



## F3B17-19 CL52 AND SCHEDULE 17: VAT GROUPING AND GROUP ELIGIBILITY (CL52 & SCH17 F3B17-19)

Issued 3 December 2018

Text of briefing submitted on 27 November 2018 to MPs by ICAEW Tax Faculty on Clause 52 and Schedule 17: *VAT grouping and group eligibility* in **Finance (No.3) Bill 2017-19** published on 6 November 2018

This briefing submitted on 27 November 2018 for the Finance Bill Public Bill Committee debates was prepared by the ICAEW Tax Faculty. For further details on who we are please see Appendix 1.

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## FINANCE (NO.3) BILL 2017-19: CLAUSE 52 AND SCHEDULE 17: VAT GROUPING AND GROUP ELIGIBILITY

TEXT OF BRIEFING SUBMITTED TO MPS ON 27 NOVEMBER 2018

### WHO WE ARE

1. Please see Appendix 1.

### SUMMARY OF THE MEASURE

2. This clause and Schedule amend section 43A of the Value Added Tax Act 1994 (VATA). Schedule 17 widens the eligibility criteria for VAT grouping and allows non-corporate entities to join a VAT group, subject to certain conditions.

### RECOMMENDATIONS

3. We feel that the phrase “carrying on a business” in sections 43A(4) and 43A(5) makes the clause too restrictive.
4. We suggest that the words “carrying on a business” be removed from the amendments to sections 43A(4) and 43A(5).

### OUR CONCERNS

5. A requirement of the clause is to implement the decision of the CJEU in the case of EC v UK (C-86/11), where it was held that the Commission’s interpretation (that VAT grouping be restricted to persons who are taxable persons) was not correct. A summary of the case can be found at:  
<http://curia.europa.eu/juris/document/document.jsf?jsessionid=C7D857343088C36BD18B3F106652BA8F?text=&docid=136793&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3534263>
6. When draft legislation was published for consultation earlier in 2018, we submitted **ICAEW REP 102/18** in response. We expressed concern that, as far as individuals and partnerships are concerned, the right to join a VAT group (subject to HMRC’s anti-avoidance powers) would be excluded for an individual or a partnership which is not liable or is not eligible to be registered under Sch1. Consequently, the draft section 43A (4) (c) and section 43A (5) (c) to VATA 1994 as at the time of the consultation were contrary to the CJEU decisions in the cases C-86/11 Commission v UK (this case was to do with the inclusion of non-taxable persons in VAT groups) and Commission v Ireland case C-85/11 (which was to do with the inclusion of businesses making wholly exempt supplies being included in VAT groups).
7. We are pleased to note the clauses have been changed since the consultation, but are concerned that the changes made are insufficient to comply with the CJEU decisions referred to above. This is because the inclusion of the words “carrying on a business” where highlighted below do not allow non-taxable persons to join a VAT group.
8. Schedule 17 of the Finance (No.3) Bill 2017-9 includes the following amendment to Section 43 A of VATA 1994:
  - (1) Section 43A of VATA 1994 (groups: eligibility) is amended as follows.
  - (2) In subsection (1), in the opening words—
    - (a) for “bodies corporate” substitute “UK bodies corporate”;

(b) omit “each is established or has a fixed establishment in the United Kingdom and”.

(3) Omit subsections (2) and (3).

(4) At the end insert—

“(4) An individual **carrying on a business** and one or more UK bodies corporate are eligible to be treated as members of a group if the individual—

(a) controls the UK body corporate or all of the UK bodies corporate, and

(b) is established, or has a fixed establishment, in the United Kingdom in relation to the business.

(5) Two or more relevant persons **carrying on a business** in partnership (“the partnership”) and one or more UK bodies corporate are eligible to be treated as members of a group if the partnership—

(a) controls the UK body corporate or all of the UK bodies corporate, and

(b) is established, or has a fixed establishment, in the United Kingdom in relation to the business.

(6) In this section—

(a) “UK body corporate” means a body corporate which is established or has a fixed establishment in the United Kingdom;

(b) “relevant person” means an individual, a body corporate or a Scottish partnership.

(7) Section 43AZA contains provision for determining for the purposes of this section whether a body corporate, individual or partnership controls a UK body corporate.”

## SUGGESTED AMENDMENTS TO ACHIEVE THE ABOVE

9. We suggest that the words “carrying on a business” be removed from the proposed amendments to sections 43A(4) and 43A(5) of VATA 1994.

## FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.

## CONTACT DETAILS

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## APPENDIX 1

### ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

## APPENDIX 2

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).