

Are fees paid to your management company deductible?

Many company directors work through a management company for a (their own) exploitation company. Such management company is not a legal form in itself, but can take the form of an NV, BVBA, V.O.F. ... The name specifically refers to the corporate objective. Though there are no specific corporate, social or tax rules for these companies, some specific tax questions raise after all.

Management company versus exploitation company

The exploitation company performs the 'real' activity, it drives the enterprise. Each (exploitation) company should be managed. This is done by the director, who can work as an individual (self-employed or employee of the company) or through a management company.

The exploitation company will have to remunerate the director or the management company for the supplied services.

What is the problem?

The fee paid by the exploitation company to the management company is clearly a 'cost'. However the tax authorities often do not accept the deduction as professional expenditure. It uses the legal conditions to be able to deduct professional expenditure, which are listed in article 49 of the Income Tax Code 92:

- the expenditure should be made or borne during the taxable period;
- in order to obtain or preserve taxable income;
- the expenditure should be necessary to perform the professional activity;
- the authenticity and the amount of the expenditure should be supported by proof.

We will not further elaborate on the expenditure being made or borne during the taxable period.

It is normal that expenditure made to obtain or preserve taxable income has a necessary link with the activity of the company. After all a company needs a director (an individual or a management company) to manage the company and such director will not do this for free. He performs services for the exploitation company and should be paid for this.

However the tax authorities have another big stick. Only expenditure for which the "authenticity and the amount are supported by proof" is deductible. The tax authorities therefore refuses the deductibility, since it considers the management company does not actually performs real services for the exploitation company.

A genuine invoice should be sufficient to proof the authenticity of the expenditure. Unfortunately, fiscal case law is even more demanding. According to this case law, an invoice is only the start of proof, which should be completed with other elements of proof. And this is not obvious. The services of a manager are after all not tangible: meet, plan, delegate, control, ... How should the tax payer proof that the management company actually has supplied all these services?

But not all hope is lost. Not all judges follow the position of the tax authorities. Derogative case law can be found in the courts of appeal of:

COMPTAFID-Benelux NV SA Brussels

Bld. Edmond Machtensl. 180/100
B-1080 Brussels
Tel: +32 (0)2 410 75 75
www.comptafid.be

COMPTAFID-Benelux NV SA Antwerp

Schijnparklaan 45
B-2900 Antwerp (Schooten)
Tel: +32 (0)3 658 89 02
www.comptafid.be

COMPTAFID (Schweiz) AG Zürich

Seefeldstrasse 19 – Postfach
CH-8032 Zürich
Tel.: +41 44 250 2929
www.comptafid.ch

- Ghent: it is nowadays the reality that companies are managed by managers taking management decisions, giving instructions to employees in the company and supervising all this,
- and Antwerp: the tax authorities should prove that the invoiced services do not match with the reality, they cannot disallow the deduction just like that.

However a lot of case law follows the tax authorities' vision.

Conclusion

Even though management fees are deductible according to the law, the tax authorities are sometimes obstructive. Next to this it is hard to find a clear line of conduct in the case law. This all unfortunately leads to quite some legal uncertainty.

COMPTAFID-Benelux NV SA Brussels

Bld. Edmond Machtensl. 180/100
B-1080 Brussels
Tel: +32 (0)2 410 75 75
www.comptafid.be

COMPTAFID-Benelux NV SA Antwerp

Schijnparklaan 45
B-2900 Antwerp (Schooten)
Tel: +32 (0)3 658 89 02
www.comptafid.be

COMPTAFID (Schweiz) AG Zürich

Seefeldstrasse 19 – Postfach
CH-8032 Zürich
Tel.: +41 44 250 2929
www.comptafid.ch