



VAT alert Belgium

VAT on director fees: clarifications on future regime

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After several delays, incorporated directors will be obliged to charge VAT on their fees as from 1 June 2016. The current optional regime, whereby companies can consider their mandates as not being subject to VAT, will be abolished. The VAT authorities published guidance on 30 March 2016 to clarify the new rules.

Entry into force and transitional rules

The activities of incorporated directors will be subject to VAT as of 1 June 2016. All remunerations paid to legal entities for management services are subject to 21%

VAT, including tantièmes. The activities of physical persons acting as directors remain outside the scope of VAT.

The new rule applies to all services rendered after May 2016. For tantièmes, the tax point occurs on the date of the Annual Meeting in which shareholders decide on granting the tantièmes. The accounting year's closing date is irrelevant. Therefore, where the annual meeting will take place after May 2016, VAT will apply to these tantièmes.

VAT exemptions

Further to discussions with relevant sectors, the VAT authorities have set out their views on situations where companies acting as director are active in sectors where VAT exemptions apply, such as:

- Intermediation in the insurance industry;
- Medical services rendered by a doctor who has contributed activities in a company;
- Bank and financial services in so far as the nature of services demonstrates the financial character.

In these situations, the company acting as director is allowed to split the remuneration between management services (subject to 21% VAT) and the exempt professional services. If the remuneration is not split, the VAT authorities consider that at least 25% of total remuneration received by the company is VAT taxable.

In certain sectors, one can also take into account the exemption regime for small enterprises allowing an exemption when management fees do not exceed EUR 25,000.00 per year.

VAT grouping rules

The VAT authorities' attention was also drawn to the possibility of incorporated directors forming a VAT group with the managed companies as a way of mitigating the extra VAT cost. The decision specifically provides for an easing of the financial link requirement in situations where multiple incorporated directors manage an operational company. A VAT group between the incorporated directors and the operational company is allowed if: all the management companies have shares in the operational company, they collectively have more than 50% voting rights of shares in the operational company and they formally agree that every decision on the 'orientation of the operational company's policy' is taken in unanimity. A financial link, other than through the managed company, between the management companies is not required.

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