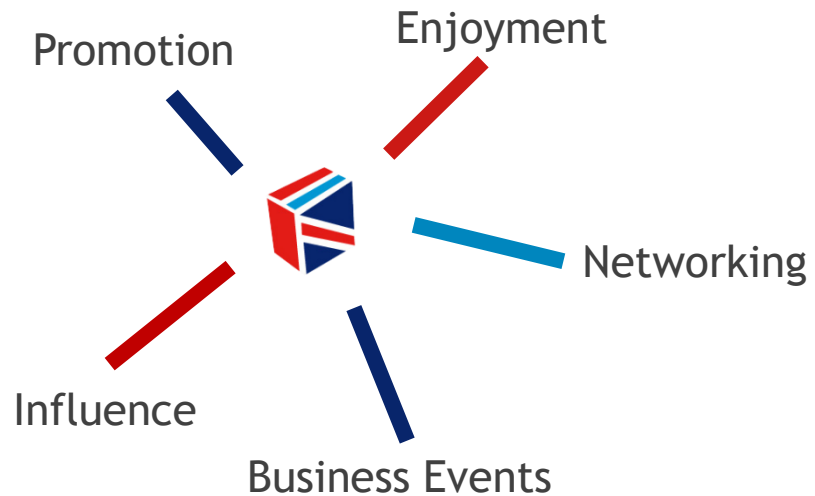




Established in 1992, The BCC provides its members in Luxembourg's international English-speaking community with a platform for networking with decision makers and business contacts, promoting their companies, products and services, and obtaining and exchanging information on the latest developments affecting business and living and working in Luxembourg.



BE A PART OF IT
w w w . b c c . l u

Open business club



VAT Update

Karine Bellony - Founding Partner VAT Solutions

2019/20 VAT Update - Hear it from the Experts

24th January 2019
Deloitte Luxembourg

2019/20 VAT Update - Hear it from the Experts

Agenda

Update on Brexit

VAT changes for 2019

The VAT Group regime: Not just for the financial industry!

VAT changes announced for 2020 ... and after

Update on Brexit

On 15th January 2019, the withdrawal agreement between the EU and the UK was rejected by the UK parliament. The transition period, during which current VAT and customs rules would have applied until end of 2020, was part of the rejected agreement.

Possible options are now as follows :

- The UK negotiates a **new withdrawal agreement** with the EU
- Or the UK **revokes unilaterally its notification to withdraw from the EU**
(as the theoretical possibility to do so was confirmed by the ECJ on 10th December 2018 – Case C-621/18)
- Or the **withdrawal date of 29th March 2019 is postponed**
- Or the UK withdraws from the EU on 29th March 2019 **without any withdrawal agreement**

If the last option applies, the [impact of Brexit on VAT and customs](#), as explained during the BCC VAT & Customs conference held on 27th September 2017, remains applicable.

VAT changes for 2019

Vouchers

New articles 19bis and 19ter of the LVATL (Directive 2016/1065)

Definition of the **concept of vouchers**: Distinguish between single- and multi-purpose vouchers.

- Single purpose voucher : any transfer of such a voucher by a taxable person is subject to VAT
- Multi purpose voucher : only the actual handing over of goods or provision of service is subject to VAT

E-commerce

New provisions of the articles 17.2.7bis, 56 quinquies.2. & 63.3.c. of the LVATL (Directive 2017/2455)

- New yearly **threshold of 10 000 EUR** to determine the place of taxation of telecommunication, broadcasting and electronically supplied services supplied to non taxable persons in the EU
- **Non EU suppliers**, who are required to be registered for VAT in the EU for other activities, **are now allowed to use the VATMOSS system**
- **Invoices must be issued in conformity with the LVATL** if the Luxembourg VATMOSS system is used for telecommunication, broadcasting and electronically supplied services to non taxable persons

Normal value

Circular Nr 790 dated 18th January 2019

Comments concerning the new article 28.3. of the LVATL implementing the concept of “**normal value**” to determine the taxable basis of transactions between related parties (article 4 of the Law dated 6th August 2018)

AEDT organisation

Circular Nr 791 dated 18th January 2019

Comments concerning the **new organisation of the execution services** of the AEDT. No particular changes for VAT – The *Recette Centrale* in Luxembourg remains competent for VAT & the competence of *Bureaux d'imposition* remains unchanged

The VAT group: not only for the financial industry

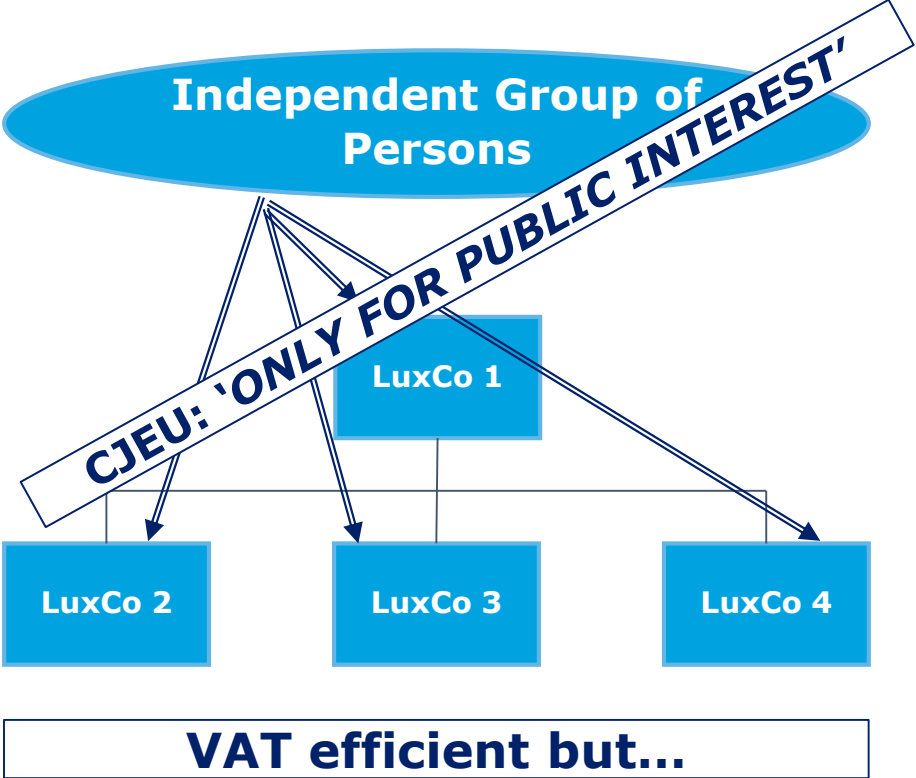
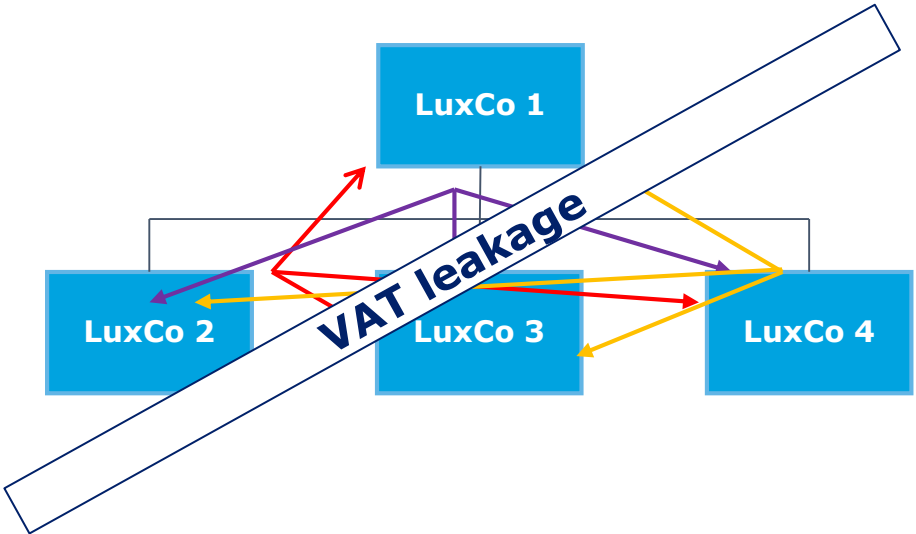
**Michel Lambion - Managing Director, Indirect Tax, Deloitte
Luxembourg**

