

Meanwhile, a number of changes have also been made to the Belgian VAT Code and the implementing decrees, and practice notes to explain practical application of the rules are also in the making.¹²

II. The importance of the introduction of VAT grouping

A. Importance from a business perspective

Normally, a VAT group offers simplification for all the undertakings that participate in it. There are no longer any supplies between members of the VAT group, as a result of which the often complex VAT rules no longer apply and errors are thereby eliminated. Nor do invoices have to be issued with or without VAT.

In so far as VAT is no longer charged on supplies between members of the VAT group, upfront financing of VAT is also avoided and the VAT charge that in some cases used to entail a cost (*e.g.* where the VAT charged could not be deducted) is done away with.

Moreover, only one VAT return need be submitted, covering all the members. This can lead to significant administrative simplification. Where VAT credits and refund positions at a group level can be set off against one another, cost savings can also be realised owing to the reduced cash flows.¹³

B. Importance for the government

The tax office only needs to process one VAT return, thus releasing resources and human capital within the civil service. Besides that, VAT audits for group companies can now be conducted at the level of the VAT group (or its representative), which is regarded as a single vatpayer.

Because the members of a VAT group in Belgium no longer have to charge one another VAT, VAT mistakes and VAT fraud (*e.g.* in case of an artificial split of large companies in medium-sized and small enterprises to benefit from the VAT exemption for small businesses)¹⁴ between such members are also eliminated.

Moreover, the great advantage for the tax authorities is the joint and several liability of the VAT group: the tax office can claim all the VAT liabilities of the VAT group (including tax, interest, penalties and costs) from any or all of the members.¹⁵

III. The ambit of VAT grouping within the European Union

As we have said, the statutory basis for VAT grouping is article 11 of Directive 2006/112/EC of November 28, 2006:

“After consulting the advisory committee on value added tax (hereafter, the “VAT Committee”), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.”

This article imposes only the following basic conditions:

- taxable persons;
- established in that Member State;-
- with financial link;
- with economic link;
- with organisational link.

Notwithstanding this general definition, there exist differences in the specific conditions under which it is applied in each Member State. Each Member State has enacted national law implementing the rules including the conditions in which VAT grouping can be applied, its commencement and its cessation.

In the following, we discuss the ambit of VAT grouping in the various E.U. Member States and in each case draw a comparison with the system in Belgium. Emphasis will be placed on the fact that VAT grouping under the Belgian model is based on a benchmark of best practices in the other Member States.

A. Interpretation of the basic conditions

1. “Persons”

What the term “persons” means as set out in the VAT Directive is food for discussion. The Member States interpret it in different ways.

Most Member States opt for a broad interpretation. They regard the term “persons” as being wider than “taxable persons”. On this basis, a group comprising full, mixed, partial and exempt taxable persons as well as non-taxpayers (such as passive holding companies) are admitted to a VAT group.

Also in most Member States, partial taxpayers can form part of a VAT group, but only as regards their taxable business.

Some Member States impose on the other hand additional conditions. Thus, in Denmark, two subsidiaries can only join a VAT group if the parent or a branch of the parent also joins up.

Finally, in Finland, Hungary and Sweden, VAT grouping is only permitted for businesses in the financial sector (mixed taxpayers).

Belgium, Ireland and Austria exclude non-taxpayers from VAT grouping.¹⁶ Cyprus excludes not only non-taxpayers but also exempt taxpayers.

In our view, it is best to keep interpretation of the term “persons” as broad as possible. This will ensure that the objectives of VAT grouping are best achieved and discussions on the VAT status of the members of the VAT group are avoided.

2. “Established”

The scope of the term “established” is similar in the various Member States. Only established persons can join a VAT group.

As a result, only domestic taxpayers or foreign undertakings with a fixed establishment in the Member State with the VAT group can form part of the VAT group. Foreign taxpayers that are only registered for VAT as a non-established taxpayer cannot join up. Belgium also follows this interpretation, just like the other Member States, with the exception of Italy. Italy allows undertakings that are not established in Italy to form a VAT group.

The Netherlands and the United Kingdom constitute an exception. They both allow cross-border VAT grouping. In the Netherlands, if a fixed establishment forms part of a Dutch VAT group, the headquarter established in another Member State can also be included in the VAT group.¹⁷

In order to become a member of a VAT group in the United Kingdom, the member has to be “resident” there. The term “resident” means that a certain part of the actual control and management of the business has to be carried on in the United Kingdom by (part of) the management.

