

vat's important  
Retroactive VAT group taxation

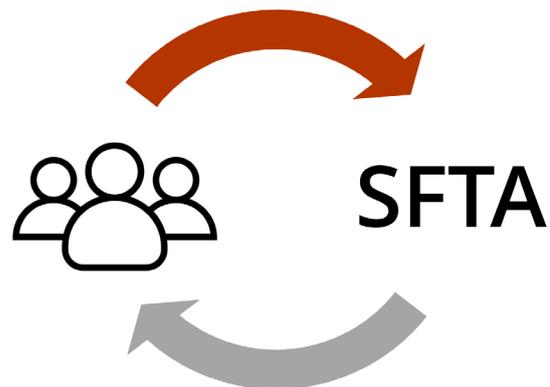
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Many Swiss groups apply VAT group taxation in order to benefit from the considerable financial advantages resulting from the elimination of taxation of internal turnover. The possibility of taxation is often discussed much later, after the establishment and/or VAT registration of a Swiss company. Is a retroactive combination as a VAT group even possible?

At the beginning of the year, the Swiss Federal Supreme Court had to decide in the case of a globally operating insurer and reinsurer whether retroactive group taxation was possible in the specific case (decision 2C\_962/2018 of 29 January 2020), after the SFTA rejected the insurance group's application to this effect and the Swiss Federal Administrative Court also dismissed the appeal lodged against it.

**When is group taxation possible and what is its effect?**

According to Art. 13 para. 1 VAT law, legal entities with their registered office or permanent establishment in Switzerland, which are closely associated with one another under the common management of a single legal entity, may on application combine as a single taxable entity (so-called VAT group). The purpose of group taxation is to eliminate the effects of supplies exempt from the VAT without credit („taxe occulte“) within the group and at the same time to simplify administration. Turnover between group members („internal turnover“) is not taxed, while „external turnover“ is directly attributable to the VAT group. By law, each member of a VAT group, with the exception of pension funds, is jointly and severally liable for VAT debts (tax, interest and cost claims) that arise during its membership.



**When does group taxation begin?**

In principle, the decision to combine as a VAT group may be made for the beginning of any tax period following the application. Retroactive registration of a VAT group with effect from the beginning of the current tax period is exceptionally only possible if no group member has yet submitted the VAT return and the deadline for submitting the return has not yet passed. The taxable person must submit a VAT return to the SFTA within 60 days of the end of the reporting period.

In the case decided by the Swiss Federal Supreme Court, two companies wanted to combine as a VAT group. At the time of the application, the first company was still not liable to the VAT and the second company had not yet been able to assess at the time it started its business activities whether the turnover limit under Art. 10 para. 2 lit. a VAT law would be exceeded.

### What does this mean for my company?

In principle, the mandatory VAT liability for Swiss companies begins with commencing the business activity, provided that the company generates at least CHF 100,000 within one year on Swiss territory and abroad from supplies that are not exempt from VAT without credit. If the company is initially exempt from VAT liability, the exemption ends as soon as the total turnover generated in the last financial year reaches CHF 100,000 or if it is foreseeable that the threshold will be exceeded within 12 months of commencing or extending the business activity.

As long as, when commencing or extending the business activity, it is not yet foreseeable whether the relevant turnover threshold for VAT registration will be exceeded within 12 months, a business cannot have been obliged to submit a VAT return. Until such time as this is clear, the combination as a VAT group can therefore be considered and decided upon. However, when a company combines as a VAT group, it is always assumed that the other potential group members have not yet submitted a VAT return or that the deadline for doing so has not yet expired.

### What do I have to consider?

All VAT group members must close their accounts on the same balance sheet date. In addition, they must settle according to the same settlement type (i.e. either according to agreed or received remuneration) and have the same settlement period.

Group internal turnover (expenses and income) must be presented separately in the accounts (separate accounts or separate tax code). Documents proving turnover of the legally independent group members must be prepared in accordance with the provisions of commercial law. If the internal turnover are only recorded in the books, they must be documented by means of internal booking documents in accordance with the principle „no posting without document“. Documents on internal turnover do not refer to the VAT.

Also with regard to the right to deduct input VAT, all members involved in group taxation are considered together as one taxable entity. This means that the entitlement to deduct input VAT is based on the purpose of use in the external relationship.

As your VAT and customs team, we will be happy to support you in deciding whether and from when a VAT group is appropriate for your group.

With best regards from your VAT team

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