Introduction

From a tool restriction to a broader tool

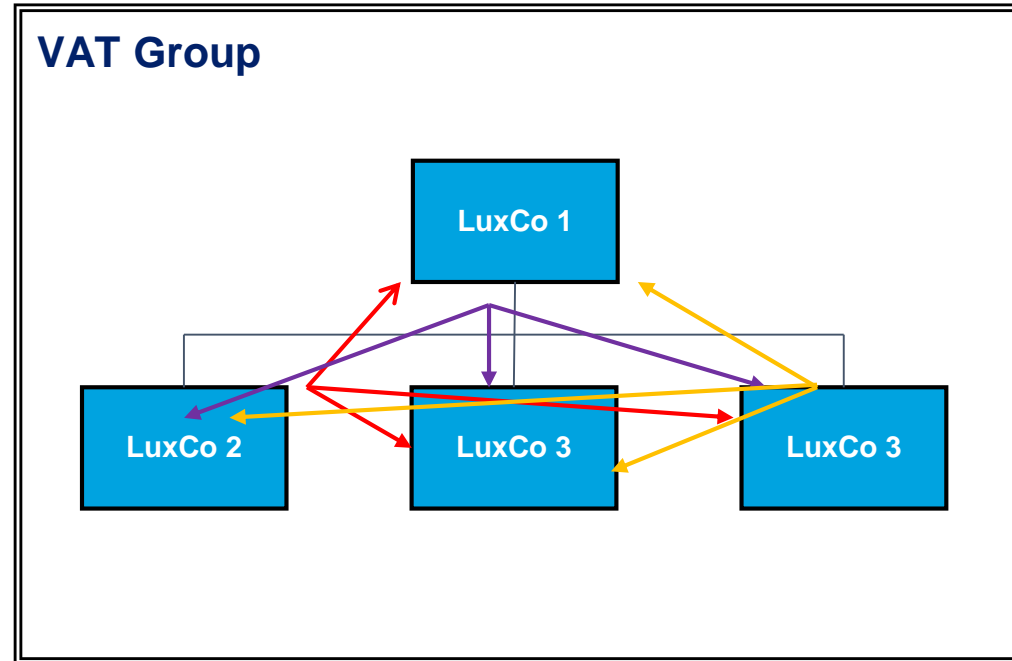
Introduction

The Independent Group of Person restriction



Introduction

The VAT group – A remedy that goes further...



Law of 26 July 2018, in force as from 31 July 2018

The VAT group in the European Union

Overview

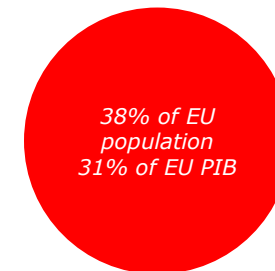
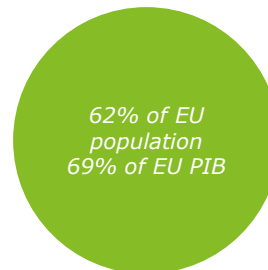
The VAT group within the European Union

Overview

Based on a provision of the EU VAT Directive

- (...) each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by **financial**, **economic** and **organizational** links

Implemented in 18 EU Member States



4 main features

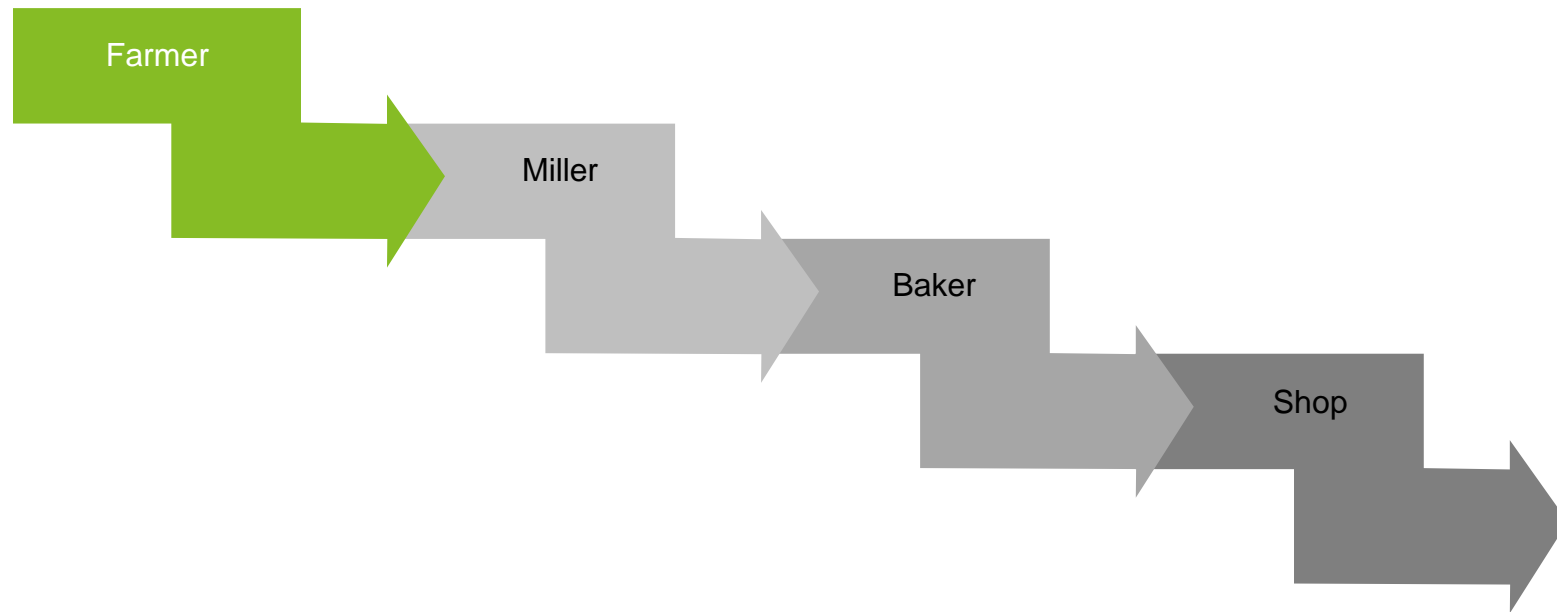
- No VAT on transactions taking place between entities belonging to the same VAT group;
- Only one consolidated VAT return;
- Only entities established in the same Member State;
- Joint VAT liability of the members during their belonging to the group.