3. The substance of financial, economic and organisational links

Most Member States have defined these basic conditions at length in their national legislation. It is observed that the conditions are in step with one another but that the substance often differs in terms of the practicalities.

The members’ *financial links* are often established on the basis of shareholdings, control and voting rights.

In Belgium, this condition is in all events fulfilled where there exists a direct or indirect *de facto* or *de iure* control relationship between the members.

This is therefore a very open condition, which can be shown on the basis of a variety of factors (not just on the basis of shareholdings).

Austria requires a shareholding of 75 percent; other Member States demand only 50 percent.

To ascertain *economic and organisational links*, the management and business activities of the group are decisive criteria.

In Belgium, the members are regarded as having close organisational links where they are factually or in law directly or indirectly under joint leadership or if their activities are wholly or partly organised in joint consultation or are under the authority of a single person.

In determining whether there are economic links, it has to be looked to whether the activities are similar or complementary to or influence one another or are carried on for each other’s benefit.

The Belgian legislation furthermore incorporates a rebuttable presumption: if a member of a VAT group has a direct holding of more than 50 percent in another taxpayer, it is assumed that there also exist organisational and economic links. However, this presumption can be rebutted if it can be shown that they do not or cannot have organisational or economic links or links on some other grounds.

Apart from the rebuttable presumption, most Member States give similar substance to the conditions.

Denmark is an exception in defining the above conditions. If all the members of a VAT group are full taxpayers and are established in Denmark, then no further conditions require to be fulfilled. If mixed taxpayers also form part of the VAT group, there has to be 100 percent direct or indirect control.

B. The optional nature of VAT grouping

The Member States have the option of incorporating VAT grouping into their national laws. If they opt to do so, they can further include an option for undertakings do decide to form a VAT group. By contrast, the Member States can also state that, once the relevant conditions are fulfilled, the businesses are obliged to form a VAT group.

Member States’ views are divided as regards the optional nature of VAT grouping.

From a business perspective, being optional is best because businesses themselves can then decide whether or not it is worth their while forming a VAT group.

Belgium has opted for a double option. A VAT group can only be formed where an option is exercised at both group level and at the level of each member separately. This means that a group of undertakings that meet the relevant conditions to form a VAT group are free to opt for VAT grouping and are also free to decide which of them are in effect going to be included in the VAT group. The motivation for this is to remove the burden on undertakings that do not have the requisite administrative and financial organisation to manage large groups of undertakings. This option is also very important because the members of a VAT group are jointly and severally liable for each others' VAT liabilities; a split in the group can also be planned, which would be at odds with the idea of forming a VAT group.

Once a VAT group is formed, however, there is an obligation on taxpayers to join up where there is a direct shareholding of 50 percent between two members (see above). Counter-evidence can always be produced.¹⁸

In Austria, Estonia, Germany and the Netherlands, undertakings are required to form a VAT group once all the basic conditions are fulfilled.

C. Membership of (a) VAT group(s)

Ireland and Denmark allow membership of more than one VAT group.

None of the other Member States provides for this facility.

Belgium, too, follows the majority on this, in order to avoid the attendant complexities, including applying different VAT systems (*e.g.* the right to VAT deduction if a member is part of two VAT groups).

D. Administrative obligations

As we have said, the introduction of VAT grouping lightens the administrative burden both for the members and for the tax office.

The majority of the Member States, except Estonia and Italy, give the VAT group a VAT number. Austria, Cyprus, Finland, Hungary, Sweden and the United Kingdom scrap the members' individual VAT numbers.

In Belgium, section 50 of the VAT Code has been supplemented. Each member of a VAT group will be given a sub-VAT-number. These are the individual VAT numbers of the members, which will be retained and have to be used for invoices issued to third parties, annual listings and intra-Community listings. A similar system exists in Denmark, Germany, Ireland and the Netherlands.

The administrative burden will certainly be alleviated by the fact that only one VAT return has to be filed for the VAT group. Nonetheless, Spain provides that each undertaking will have to report its transactions. The Netherlands offers the choice between filing separate VAT returns for each member or a joint return for the VAT group.

