

Incorporated directors and VAT: an update

After some delay the new rules subjecting incorporated directors to VAT entered into force on 1 June 2016. In order to avoid all possible misunderstandings, we will here refresh the new rules and explain the last updates.

General rule: subject to VAT as from 1 June 2016

The administrative tolerance which made it possible for incorporated directors to not apply VAT, expires definitively on 1 June 2016 (all the delays did not lead to annulment of the new rules).

The regulations now foresee that:

- incorporated directors charge VAT on their director fees;
- individuals/directors do not charge VAT.

There are still some questions to which we want to provide an answer.

Question 1: what if the director provides also other services?

What if a director, next to his director activity, also provides other services?

- If these services are also subject to VAT, nothing changes - all services provided by the corporation are subject to VAT;
- If the other services are VAT exempt (e.g. letting of immovable property), the corporation becomes a partial exempt VAT payer. The right to deduct VAT will consequently be limited.

It is important to know which services of the incorporation are subject to VAT or not. Therefore a split has to be made between director services and possible other supplies or services. The VAT payer has to do this himself. If not, the VAT authorities will allocate at least 25% of the income to director services. Watch out: this does not mean that this is a lump sum which you can apply, this is only the absolute minimum which the VAT authorities will use if you do not make any split yourself.

Question 2: what if the director is a small company?

A small company is a company with an annual turnover of less than 25.000€. A small company is exempt, but cannot deduct VAT. This is mainly an administrative simplification: small companies do not have to charge VAT nor file periodical VAT returns.

Also an incorporated director can be a small company. In such case the question raises how it should be determined whether or not the threshold was exceeded. Some exempt transactions are not taken into consideration for the calculation of the threshold, if these are to be considered as ancillary transactions (e.g. financial services, insurance services, real estate transactions).

Example

An incorporated director performs director services leading to 20.000€ turnover and other services with a turnover of 15.000€:

- *the other services are subject to VAT (e.g. intellectual services): the total turnover amounts to 35.000€ = the threshold is exceeded. The director cannot be considered as a small company;*
- *the other services are VAT exempt and are ancillary (e.g. insurance activity): 15.000€ should not be taken into consideration. The turnover to be taken into consideration amounts to 20.000€ = the threshold is not exceeded. The director remains a small company.*

Question 3: how about services until 31 May 2016?

Only director services with a tax point as from 1 June 2016 are subject to VAT.

Bonuses (tantièmes) are however a special case. These bonuses are also considered as director fees. Such bonuses are normally paid out later, namely when the general shareholders meeting has taken the decision to pay these bonuses. In case the general shareholders meeting takes such decision after 1 June 2016, VAT will be due, even if these bonuses relate (partially) to services rendered before that date.

Question 4: How about historical VAT deduction?

At the time when bailiffs, notaries and lawyers became subject to VAT, they could deduct (part of) the VAT which they could not deduct in the past, by making a revision.

For incorporated directors now becoming VAT payers this possibility does not apply. The VAT they could not deduct in the past, remains non deductible. A revision is not allowed.