The VAT group in Luxembourg

Overview

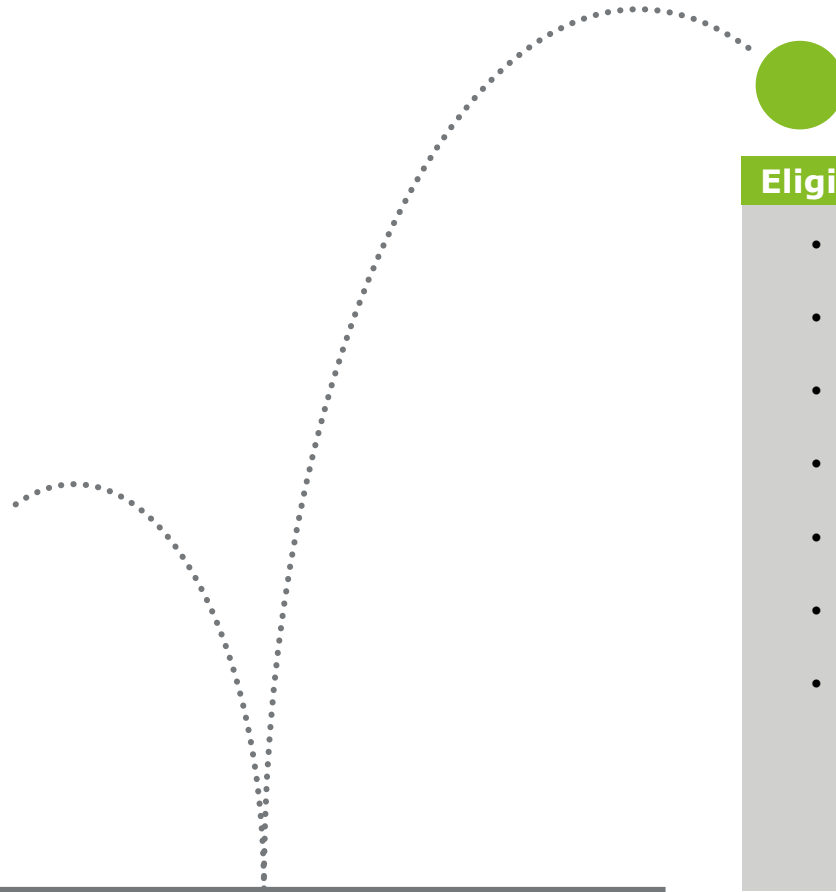
The Luxembourg VAT group

Key concept: "the integrated undertaking" or "value chain"



The Luxembourg VAT group

Design of the VAT group provisions in Luxembourg



Eligibility ?

- Taxable and **non taxable persons** (holdings)
- Individuals/entities without legal personality
- Luxembourg branch of foreign companies
- **Available to all industries**
- A person could be part of only **one** Luxembourg unity : JV !
- Membership to a group could last at least two civil years
- **Organizational, economic and financial links** are required

The Luxembourg VAT group

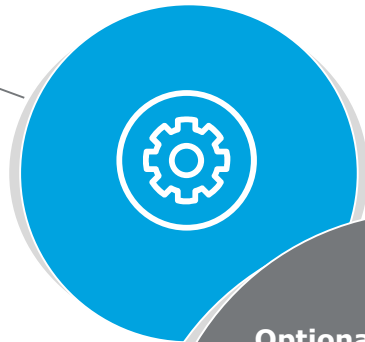
Design of the VAT group provisions in Luxembourg

Economic link

- The main activity of the members is of the same nature, or
- The activities of the members are complementary or influence themselves or are part of a same common economic objective, or
- The activity of a member is exercised totally or partly for the economic activities of the other members

Organizational link

- Are legally or de facto, directly or indirectly under a common management; or
- Organize their activities totally or partly in a concerted manner; or
- Are legally or de facto, directly or indirectly, under the control of one single person.



Optional but...
 Setting up a VAT group is an option but when it is decided to set up a VAT group, **all members that meet the three criteria must be members !**

NO CHERRY-PICKING !

Financial link



Article 1711-1§1, 1, 1°, 2° and 3° of the Luxembourg corporate law:

A company must draw up consolidated accounts and a consolidated report if it :

1° Has a majority of the shareholders' or members' voting rights in another undertaking; or

2° Has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is at that time a shareholder in or member of that undertaking; or

3° Is a shareholder in or member of an undertaking, and control alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or member's voting rights in that undertaking

Opt-out clause



The non-participation does not lead to a tax saving
 The potential member is not integrated in the value chain between other members

The VAT group in Luxembourg

Set-up and exit

The Luxembourg VAT group

Set-up and exit

The VAT group must designate a representative

- *the «head» of the control, or*
- *the one with the highest turnover or income, or*
- *The one who is the most "capable"*
- *The representative must have an access to the information of all members and the necessary resource*

The representative is the first responsible of all payments towards the VAT authorities.