Belgium, too, introduces an additional rule as a control measure, which is an obligation on the VAT group to list transactions between members in an annual listing.¹⁹

E. Joint and several liability and VAT inspections

At first sight, VAT grouping only appears to offer benefits for groups of undertakings. A drawback is the joint and several liability that many Member States impose on VAT groups. For the tax office, this drawback is positive, because they can collect VAT liabilities in the hands of any of the members of the VAT group.

Belgium, too, makes provision for this in its national legislation. In this respect, a new section 51*ter* has been incorporated into the Belgian VAT Code: "*Persons that are regarded as a single taxable person in application of section 4(2) are jointly and severally liable to the State for payment of the tax, interest, penalties and costs that may be demanded as a consequence of the dealings relating to the period in which such persons are regarded as a single taxable person for the purposes of this Code.*"

Only Austria and Hungary do not impose this rule. Italy qualifies the rule by only imposing penalties on the "controlling entity" of the VAT group.

There is no unanimity as to the level at which VAT inspections are carried out. *Inter alia*, in Austria and Ireland, VAT inspections are in principle carried out at group level.

F. Right of deduction

The principle of neutrality and the destination principle are also applicable to VAT grouping.

For Belgium, it is contended that sections 45 to 49 of the VAT Code and the provisions of Royal Decree no. 3 of December 10, 1969 on the deduction regulations are applicable to VAT groups. This

means that, just as with all other taxpayers, the right to deduct input VAT on goods and services supplied to a VAT group will be dependent on the final destination that the members give them.

Where a member joins a VAT group, it will in any event have to review the VAT levied on its operating assets such as the assets immovable by nature that are subject to adjustment and the real rights on which VAT is originally deducted.²⁰ Accordingly, the new member will have to adjust the VAT deducted on these assets for the years for which the adjustment period has not yet lapsed.

However, an adjustment may subsequently be carried out at the level of the VAT group in its favour; *i.e.* where the relevant operating asset is used by the VAT group to effect transactions for which there is a right of deduction.²¹ This adjustment can be effected in one go, so that, in practice, the negative adjustment in the hands of the new member is offset by the positive adjustment in the hands of the VAT group.

In most Member States, for determining the right of deduction within the VAT group, both a pro rata calculation at a group level and the actual use method within the VAT group are permitted.

IV. VAT grouping and anti-abuse

As we have already said, the statutory basis for VAT grouping is article 11 of Directive 2006/112/EC of November 28, 2006.

In addition to the first paragraph, which is discussed above, article 11 of Directive 2006/112/EC also contains a second paragraph, which covers the following: “A Member State 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.”

It is consistent Court of Justice case law that all measures taken to combat tax fraud and avoidance must be proportionate with their goal.²² The ambit of the aforementioned provision ought therefore to be limited.

Many Member States have already incorporated a general anti-abuse provision into their national legislation. Germany²³ and Belgium are two examples.

Section 1(10) of the Belgian VAT Code defines the general anti-abuse provision as follows:

“For the purposes of this Code, there shall be deemed to be abuse where the transactions carried out in a given case result in the accrual of tax advantage the grant of which is contrary to the purpose intended in this Code and the decrees enacted in implementation hereof and those transactions are essentially aimed to obtain that tax advantage .”

The advantage of the general anti-abuse provision for the tax authorities is its broad formulation and the non-restrictive definition of the cases of abuse. This anti-abuse provision is therefore going to be applicable to VAT grouping.

Despite having general anti-abuse provisions, the United Kingdom lays down a particular provision in the context of VAT grouping,²⁴ where headquarter or branch transactions followed by recharging “as such” within the VAT group can, under certain conditions, give rise to VAT on the recharge (via the reverse charge principle).

However, this very specific anti-abuse provision is very seldom used in practice because:

- it only concerns services under article 56 of Directive 2006/112/EC (“intangible services”);
- it only concerns bought-in services (procured from third parties by a foreign headquarter or branch);
- the provision is only applicable where the services received from the foreign headquarter or branch are recharged “as such” within the VAT group;
- the provision is not applicable where the services are recharged as a total package and their share of the package is less than five percent.

