

Directors-corporations always subject to VAT as from 1 April 2016

Directorship in a company can be assumed both by an individual as by a corporation (e.g. another company). When a corporation acts as director, it performs a service which is in principle subject to VAT. For the time being such corporations should not charge VAT, due to the flexible position of the tax authorities. The administrative tolerance will expire as from 1 April 2016 and directors-corporations will have to charge VAT.

Who is concerned?

This is about (1) corporations which (2) act as director of a company.

Corporations means mainly other companies, but also not for profit organizations can be concerned. Individuals acting as director are not concerned: they should not charge VAT for their services. Individuals are deemed to not perform an independent activity, but to exercise their function under supervision of other parts of the company (e.g. board of directors).

The corporation should act as director (or manager or liquidator). This concerns organs of the company acting within their function and within the boundaries of their competence following the articles of association, while representing the company, e.g. by signing contracts.

Consequences for the director: charge VAT as from 1 April 2016

Directors-corporations should charge VAT on their services as from 1 April 2016.

Director services are continuous services. This means that it is difficult to determine when they are performed or completed. Therefore such services are settled in between: at certain times invoices are issued for the performed services. Since it is of key importance for VAT to determine when a service is provided (e.g. the time of eligibility of the VAT, the time the client can deduct the VAT), the law defines that for continuous services VAT is due at the expiration of every period for which an invoice is issued or payment is received.

For interim settlements drafted before 1 April 2016 no VAT applies, even when the payment occurs later during the year. If the settlement is issued after 1 April 2016, the director-corporation will have to charge VAT.

If the director-corporation is a small company, it can apply the small companies scheme and charge no VAT.

Consequences for the directed company

For companies this new situation can be detrimental. This would be the case if the company has only partial or no right to deduct input VAT, e.g. a hospital which is VAT exempt for its medical treatments and therefore cannot deduct VAT. The cost for the services of the directors are now increased with non-deductible VAT.

For your information: why directors-corporations did not charge VAT and why that is a problem

Based on the text of the law, directors-corporations should already have charged VAT in the past, since they perform taxable supplies of services. A corporation is after all always independent, has an economic activity and is a VAT payer.

The Belgian tax authorities took a flexible position and gave the directors-corporations the possibility not to charge VAT on their services. This tolerance was however diametrically opposed to the text of the law.

The European Commission had a problem with this administrative tolerance. According to the Commission the Belgian tax authorities could not give this option to the directors, since this option is not foreseen in the European rules. To be in accordance with these rules the Belgian authorities should abolish this tolerance. This was already planned for 1 January 2015, however the abolishing was postponed until 1 January 2016 and recently with an additional four months until 1 April 2016.

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