The VAT group must register for VAT purposes

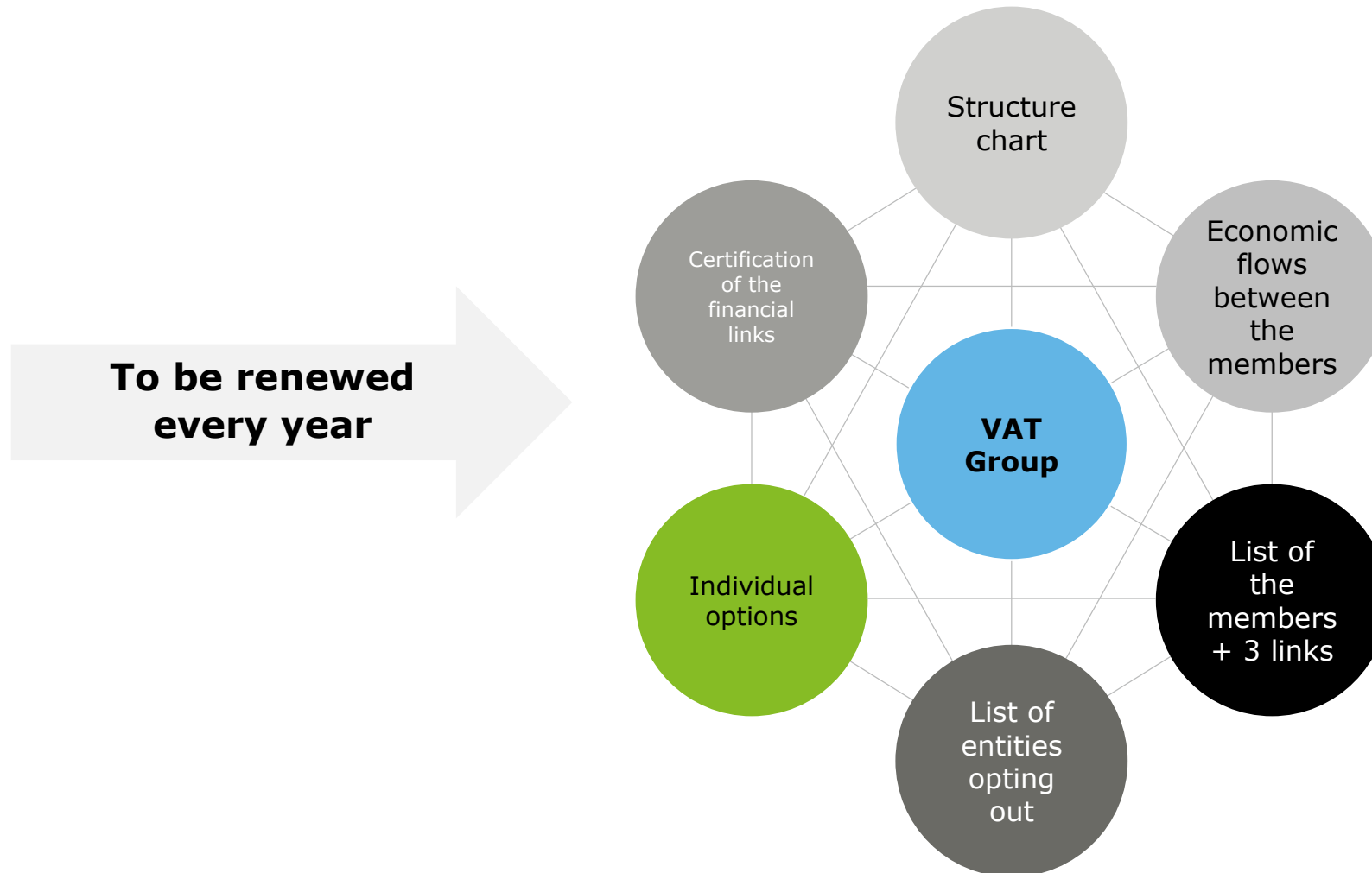
*The VAT group is a "tax fiction". The granting of the VAT number is **not** a confirmation of the validity of the group*

→ No "preclearance" but ...

- **The declaration enters in force the 1st day of the month following a delay of 15 days starting as from the reception of the request by the VAT authorities**

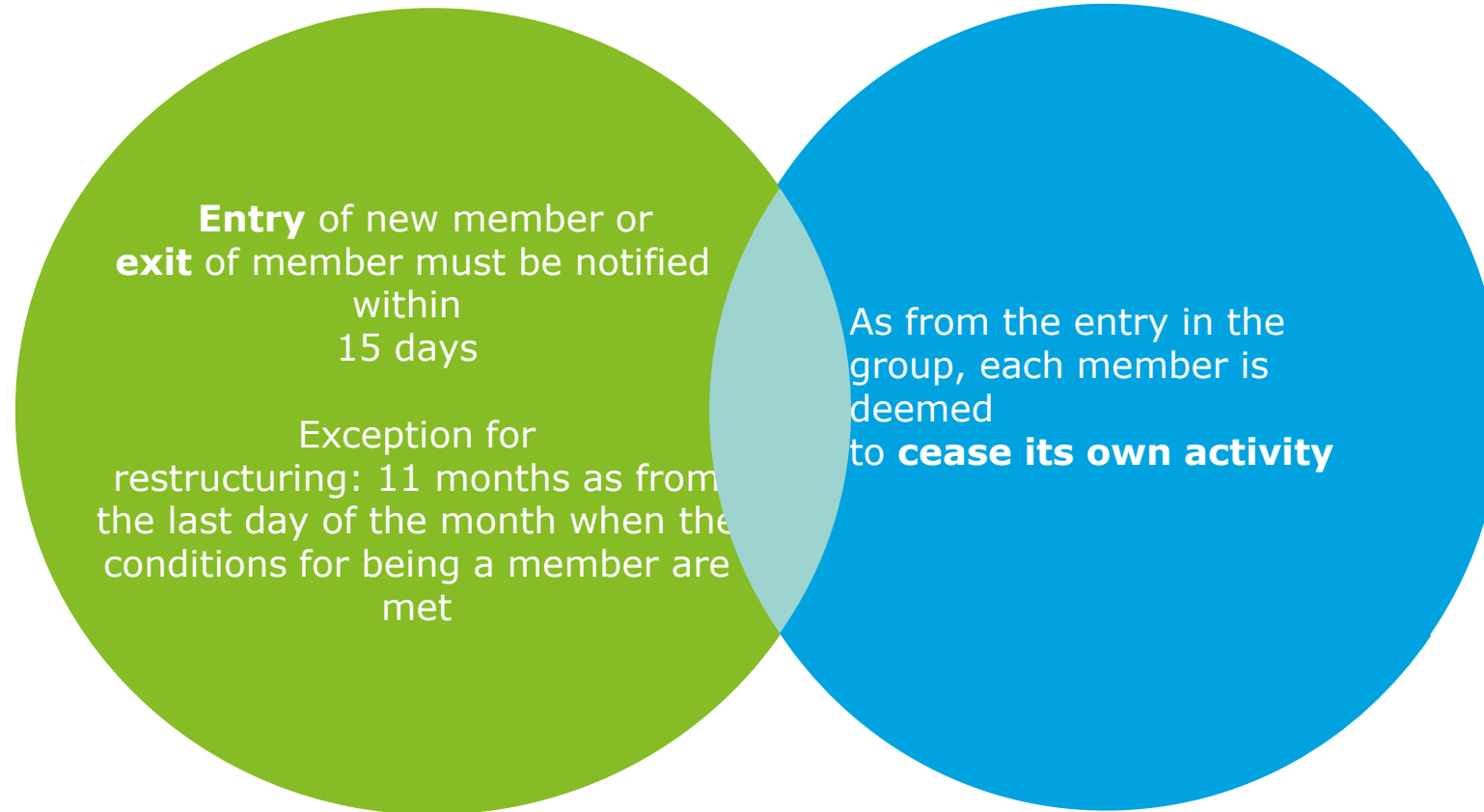
The Luxembourg VAT group

Set-up and exit – Documents for the VAT registration



The Luxembourg VAT group

Set-up and exit



The VAT group in Luxembourg

Day-to-day

The Luxembourg VAT group

Group VAT number and Auxiliary VAT numbers

Group VAT number

- Filing of th consolidated VAT returns
- VAT refunds in other EU member states
- Registration under the MOSS

VAT
NUMBER

Auxiliary VAT numbers

The VAT numbers of the members will be kept and become “auxiliary numbers” of the VAT group and will be used for relationship with third parties.

