



VAT alert Belgium

Companies acting as director must apply VAT on their fees as of 2015



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Directors acting through a company will be obliged to charge VAT on their fees as from 1 January 2015. The current optional regime, in place since 1993, whereby companies can consider their mandates as not subject to VAT, will be abolished. Where the business in which the directors are appointed cannot (fully) recover input VAT, the new regime will generate a VAT cost. For director mandates held by physical persons, VAT remains not applicable.

Content of Decision n° E.T.125.180 of 20 November 2014

Under the traditional administrative viewpoint, applicable since 1993, directors acting through a company had the option to register for VAT. Hence, they could choose whether to charge VAT to their director fees or not. In a 2010 decision, the Belgian VAT authorities took the viewpoint that this option applied to all their mandates and that the option could not be revoked.

The new decision abolishes this option regime. According to the decision this change is consequent to an 'advice' from the European Commission.

As a result, the normal VAT rules apply to director fees (acting via a company) as of 1 January 2015. This means that these directors will become 'normal' VAT taxable persons and will be also be entitled to recover VAT on their expenditure.

The VAT position of a physical person acting as director is not affected and will remain outside the scope of VAT.

Transition

For director fees granted in 2015 but covering 2014 activities, the normal tax point rules are to be applied in order to determine whether these fees are governed by the former or the new regime. Of course, this is only relevant where the current fees are not charged with VAT.

If the company pays a director remuneration agreed upon for the year 2014 only in the course of 2015, VAT will not apply as the service is deemed to be rendered at the end of 2014, under the old regime. Where part of the fee for 2015 is paid in advance in 2014, the current regime applies as well so no VAT is due provided that the director opted out of VAT registration.

A special rule applies to annual fees awarded to directors by way of "Tantièmes". In that case, the tax point is deemed to arise on the date of the Annual Meeting in which the shareholders decide on the Tantièmes' granting. The closing date of the accounting year is irrelevant. Therefore, where the annual meeting will take place in 2015, VAT will in any case apply to the Tantièmes.

Companies holding director mandates, particularly in VAT-exempt entities, should consider the VAT cost as well as potential alternatives for the future.

Contacts

Any questions concerning the items in this alert? Please contact your usual tax consultant at our Deloitte office in Belgium or:

- Johan Van der Paal, jvanderpaal@deloitte.com, + 32 2 600 66 39
- Ivan Massin, imassin@deloitte.com, + 32 2 600 66 52

For general inquiries, please contact:

bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit us at our website: <http://www.deloitte.com/be/tax>



[Deloitte Belgium](#)

Berkenlaan 8A, 8B, 8C
1831 Diegem
Belgium

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