HMRC - VGROUPS02550 - Unauthorised VAT Group Treatment

General

This occurs where businesses have been acting as a VAT group and assume that it is acceptable to HMRC. Although all the conditions may have been fulfilled throughout, the companies have not applied for, nor been granted, group treatment. Where it comes to our attention that this has happened HMRC would expect co-operation from the businesses as we carry out our investigation. You should be aware that in such circumstance a formal application for group VAT treatment is required and HMRC must consider each case on its own merits. We would also expect a detailed explanation as to why a formal application was not submitted previously, how supplies have been treated between companies and how VAT has been accounted for. Where retrospective group VAT registration is applied for, we need to make a decision based on the facts of each case and approval is subject to the eligibility criteria for group VAT treatment being fully satisfied and any VAT due having been properly accounted for by the “acting” representative member of the VAT group.

Unauthorised VAT group membership

Unauthorised membership of a VAT group occurs where an individual company acts as if it were a member of VAT group without applying for, and being granted, inclusion in the group. If the group is partly exempt, this could result in significant loss of revenue relative to separate VAT registrations. Inclusion may be allowed from a current date, but if it is, it will be necessary to establish whether the company should have been registered separately up to the current Group inclusion date. Each application for retrospective VAT grouping should be considered on its own merits. Applications should be treated equally regardless of who identified that the ‘VAT grouping’ is unauthorised (HMRC or the companies themselves). You need to be aware that HMRC may need to consider the issue of assessments and penalties if applications for retrospection are refused.

The factors that should normally apply when considering a request for retrospective VAT grouping are:

whether VAT grouping would have been granted at the time;

whether VAT grouping would lead to objectionable results in any way, for example it facilitates avoidance;

the business must demonstrate that there was a genuine misunderstanding or error which led to their failure to apply for grouping. This does not include ignorance or an error of judgment, for example, they could have arranged things to better effect if they had chosen to VAT group earlier;

the business must provide a detailed explanation as to why there was a delay in submitting the application;

whether all supplies between the companies have been treated consistently with VAT grouping; and

the ‘acting’ representative member has properly accounted for any VAT due (i.e. there is no need to amend or replace previous VAT returns).

You are not expected to work on the mechanistic basis that every business which does not meet all of the above factors must automatically have its retrospective application refused. You should consider each business’ circumstances separately and think about how a First Tier Tribunal judge might regard those circumstances should the business appeal against a decision to refuse the request.

The test of any decision is that it is reasonable and proportionate in all the circumstances of the case.

It is important that you:

take account of all relevant factors;

don’t allow irrelevant factors to prejudice your judgement;

weigh the impact, if any, which granting the request would have on the extra administration costs for the business and HMRC against the inconvenience of recreating the VAT position.

You should keep a written record of every decision – this is particularly important where you have refused the request. This should include factors you considered and any other relevant information that you took into account. Save the record to EF so that, if the decision is appealed, your appeals team colleagues will be able to see how you reached it.

You should discuss cases of difficulty with your team leader. In any cases of doubt, or where you feel that there is a need to do so, you should submit a Technical Advice Request (TAR) with full details and a reasoned recommendation to the VAT Advisory policy team.

Guidance about the process for submitting requests to the VAT Advisory policy team can be found in VPOLADV

Where it is demonstrably the case that the unauthorised group treatment has occurred as the result of HMRC error, so long as the company is eligible for group VAT treatment, HMRC would always retrospectively formalise the company’s inclusion in the group. (Please see VGROUPS04800 and VGROUPS04850 for more detail).

HMRC will always refuse retrospective VAT grouping if we believe it is being used for avoidance, abuse or evasion.

Previous page

Next page