If a member leaves the group, it will get its VAT number back.

- Invoices to third parties
- Invoices from third parties
- European Services /Sales listing

The Luxembourg VAT group

Day-to-day

Transaction between members

Each transaction between members must be documented by a specific document or a document replacing the invoice:

- Nature, value, place and date of the transaction
- If a document replacing the invoice is issued it must refer to the VAT group regime

Group VAT return appendices

The group must enclose to the annual VAT return the amounts of transactions made between the members

Responsibility of the group for VAT adjustments

The group is the successor of the members for the adjustments of the taxable basis and the adjustments of the VAT deducted including the VAT adjustments on capital goods

Responsibility of a member leaving the group for VAT adjustments

When a member leaves the group, he is the successor of the group for the adjustments of the taxable basis for transactions performed during his appurtenance to the VAT group and the adjustments of deducted VAT including the VAT adjustments on capital goods

The Luxembourg VAT group

Advantages for taxpayers with a full input VAT deduction

Preventing the pre-financing of VAT on internal transactions

Tax payers in a VAT credit position may have to wait up to the assessment of their annual return to actually recover their cash.

Administrative simplification (?)

- *Clearing of payments*
- *One single return (but...)*

Enhance the VAT situation of other members

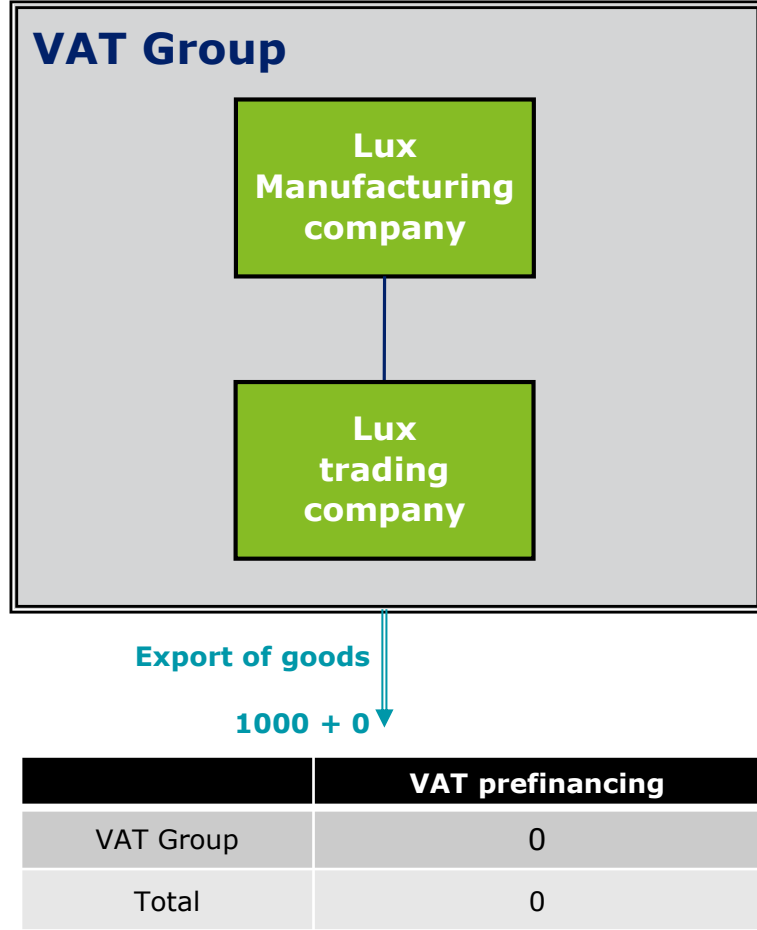
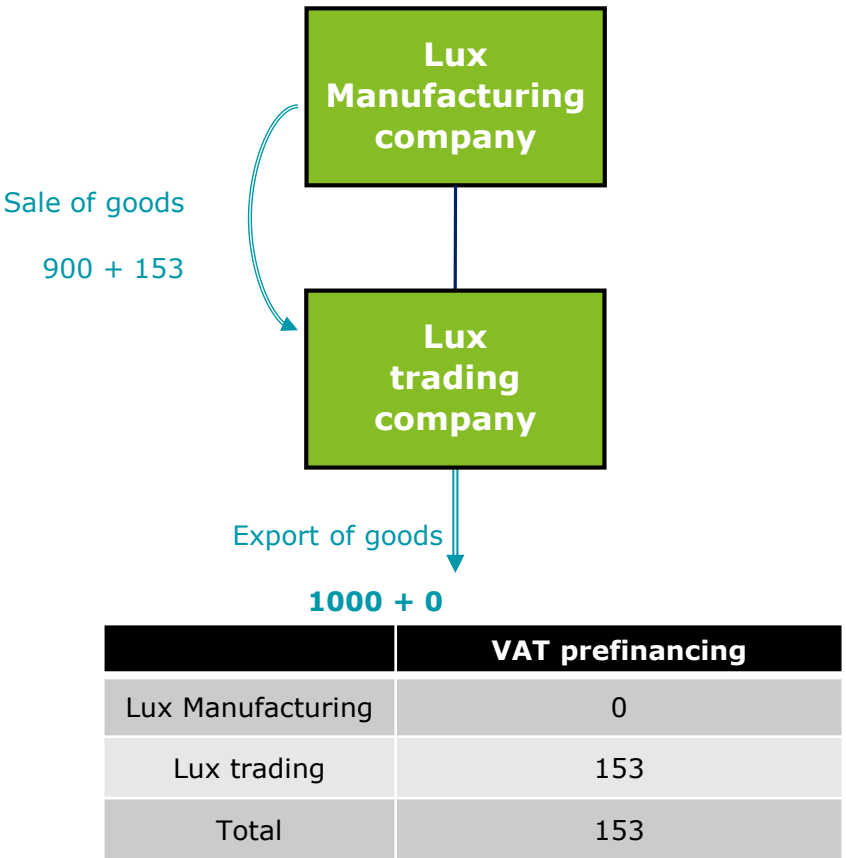
e.g. finance or holding companies