Belgium, too, along the lines of the United Kingdom, has introduced a new section 19*bis* into the VAT Code further to the introduction of VAT grouping:

“There shall be equated to a service provided for valuable consideration the provision of a service as stipulated in section 21(3)(7°) by a taxpayer established outside Belgium for one of its establishments that is a member of a VAT group in Belgium within the meaning of section 4(2).”

This provision is intended to avoid membership of a VAT group giving rise to unjustified VAT benefits and savings.

Although section 19*bis* is included in the VAT Code and thus always appears to be applicable to such services, the new provisions could in practice only be invoked to counter tax evasion as defined in the Memorandum of Explanation, whereby services that are in principle subject to VAT might not be taxed as an effect of the functioning of the VAT group.²⁵

In particular, with this measure Belgium’s lawmakers seek to avoid the risk of so-called “channelling”. An example of this is where intangible services provided by a taxpayer established

outside Belgium via the foreign headquarters are charged outside scope of VAT to the Belgian fixed establishment, which subsequently recharges the services without VAT to other members within the VAT group in Belgium. If it is not the Belgian fixed establishment but the other members of the VAT group that are the actual users of the services provided by the taxpayer established outside Belgium, there can indeed be said to be an unjustified VAT benefit. To the degree that the members of the VAT group established in Belgium have a limited right of deduction, in the foregoing example they do indeed avoid VAT that they would have incurred and would only have been partly able to deduct had they been invoiced directly by the taxpayer established outside Belgium.

Although, in terms of the answer given to the aforementioned parliamentary question, the scope of section 19*bis* of the VAT Code could be somewhat restricted, in our opinion it is not in line with the proportionality and specificity of anti-abuse provisions required according to the consistent case law of the Court of Justice.

In this respect, we refer to the European Court of Justice case of FCE Bank,²⁶ in which it is stated that a headquarter and its fixed establishments are to be regarded as one taxpayer. Accordingly, no services can for VAT purposes be provided between a headquarters and a branch. In other words, the dealings between a headquarters and a branch in principle fall outside the scope of VAT. It is therefore possible to contend that there is discrimination where one is member of a VAT group.²⁷

Likewise, we refer to a decision by the Supreme Court of the Netherlands, which also ruled that there cannot be taxable services between an headquarter and a branch.²⁸

In our view, the anti-abuse provision of section 1(10) is furthermore sufficient to deal with the abuse that is feared. The current general anti-abuse provision in respect of VAT is in our opinion in conformity with the case law referred to above and also fulfils the principle of proportionality. Anti-abuse in cases of the channelling of services is moreover already specifically covered in Belgian official practice note no. 14 of August 24, 2006.

Finally, the specific anti-abuse provision threatens not only to go too far from a purely legal point of view but also to disregard economic and legal reality for groups that have already set up an international organisation for themselves in Belgium with branches and headquarters.

To the extent that they do not set up a VAT group in Belgium, they will not be faced with section 19*bis* of the VAT Code. Upon a broad application of section 19*bis* of the VAT Code, intangible services provided by a foreign headquarters to its branch in Belgium (as a member of a VAT group in Belgium) would indeed be taxed. Groups organised internationally and in Belgium with branches and headquarters would in this case miss out on economic benefits and be discriminated against from a VAT point of view.

V. Future prospects: cross-border VAT grouping

A far-reaching change, but one that would be warmly welcomed by business, would be the introduction of cross-border VAT grouping within the European Union.

The introduction of cross-border VAT grouping within the European Union would meanwhile contribute to improving the competitive position of the financial sector,²⁹ but threatens not to gain much support at a European level.³⁰

The concept of cross-border VAT grouping has furthermore already been introduced in the Netherlands and the United Kingdom.

The introduction of cross-border VAT grouping within the European Union could furthermore be a fillip to the working of the Internal Market.

It is possible that the current geographical limitation of VAT grouping to the territory of a Member State is itself incompatible with the freedom of establishment as set down in article 43 of the E.U. Treaty.³¹ Member States would be able to cite arguments such as the effectiveness of tax inspections or the fight against tax fraud and abuse of rights to justify the territorial limitation of VAT grouping.

However, the question is whether restricting the territorial effect is truly a proportionate means for *inter alia* avoiding tax fraud and abuse of rights.

