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Submitted via email to: HMTVATandExcisePolicy@hmtreasury.gov.uk

RE: VAT Grouping - Establishment, Eligibility and Registration Call for Evidence

BlackRock¹ is pleased to have the opportunity to respond to **Call for Evidence on VAT Grouping - Establishment, Eligibility and Registration** issued by HM Treasury and HM Revenue & Customs.

BlackRock supports a tax regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to respond to this call for evidence and will continue to contribute to the thinking of HM Treasury and HM Revenue & Customs on any issues that may assist in the final outcome.

We welcome further discussion on any of the points that we have raised.

Yours sincerely,

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¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

Executive summary

We welcome this opportunity to contribute to this Call for Evidence, but have concerns around the timing and the potential negative impacts for business that might follow from any changes to the current way in which VAT grouping operates. In our view, the current UK VAT grouping regime works well and is straightforward for businesses to manage. Any change which restricts or materially alters the UK VAT grouping provisions would be unwelcome, particularly at a time when UK business are dealing with the impact of Covid-19 and preparing for the end of the Brexit Transition Period.

It is vital that before any changes to the VAT grouping regime are implemented, HM Treasury (“HMT”) and HM Revenue & Customs (“HMRC”) consult extensively with business to get a full assessment of the impact of those changes.

It should also be noted that as part of a wider review of VAT and financial services, the European Commission is looking at the issue of VAT grouping and cost sharing arrangements. HMT and HMRC should ensure that they consider the European Commission’s proposals on this point to ensure that UK businesses are not disadvantaged in this regard, relative to competitors established in the EU.

We are not in favour of a move to establishment only VAT grouping and are also not in favour of a compulsory VAT grouping regime.

Responses to questions

Chapter 1: VAT grouping and establishment provisions

1. What are the advantages of ‘whole establishment’ provisions; how do they facilitate business activity in the UK?

Part of the rationale behind VAT grouping is to ensure that corporate groups are not disadvantaged by an increased VAT cost, compared to businesses that can operate as a single entity or with a divisional structure.

The current ‘whole establishment’ provisions remove, to some extent, the artificial manufacturing of irrecoverable VAT on transactions between members of corporate groups which are established as separate entities for entirely non-tax related reasons. If HMRC have concerns about VAT avoidance based on ‘whole establishment’ provisions, they already have significant powers to address this.

2. Do the ‘whole establishment’ provisions make the UK a more attractive business destination than countries that utilise ‘establishment only’ provisions, both across all industries and within specific sectors?

Yes, particularly in sectors that do not have full VAT recovery on costs and sectors where, for regulatory reasons, businesses do not have complete freedom of choice in terms of their corporate form and structure.

These factors both apply to the UK Investment Management industry.

3. Are the advantages of the whole establishment provisions equally accessible to all companies? Does the size or location of the VAT group head office impact this?

Yes – the current regime does not discriminate between who can access them.

4. What additional benefits do ‘whole establishment’ provisions bring to businesses and sectors, including those unrelated to tax?

See answer to Q. 1.

5. What disadvantages arise as a result of the 'whole establishment' provisions?

None of note.

6. How would a change to 'establishment only' provisions affect UK businesses that utilise VAT grouping? Please outline both positive and negative changes.

It would lead to a significant increase in the irrecoverable VAT cost for businesses in the UK which operate in sectors that do not have full VAT recovery. To be clear, this cost would be incremental to the existing VAT cost which is a natural consequence of businesses making VAT exempt supplies.

No positive impacts are identified.

7. Which sectors would likely be affected if the UK were to adopt 'establishment only' provisions?

Investment Management businesses that operate global business models.

8. Would adopting the 'establishment only' provisions result in a reduced administrative burden for businesses?

We would not expect any a reduction in the administrative burden to result from 'establishment only' VAT grouping provisions.

9. Would adopting the 'establishment only' provisions result in any increased administrative burden from applying the reverse charge to all supplies from overseas? Would this be offset by the reduction of administration in applying the current anti-avoidance legislation, S43(2A)?

Please see the response to question 8. The current section 43(2A) provisions are well understood and for those businesses that are subject to 43(2A), the associated administrative burden is minimal.

10. Would adopting the 'establishment only' provisions have a financial impact upon affected businesses?

Yes, there would be a material impact. As noted above, this impact would specifically disadvantage those businesses which are required to be established as corporate groups compared, say, to those which can be structured as a single legal entity operating internationally through a branch network.

11. Would adopting the 'establishment only' provisions have an impact on the geographical allocation of jobs (both within and outside of the UK) in affected businesses?

Potentially, yes, although a significant number of other factors come would need to be considered in order to answer this question fully.

