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Changes in tax regime for directors and other officers



November 25 2016 | Contributed by Andreas Neocleous & Co LLC

Corporate Tax, Cyprus

The Cyprus Tax Department has issued a circular⁽¹⁾ explaining changes to value added tax (VAT) for persons who are appointed as directors or other officers of companies. In the event that a lawyer, accountant or other professional is appointed as a director, treasurer or secretary of a company and continues to practise his or her profession or participate in any other economic activity after being appointed, then such services constitute an economic activity which is subject to VAT.

However, the circular provides for a number of exceptions. For example, if a person accepts such a position in a banking institution based on the Central Bank of Cyprus's directive to licensed credit institutions on the evaluation of the capacity and suitability of the members of their directors and administrative body, then this does not constitute an economic activity. Such economic activity is already strictly prohibited by Central Bank regulations.

In addition, acceptance of a position on purely personal grounds (eg, personal merit, professional experience, expert knowledge and expertise or social status) does not of itself create an economic activity subject to VAT if the position is unconnected to the trade or profession of the appointee. Accordingly, no economic activity subject to VAT arises if a person's appointment is not made for the promotion of any profession or any other commercial activity, or for a person (including a retired person) who offers no other professional services beyond the role in question. Individuals who are employees – as defined in Article 3(3) of the VAT Law – of a company in which they hold office are exempt, since they are not promoting their own profession or business.

The circular includes a number of practical examples. For instance, where an employee or a director of Company A is appointed as a member of the board of directors of Company B, Company A is required to charge VAT at the standard rate on the agreed fee.

In groups of companies, an individual may carry out the role of director in several companies, while being remunerated by only one of them. Unless there is an agreement between the companies to charge for the time spent by the individual, the services are treated as being offered directly by the individual to the relevant businesses and are not subject to VAT, since there is no provision of services from one company to another.

When a director or an employee of a company is appointed as a director of another company and is directly remunerated by that company, the first company has no liability to charge or account for any tax. Instead, the onus will be on the individual concerned and he or she will be required to register and charge VAT for the services offered if the total remuneration exceeds the VAT threshold of €15,600 per annum. However, the appointment must clearly be made on a personal level and not in the context of the provision of services between the two companies.

If a company or a person holds an investment in a separate company and exercises a legal or contractual right to appoint a director to the board of that company, then as long as the director does not offer expert advice and does not participate in the management of the business, there is no taxable supply of services for VAT purposes. However, if the director is appointed because of his or her specialist knowledge and participates in or advises on the management of the business, this constitutes a taxable supply of services and VAT must be charged on any fees or remuneration.

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Endnotes

(1) Circular 151, October 7 2016.

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