

CHAPTER 28

GROUPS

28.1 Introduction

A group of companies is permitted to apply to HMRC to form a VAT group.

[VATA 1994, s. 43](#)

The VAT group is treated in the same way as a single company registered for VAT on its own.

28.2 Conditions

Two or more "bodies corporate" are eligible to be treated as members of a group if

- (a) one of them "controls" each of the others; or
- (b) one person (whether a body corporate or an individual) controls all of them; or
- (c) two or more individuals carrying on a business in partnership control all of them;

and each of the bodies has a "**fixed establishment**" in the UK.

"Control" of a company means an ability to control more than 50% of share capital, distributable income or assets on a winding up. In broad terms, "control" for VAT groups has the same definition as control for the purposes of determining associated companies for corporation tax.

[VATA 1994, s. 43A](#)

HMRC have no discretion to accept group registration where the above requirements are not met.

A company is "established" in the UK if it has its principal place of business or registered office in the UK, which means if

- the central management and control of the company are carried on in the UK; or
- its headquarters or head office are in the UK.

A company will normally be established in only one country.

A company has a "fixed establishment" in the UK for VAT group purposes if it has a real and permanent trading presence in the UK. This would apply, for example, if it has

- a permanent place of business with the necessary human and technical resources to carry on its business activities; or
- a branch or office in the UK with its own staff and equipment.

28.3 Application for Group Registration

There is complete free choice of which companies are chosen to be included in the group registration.

[VATA 1994, s. 43B](#)

Group registration is entirely at the option of the companies involved, so it is possible to choose to leave some eligible companies out, or maybe even to form several different VAT groups within the same overall group of eligible companies.

Just because a company is in a corporate group does not mean that it has to also be within a group registration for VAT purposes. Such a decision is entirely at the discretion of the group companies.

When an application is made to form or alter a group registration, the **application is normally accepted on the day on which it is made**, or at a different date by agreement between the taxpayer and HMRC.

[VATA 1994 s. 43B\(5\)](#)

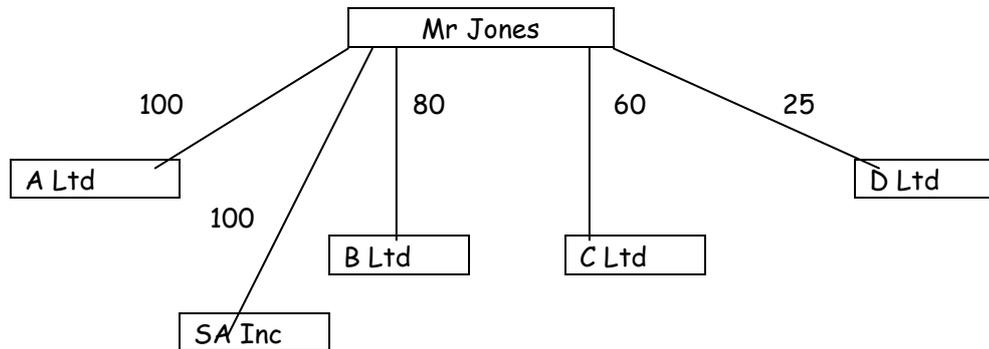
However, **HMRC do have the power to refuse the application within 90 days of it being made**. They are allowed to do this "for the protection of the revenue".

It is also possible to apply for a retrospective group registration, but this is only allowed in the most exceptional circumstances.

A group registration can be amended at any time, and again the amendment is normally accepted on the date on which it is made.

If any member of a VAT group ceases to satisfy the criteria for group treatment, HMRC must be notified within 30 days of the change in circumstances.

[SI 1995/2518 Reg 5\(2\)](#)

Example 1

All companies except SA Inc are UK based.

Which companies can be included in a VAT group registration?

28.4 Impact of a Group Registration

The first impact of setting up a group registration is that the **group is treated as one single taxable person**.

One company calls itself the "**representative member**". That company is **responsible for all VAT accounting** including the completion and submission of the VAT return.

However, **all the companies** within the group registration are **jointly and severally liable for any VAT due**. Thus they are not liable for only their share of the VAT, but for the whole VAT due from the group.

The main effect of VAT registration is that any **supplies made between members of the VAT group are ignored** (outside the scope). All that is considered is what is coming into the group and what is going out of the group as a whole. What is happening within the group is irrelevant.

Supplies to or from outside the group are treated as made by the representative member.

28.5 Advantages of Group Registration

One of the advantages of a group registration is that it offers **simpler VAT accounting**, because there is only one VAT return for the whole group, rather than each company completing its own individual VAT return.