Given that transactions between headquarters and branches in the European Union fall outside the scope of VAT, the introduction of cross-border VAT grouping would meanwhile result in transactions between separate legal persons established in different Member States also henceforth no longer being taxable. That way, the principle of the freedom of establishment and non-discrimination would be precisely the argument to swing introduction of the concept of cross-border VAT grouping into the European Union.

VI. Conclusion

The foregoing analysis shows that, if Member States want to capitalise on ever-increasing globalisation and international competition, the introduction of VAT grouping is a winning factor for their national economies.

As from April 1, 2007, Belgium is now the fourteenth Member State in which VAT grouping comes into force. The Belgian VAT grouping legislation is generally based on best practices from other Member States.

This analysis shows also that there is not yet any form of harmonisation at a European level because far from all the Member States have introduced VAT grouping and the specific terms and conditions are divergent.

Into the future, the introduction of cross-border VAT grouping should be positive with a view to the creation of one European market without VAT barriers.

However, it is clear that this will not be a project for the near future for as long as VAT – except for the own resources of the European Union – is a “national” decision.

A positive first step would meanwhile be if VAT grouping were to be introduced by each Member State on a mandatory basis.

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- 1 Study entitled “Off-shoring in the FS Industry, Risk & Rewards”, PwC/Economist Intelligence Unit (EIU), July 2005.
- 2 Royal Decree no. 55 of March 9, 2007 on the regulations for taxpayers that constitute a VAT group, Report to the King, published in the Belgian official gazette on March 15, 2007, p. 13787. This conclusion was also evident from the study conducted by PricewaterhouseCoopers for the European Commission, entitled “Study to increase the understanding of the economic effects of the VAT exemption for financial and insurance services”, headed up by Ine Lejeune. See http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm.
- 3 In Romania VAT grouping is currently only a consolidation with respect to VAT
- 4 The impact on tax revenues after introduction of VAT Grouping was limited in the United Kingdom and Finland as highlighted in the study conducted by PricewaterhouseCoopers for the European Commission, entitled “Study to increase the understanding of the economic effects of the VAT exemption for financial and insurance services”, headed up by Ine Lejeune. See http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm. “VAT Grouping in the European Union: Purposes, Possibilities and Limitations”, Kenneth Vyncke, International VAT Monitor, July/August 2007, p. 250 – 261.
- 5 Belgian writers use the terms “VAT unit(y)” and “fiscal unit(y)” to mean the same as the English term “VAT group(ing)”.
- 6 Royal Decree no. 55 of 9 March 2007 on the regulations for taxpayers that constitute a VAT group, Report to the King, published in the Belgian official gazette on March 15, 2007, p. 13787.
- 7 Annex 1, art. 2(4), E.C. Council Directive no. 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (Second VAT Directive).
- 8 Art. 4(4), E.C. Council Directive no. 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (Sixth VAT Directive).
- 9 Art. 11(1) Directive 2006/112/EC of November 28, 2006 on the on the common system of value added tax.
- 10 Art. 132(1) (f) Directive 2006/112/EC of November 28, 2006 on the common system of value added tax.
- 11 Clause 5, Bill to amend the Value-added tax Code and the Registration Duties, Mortgage and Registry Dues Code, parliamentary documentation, Lower House 1992-1993, no. 684/1, 153.
- 12 The Finance Bill was adopted by the Senate on April 27, 2007 (official gazette 8 May 2007, p. 25153).
- 13 Based on the study conducted by PricewaterhouseCoopers for the European Commission, entitled “Study to increase the understanding of the economic effects of the VAT exemption for financial and insurance services”. The study showed that VAT grouping has an influence on the location of financial services players. See http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm.
- 14 “VAT Grouping in the European Union: Purposes, Possibilities and Limitations”, Kenneth Vyncke, International VAT Monitor, July/August 2007, p 250 – 261
- 15 New section 51ter incorporated into the VAT Code on the basis of the Law Reform (Miscellaneous Provisions) (IV) Act of 25 April 2007 (official gazette May 8, 2007, 25103), document no. 2007/201376.
- 16 Under teleological interpretation of the term “any persons” it seems that the restriction of VAT grouping to taxable persons only is justified. See “VAT Grouping in the European Union: Purposes, Possibilities and Limitations”, Kenneth Vyncke, International VAT Monitor, July/August 2007, p 250 – 261