The VAT group in Luxembourg

Examples

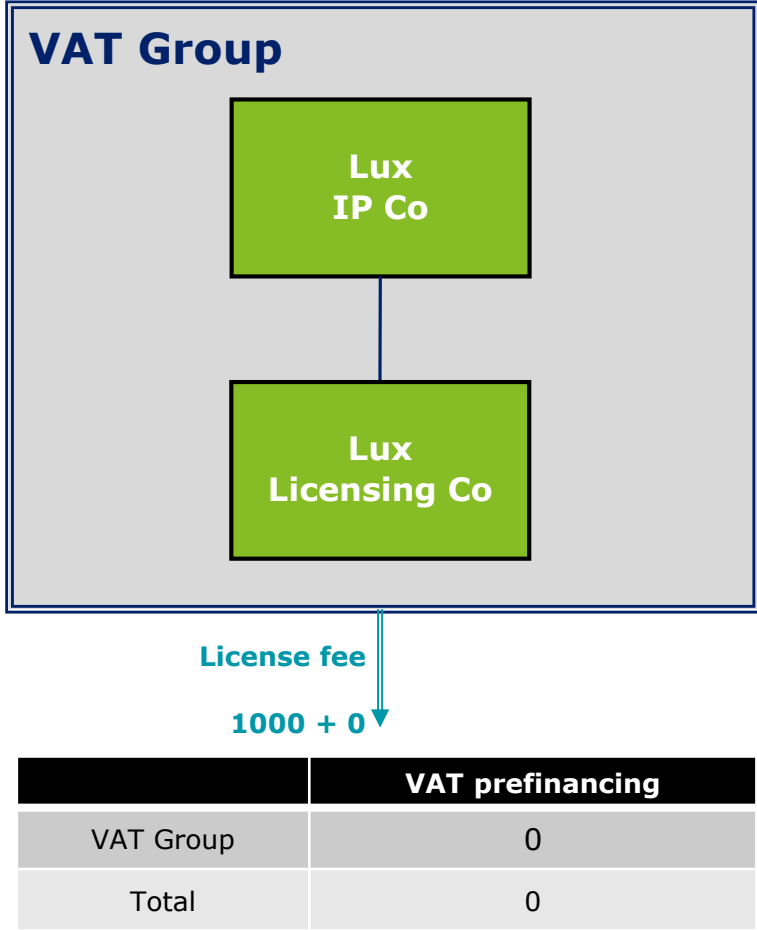
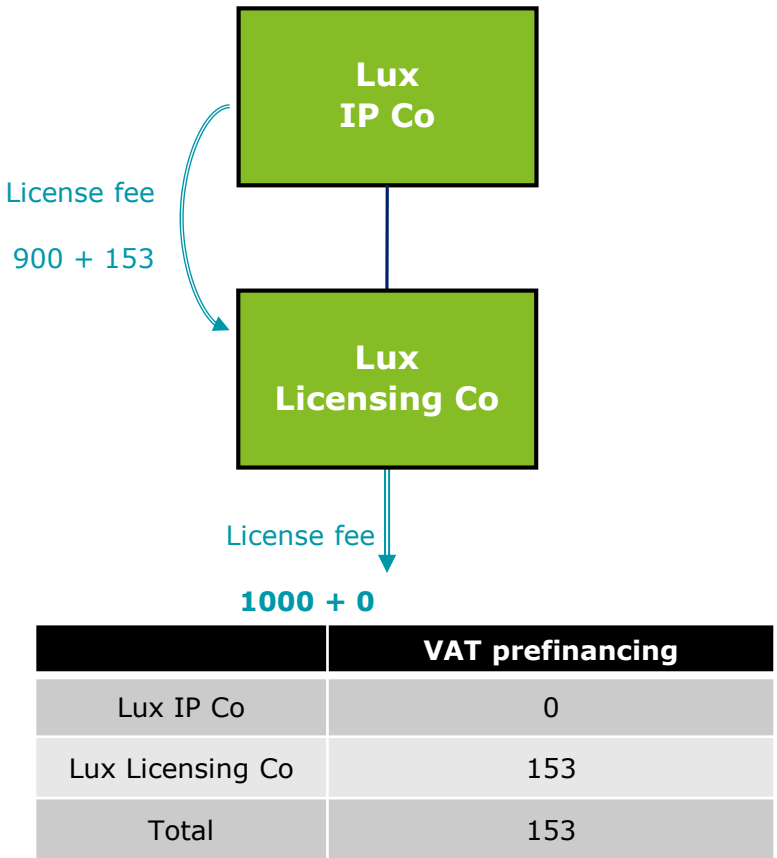
The Luxembourg VAT group