12. Would adopting 'establishment only' provisions impact on business competitiveness, both for those VAT groups that are headquartered in the UK and those based overseas?

Yes, for the various reasons set out above.

13. What impacts have the revised arrangements introduced in response to the Skandia ruling had on your business?

These have had a very limited impact.

14. Would any further changes to the current arrangements materially impact your business or sector?

Without knowing what these further changes might be, we cannot respond to this question in a meaningful way.

However, what we can say, again, is that the current VAT grouping regime is well understood and operates effectively.

15. Do you want to maintain the current arrangements that were implemented in response to Skandia, or reverse them?

We would need to understand better what is meant by reversing the current arrangements before we can comment on this question.

Chapter 2: Compulsory VAT grouping

16. What benefits or disadvantages could a system of compulsory VAT grouping deliver for businesses? Would this vary between different sectors?

In our view, compulsory VAT grouping would be extremely problematic. We have experience of this type of regime being implemented in other EU member states, Luxembourg being the most recent example, where it has proved to be particularly difficult to operate. In particular there are enormous challenges in identifying all entities that fall within the requirement to include in a VAT group. Also, joint and several liability provisions create issues where fund vehicles are involved and also where there is a need to ring fence an entity's risk for regulatory and/or commercial reasons.

Compulsory VAT grouping would almost certainly make the partial exemption position of a VAT groups more complex and require more frequent updating. Businesses already face enormous challenges in agreeing and amending VAT partial exemption methods with HMRC and compulsory VAT grouping would only exacerbate that problem.

The current process for adding and removing entities to or from a VAT group is clear and well understood and provides certainty for business.

We do not see any benefits from a compulsory VAT grouping regime compared to the current system.

17. How would compulsory VAT grouping impact the administrative processes for businesses?

As noted at 16. above, we already have experience in Luxembourg of the significant negative impact of compulsory VAT grouping on VAT administrative and compliance processes. This brings with it additional cost and risk for taxpayers and tax authorities alike, with no discernible benefits.

18. How would compulsory VAT grouping interact with 'establishment only' VAT grouping provisions, if they were to be implemented?

Without more detail on how HMRC would operate each of the particular regimes, it is not possible to provide a meaningful response to this question.

19. How would compulsory VAT grouping impact businesses of different sizes, and would the minimised risk of errors be of benefit?

In our view, compulsory VAT grouping would not in any way minimise the risk of error, but rather the reverse, with the risk exposure being greater for larger, more complex businesses.

20. Are there any instances where businesses are not VAT grouped for specific commercial or regulatory reasons? Please provide examples.

Yes.

- Businesses subject to regulatory ring fencing – e.g. banking groups with retail and wholesale operations;
- Fund umbrella companies where the joint and several liability associated with VAT groups is commercially unacceptable to fund boards;
- Special purpose vehicles where the joint and several liability associated with VAT groups is commercially unacceptable;
- The corporate trustee of a pension scheme which is under common control with a sponsoring employer where the scheme trustee cannot accept the joint and several liability associated with VAT grouping.

Chapter 3: Eligibility criteria: partnerships

21. How do limited partnerships (LPs) and Scottish limited partnerships (SLPs) currently participate in VAT groups?

Under the current rules limited partnerships and Scottish limited partnerships can join and participate in VAT groups in accordance with HMRC guidance and are often seen in the private equity, real estate sectors.

22. How do LPs and SLPs tend to be used within the structure of corporate groups and what is the commercial rationale for inserting them into VAT groups?

We have no comments on this question.

23. What, if any, commercial reasons are there for having more than one general partner in a LP that may affect VAT grouping arrangements?

We have no comments on this question.

24. In cases where a LP has more than one general partner, what commercial reasons are there to add more than one general partner to the same VAT group?

We have no comments on this question.

25. If the test for VAT grouping LPs/SLPs changed to a control and beneficial ownership test, how would this affect current VAT groups and the LPs/SLPs in question, including those that would be able to VAT group, and those that would have to be removed from existing VAT groups?

We have no comments on this question.

26. When considering the normal eligibility tests for VAT grouping, what would the impact be on VAT groups if those tests were applied to LPs and Scottish partnerships as a whole rather than just general partners?

We have no comments on this question.

27. Would it be beneficial to allow Scottish partnerships to join a VAT group subject to the same rules as other entities (i.e. where they are controlled, rather than controlling all other members of the VAT group)? Should the same treatment also apply to general partnerships?

We have no comments on this question.

28. Were any changes discussed in chapters one and two to be implemented, how could they impact on the inclusion of partnerships within VAT groups?

We have no comments on this question.