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The New VAT Fiscal Unity in France

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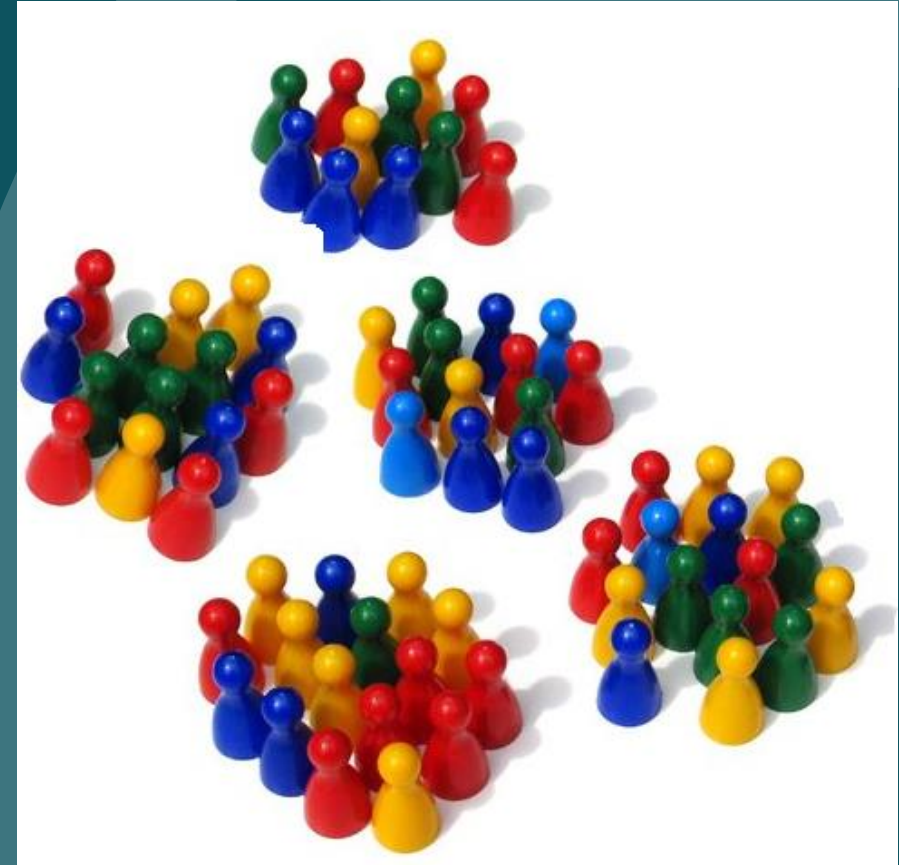
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1. Comparative French/German approaches

- ***“A single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”***

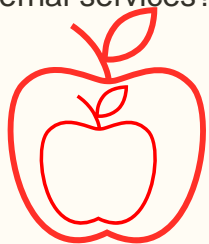
-- Louis Brandeis, *New State Ice Co. v. Liebmann*



2. VAT grouping – old issues in Germany versus new issues in France

In Germany:

- *Organschaft* since 1934
- German notion as a foundation of the EU VAT concept first seen in the 1965 Second VAT Directive
- **Mandatory** if conditions fulfilled
- Application across all business sectors
- Taxation of internal services? New referral to the ECJ...



In France:

- Birth of French single VAT-taxable person with death of art. 132 VAT exempt cost-sharing groups where activity not in the “public interest” (C-326/15 DNB Banka & C-605/15 Aviva of 21 Sept. 2017)
- *Groupe TVA* since 1/1/2023 in practice
- **Optional** if elected by 31/10 of N-1 for effective entry date at 1/1 of N → Ruling requests as a tool to secure the perimeter?
- Application mainly in practice in financial/insurance sectors given specific French wage tax implications
- Each member as a sector + sub-sectors possible

AG Medina’s opinion in C-141/20 NGD at n° 3:

*The German VAT group regime has been described in the academic commentary as akin to the fairy tales of the Brothers Grimm: ‘[that regime] reminds [one of] the poisoned apple given by the evil queen to sweet Snow White. Albeit **designed as a facilitation measure**, VAT grouping has become a **focal point of audit** for the German tax authorities ... led to numerous court cases ... resulting [in] a **bureaucratic jungle** for taxpayers who are often lost when wondering if their supposed VAT group is likely to withstand an audit’...*



3. Who's a person? From Art. 11 of the VAT Directive to Art. 256(C) of the French Tax Code

- Is the single taxable person the head of the group, meaning the controlling company?



or

- Is the single taxable person the group itself?
 - Flexibility to appoint the head group representative



- Group return or in some cases continuing possibility for members to file individual return?
- Group VAT number but also VAT numbers of individual members?

4. Specific issues in VAT grouping: concept of “close financial links”

– Holding more than 50% of share capital?

or

– Holding more than 50% of ~~share~~ capital **AND** also more than 50% of ~~voting~~ rights?



or

– Holding more than 50% of share capital **OR** also more than 50% of voting rights?



– “Deemed” financial links, a particularly French construction (art. 256 C-II-1-a) to e)?

5. Specific issues in French VAT grouping: impacts of insolvency of a member

- French Adm. Guidelines BOI-TVA-AU-20, n° 70:
 - Automatic exit of the member first day of month following that in which conditions no longer satisfied, otherwise insolvency in and of itself without impact
- Irrecoverable debts?
 - Vis-à-vis the Treasury? Jointly/severally liable for VAT
 - Debt between group members but stemming from pre-constitution of group? CA3 12/22 for regularization
- VAT grouping and VAT recovery? VAT grouping and non-taxability of internal supplies?
- Otherwise, option for mandatory initial 3 year period, following which, possibilities to opt in/opt out with effective entry/exit on 1/1/ of the following year



- German practical experience, insolvencies of entities in VAT groups and opportunities for broader claims vis-à-vis debtors of the overall group?
- Other opportunities encountered in Germany compared to initial experiences in France:
 - Deduction of costs in cases of share purchases?
 - More streamlined VAT return filing and payment?

6. French commentary on recent cases from European Court of Justice on VAT & Germany

C-141/20 - NGD mbH:

1. [...] must be interpreted as **not precluding** a Member State from designating, as a **single taxable person** of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, **the controlling company of that group**, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.
2. [...] must be interpreted as **precluding** national legislation which makes the possibility for a given entity to form, with the undertaking of the controlling company, a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links **conditional upon that controlling company having, in that entity, a majority of the voting rights in addition to a majority holding in the share capital of that entity**.
3. [...] must be interpreted as **precluding** a Member State from classifying, by categorisation, given entities as non-independent, where those entities are integrated, in financial, economic and organisational terms, into the controlling company of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links.

C-269/20 - S (a German foundation governed by public law):

1. [...] must be interpreted as **not precluding** a Member State from designating, as a **single taxable person** of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, **the controlling company of that group**, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.
2. EU law must be interpreted as meaning that in the case of **an entity which is the single taxable person of a group** formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, and which carries out, on the one hand, **economic activities for which it is a taxable person and, on the other, activities in the exercise of its powers as a public authority, in respect of which it is not considered to be a taxable person liable for value added tax** under Article 4(5) of the Sixth Directive, **the provision, by an entity forming part of that group, of services in connection with that exercise of powers, must not be taxed under Article 6(2)(b) of that directive**.

 Questions?

 Conclusions...

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