Example: Trading company



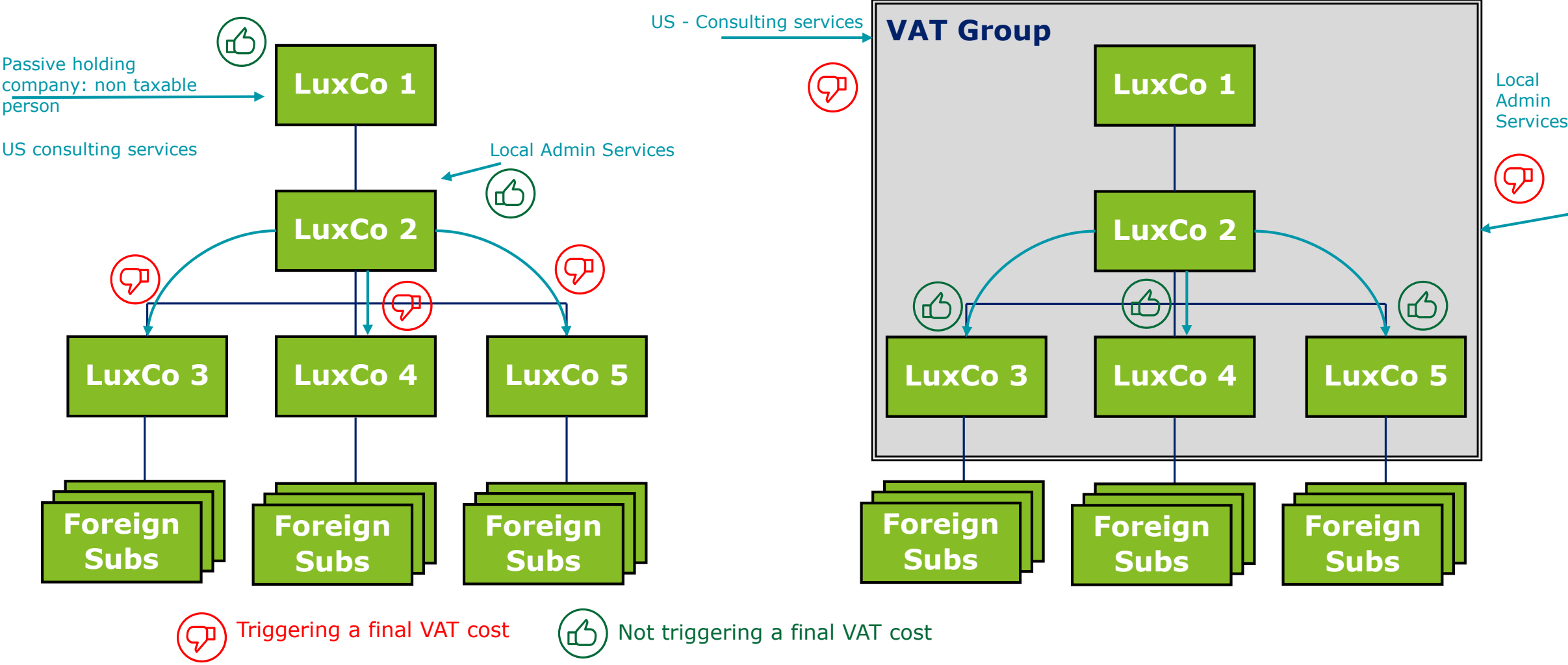
The Luxembourg VAT group

Example: IP company



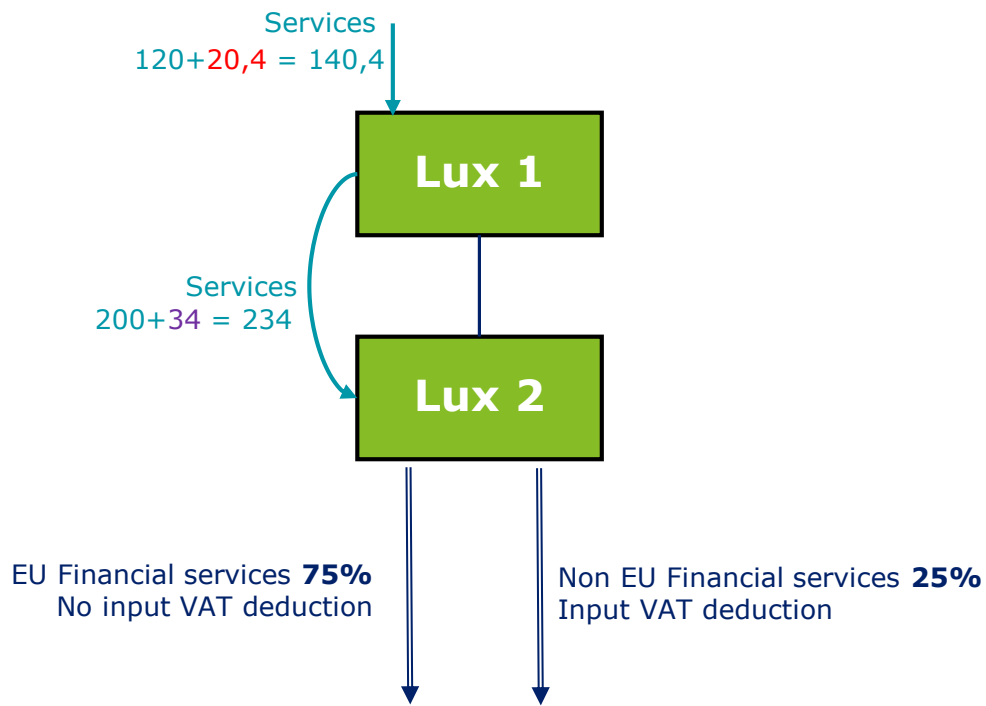
The Luxembourg VAT group

Example – Holding structures

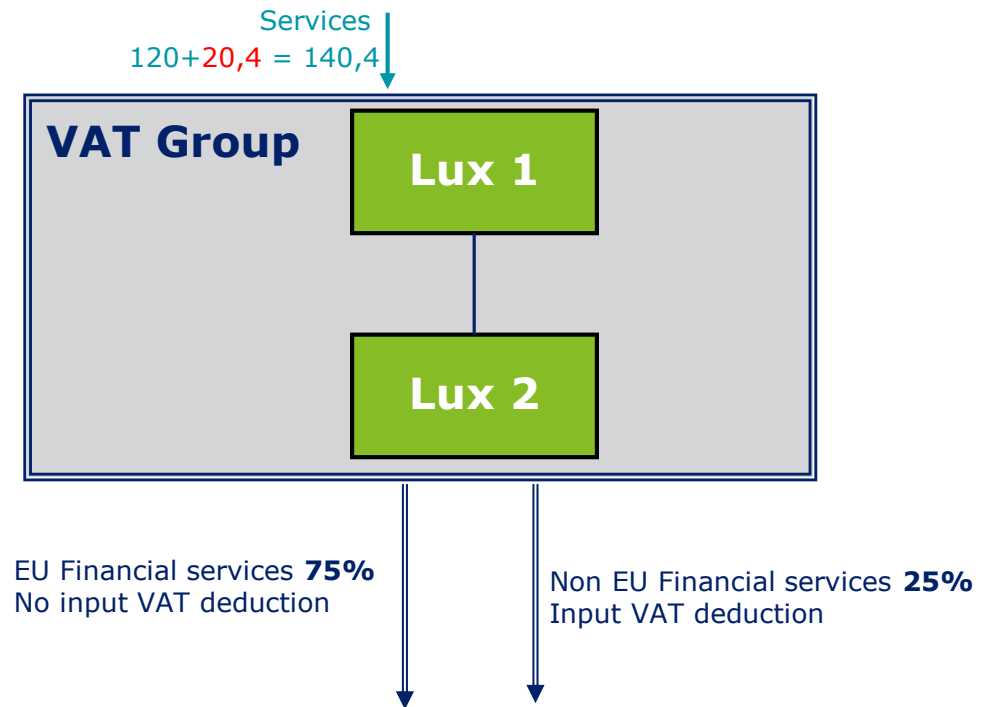


The Luxembourg VAT group

Example - Limited VAT deduction



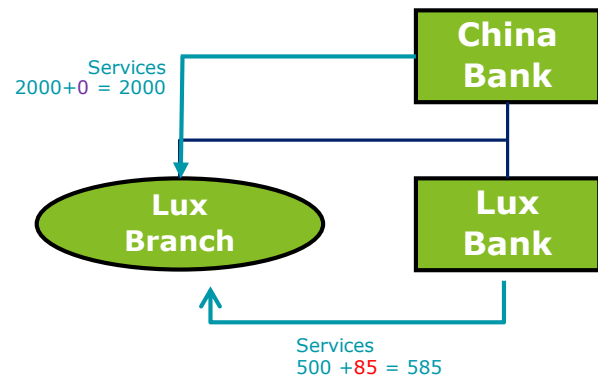
| | Non recoverable VAT |
|----------------|--------------------------|
| Lux 1 | 0 |
| Lux 2 | 25,5 $34 \times 75\%$ |
| Total VAT cost | 25,5 |



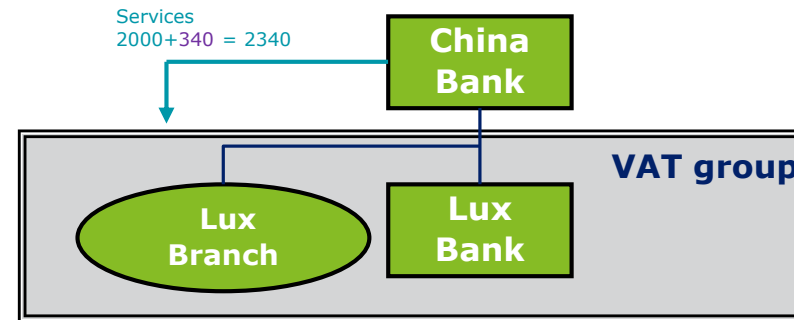
| | Non recoverable VAT |
|----------------|----------------------------|
| VAT Group | 15,3 $20,4 \times 75\%$ |
| Total VAT cost | 15,3 |