- 17 Supreme Court decision of June 14, 20025, no. 35,976.
- 18 Counter-evidence can be produced if it is shown that they do not or cannot have organisational or economic links or links on some other grounds.
- 19 New sec. 53*quinquies*, second paragraph, introduced into the VAT Code on the basis of the Finance Act of 27 April 2007 (official gazette May 8, 2007, 25153), document no. 2007/201506.
- 20 New sec. 10(1), first para. (5°), Royal Decree no. 3, introduced into the VAT Code on the basis of the Finance Act of 27 April 2007 (official gazette May 8, 2007, p. 25153), document no. 2007/201506.
- 21 New sec. 10(2), second indent, Royal Decree no. 3, introduced into the VAT Code on the basis of the Finance Act of 27 April 2007 (official gazette May 8, 2007, p. 25153), document no. 2007/201506.
- 22 See *inter alia* Test Claimants in the Thin Cap Group Litigation v. Commissioners of Inland Revenue, C-524/04, 13 March 2007. Furthermore, in transposing these provisions into Belgian law, there must be compliance with the, meanwhile conclusive case law from the Court regarding abuse, as set down *inter alia* in the cases of Gabalfrisa, ECJ 21 March 2000, cases C-110/98 to C-147/98, ECR 2000, I-01577, no. 52; Halifax, ECJ 21 February 2006, case C-255/02, ECR 2006, I-01609, no. 92; Huddersfield, ECJ 21 February 2006, case C-223/03, ECR 2006, I-01752.
- 23 Section 42, *Abgabenordnung*.
- 24 Section 43(2A) of the VAT Act 1994: “A supply made by a member of a group (“the supplier”) to another member of the group (“the UK member”) shall not be disregarded under subsection (1)(a) above if (a) it would (if there were no group) be a supply of services falling within Schedule 5 to a person belonging in the United Kingdom; (b) those services are not within any of the descriptions specified in Schedule 9; (c) the supplier has been supplied (whether or not by a person belonging in the United Kingdom) with any services falling within paragraphs 1 to 8 of Schedule 5 which do not fall within any of the descriptions specified in Schedule 9; (d) the supplier belonged outside the United Kingdom when it was supplied with the services mentioned in paragraph (c); and (e) the services to be mentioned have been used by the supplier for making the supply to the UK member.”
- 25 Parliamentary question no. 15082 of April 23, 2007 – Mr Tommelein – CRABV 51 COM 1285, p. 1.
However, regardless of the answer to this parliamentary question, it seems that the Belgian VAT authorities at this stage are planning to invoke article 19*bis* even if there would not be on-charging within the Belgian VAT Group.
- 26 FCE Bank, judgment of the Court, case C-210/04, 23 March 2006, www.curia.eu.
- 27 Some authors state that there are valid reasons to contend that the principle laid down in the FCE judgement does not apply to services exchanged between a taxable person’s non-resident main office and its resident fixed establishment if that fixed establishment is part of a VAT Group in the Member State of residence. See “VAT Grouping in the European Union: Purposes, Possibilities and Limitations”, Kenneth Vyncke, International VAT Monitor, July/August 2007, p 250 – 261
- 28 Supreme Court judgment, 14 June 2002, no. 35,976.
- 29 This conclusion is evident from the study conducted by PricewaterhouseCoopers for the European Commission, entitled “Study to increase the understanding of the economic effects of the VAT exemption for financial and insurance services”, headed up by Ine Lejeune. See http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm.
- 30 Cross-border VAT grouping has been rejected by the Commission as a solution to the problems associated with VAT and financial and insurance services, Financial VAT Bulletin, PricewaterhouseCoopers, May 2007.
- 31 ‘The Internal Market and VAT: intra-group transactions of branches, subsidiaries and VAT groups’, Ad van Doesum, Herman van Kesteren, Gert-Jan van Norden, EC Tax Review 2007/1, pp. 34-43. (We would add that the writers also work for PricewaterhouseCoopers, with the exception of Mr van Norden.)
- 32 Ine Lejeune was actively involved as an adviser in bringing about and introducing Belgian VAT grouping. In that context, a best-practices benchmark was developed in conjunction with the VAT network of specialists at PricewaterhouseCoopers in the other Member States that have VAT grouping.