Group registration will **centralise the VAT affairs** of the group. This can help with compliance, because a greater central control will be needed over the VAT comings and goings of the whole group.

The major advantage of group registration is that **supplies between group members are outside the scope of VAT.**

By setting up a group registration and choosing which companies to include in that group, it is possible to **include an exempt company** in the group. Normally companies making exempt supplies cannot register for VAT. However, it is permitted to include such a company in a group with companies making taxable supplies and to effectively register that exempt company. This may enable recovery of some input tax which would otherwise be irrecoverable.

The other side of the coin is that by including an exempt company, **the group becomes partially exempt.** However at least it means that the input tax incurred by the exempt company goes into the "residual pot" and in theory could be recovered.

28.6 Disadvantages of Group Registration

There is a requirement for only a single VAT return for the whole group. The same time limit still applies to submit that VAT return, even though there are lots of different companies providing the required information. It **can be difficult to collect all the information necessary** to make that single VAT return complete by the normal 30-day deadline. This can be quite a disadvantage for groups and could lead to default surcharge liabilities if returns are persistently late.

One of the advantages of a group registration is being able to include an exempt company. The disadvantage is that including an exempt company in the group **makes the group partially exempt.** This would **restrict the input tax recovery** for the group as a whole.

Another disadvantage is the **joint and several liability for VAT** for the whole group. Assume one company became insolvent - the rest of the group would have to pay its share of the overall VAT liability.

With large groups and hence large figures of turnover, the **group may be more likely to exceed the £2 million monthly payments threshold**, i.e. they will have to make monthly payments of VAT instead of quarterly payments of VAT.

Another disadvantage of these larger turnover figures is that if the VAT return is late, the **default surcharge, which is a percentage of the VAT that is late, is much higher.** It only takes one company to be late getting its information to the representative member for the group's VAT return to be late. Default surcharges are based on the VAT due on the VAT return for the group, not the VAT shown as due from the company that couldn't get its figures to the representative member on time.

There are also certain **cash flow advantages that may be lost** by registering under a group registration. For example, if one company in the group is a "repayment" trader - for example a company making zero-rated supplies such as books or children's clothes - it can recover input tax every month by making **monthly returns**. If included in a group registration, it has to go on to the normal quarterly returns the group companies have decided on. The zero-rated company should then be excluded from the VAT group to retain this cash-flow benefit.

28.7 Refusal to allow a Group Registration

[VATA 1994, s. 43B\(5\)](#)

HMRC have the right to **refuse to allow a company to join** a VAT group if they feel that it is necessary to do so "for the protection of the revenue". They can also **refuse to allow a group company to leave** a VAT group for the protection of the revenue.

If there are VAT savings which arise from the natural effects of grouping, in other words by treating companies as a single entity so that inter-group supplies are disregarded, then HMRC will not apply the "revenue protection" powers. However, if any VAT savings go beyond the natural effects of grouping, then HMRC will consider whether the need for revenue protection outweighs the company's commercial interests.

28.8 Appeals

Because a refusal to accept a grouping is dependent on HMRC's opinion that it is necessary for the protection of the revenue, it is only possible to appeal against a ruling on the basis that HMRC's opinion is unreasonable.

HMRC has stated that when they give an opinion, they will also give full reasons for any refusal.

VAT Notice
700/2

28.9 Cancellation of a VAT Group

[VATA 1994, s. 43C](#)

HMRC also has the **right to remove a group member** from a group registration once it has been included. This direction can be made in two situations.

The first situation is for the **protection of the revenue**, in which case the direction would have effect from the date on which it is made or any later date.

The second situation is where HMRC have decided that a company is **no longer eligible for grouping**. In this case the direction would have effect from the date on which the company ceased to be eligible to be part of a VAT group.

Example 2

1. How many days after application for a group registration do HMRC have to refuse the application?
2. "Control" of a company is when in excess of how many votes is held?
3. HMRC aim to issue a letter stating if a group registration is effective or will be considered further within how many days of an application?

Answer 1

There are two things to look at in respect of the answer. First requirement is common control by a single person and it can be an individual - it does not have to be a company. Mr Jones can qualify and he controls A Limited, B Limited, C Limited and SA Inc.

The next thing for a group registration is that those companies under common control must be established in the UK or have a business establishment in the UK and hence SA Inc does not qualify under this condition.

In the VAT group there will be A Limited, B Limited and C Limited as the companies which can be registered jointly under a group registration.

Answer 2

1. 90 days
2. 50%
3. 15 days