The Luxembourg VAT group

Example – Bank with a branch



| | non déductible VAT |
|-----------------------|--------------------|
| Lux Branch | 85 |
| LuxCo | 0 |
| Total VAT cost | 85 |



| | non deductible VAT |
|-----------------------|--------------------|
| VAT group | 340 |
| Total VAT cost | 340 |



The VAT position of branches is due to a CJEU decision (Skandia) applicable in all EU :

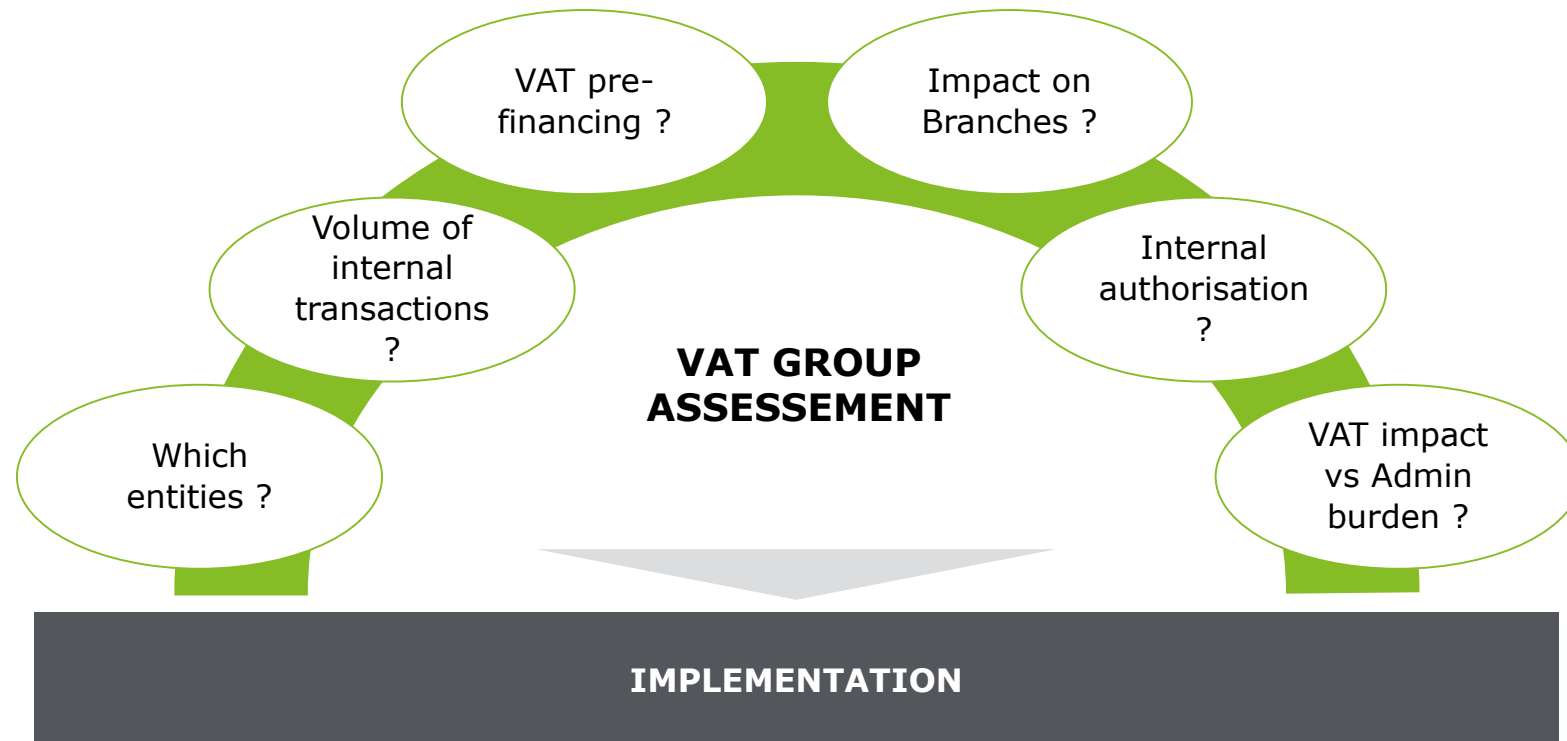
VAT groups in other Member states are faced with the same issue

The VAT group in Luxembourg

Conclusion

The Luxembourg VAT group

Key points to consider





Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 286,000 people make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

VAT Changes

Karine Bellony - Founding Partner VAT Solutions

VAT changes announced for 2020

Proofs of intracommunity supply (EU Regulation 2018/1912)

Defines the nature of evidence the vendor shall keep to justify the exemption for intracommunity (IC) supply of goods.

Vendor shall be in possession of at least two items of non-contradictory evidence, which were issued by two different parties that are independent of each other, of the vendor and of the acquirer

Exemption for intracommunity supply (EU Directive 2018/1910)

New substantive conditions for the application of the exemption for IC supply of goods :

- The taxable person who buys the goods is registered for VAT in a member state other than that in which the transport begins, and has indicated his VAT number to his supplier
- The supplier has declared the transaction in his recap statement for IC supply of goods

Consignment stock (EU Directive 2019/1910) (EU Regulation 2018/1909)

In case a company transfers goods of its own to another EU member state, and the goods are to be sold to a pre-identified taxable person in that member state at the time of the transfer, the company transferring the goods no longer needs to register for VAT in that member state

Substantive and formal conditions apply

Chain transactions (EU Directive 2018/1910)

Defines the way to describe the transport in case the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain

VAT changes announced and expected effective 2021

E-commerce 2021

(Directive 2017/2455)

(+proposal of Directive and EU Regulation dated 11th December 2018)

- Distance sale of goods are taxable in the country of destination
- Extension of the VATMOSS system to other type of services and to distance sale of goods
- Taxable persons who facilitate supplies made by other taxable persons through the use of an electronic interface such as marketplace, platform, portal or similar means are liable for VAT on the supplies made by the users of this interface

And ... after 2022 ?

Proposal of Directives dated 18th January 2018

Measures for small entrepreneurs

- Pan European tax exemption scheme for yearly revenues below 100 000 EUR

VAT rates

- Simplification of VAT rates : reduced VAT rates can apply to all goods that are not listed in an appendix

Proposal of Directive dated 25th May 2018

Implementation of the destination principle for IC supply of goods

- IC VAT exemptions will no longer apply (VAT of the destination country due by the seller)
- Wide use of the VATMOSS system
- Trusted and reliable taxable persons recognized as Certified taxable persons can access simplification measures

THANK YOU FOR YOUR ATTENTION



ANY QUESTIONS ?



Speakers



Karine Bellony

Founding Partner

VAT Solutions

Tel: +352 26 915 944 15

Email: karine.bellony@vat-solutions.com



Michel Lambion

Managing Director, Indirect Tax

Deloitte Tax & Consulting

Tel: +352 451 453 993

Email: milambion@deloitte.lu