

Circular on VAT and directors' fees to be published in September

5 August 2016

In brief

The Luxembourg Directors Association (ILA) released a communication to its members announcing the publication of a circular with respect to the VAT treatment of directors' fees. Based on ILA's communication, directors' fees should, as a rule, be subject to VAT unless a VAT exemption or a specific relief currently available in the Luxembourg VAT law applies. Representatives of the Luxembourg VAT authorities have indicated that as from 1 January 2017 they will monitor the application of VAT on directors' fees.

In detail

Background

The VAT treatment applicable to directors' fees has been under the spotlight since the beginning of this year. This is mainly due to the fact that there is no specific guidance available on this subject in Luxembourg. More generally, this topic has always been subject to different interpretations, not only in Luxembourg but also in other EU Member States.

ILA, the Ministry of Finance and the Luxembourg VAT Authorities have discussed this question at several occasions in the past few months with a view to clarifying the position for directors and taxpayers. It now appears that a long awaited guidance will soon be issued.

Circular's expected content

ILA has just sent a communication to its members indicating that last week it was informed by representatives of the Ministry of Finance that a circular will be released mid-September 2016.

Based on ILA's note, the circular should clarify that directors' fees fall within the scope of VAT, whatever the form of the remuneration and irrespective of whether the director is a company or a private individual.

The representatives of the Luxembourg VAT authorities also confirmed that they would strictly monitor the application of those rules as from 1 January 2017.

On the other hand, representatives of the Ministry of Finance mentioned that Luxembourg directors with an annual turnover below a threshold of EUR 25k would be eligible to the small enterprises scheme and that the VAT exemptions provided for in the Luxembourg VAT law may still apply if the conditions are met.

In that respect, we note that, although it may prove difficult in some cases, the application of the fund management VAT exemption (article 44.1.d) of the Luxembourg VAT law) may apply. For instance this would be the case for a director having a mandate in a management company managing several funds being contractual funds and/or statutory funds.

In such case, an allocation key may be required to determine (i) the portion of the director's mandate that could be exempt from VAT as part of the management of the fund(s) and (ii) the portion of the director's mandate relating to the management of the management company itself which would be subject to VAT.

In conclusion

The publication of this circular should lead to an harmonised VAT treatment in Luxembourg and provide taxpayers and directors with more certainty as far as VAT and directors' fees are concerned.

As soon as the circular is published, we recommend to review the practical implications on a case by case basis and where applicable to make the necessary arrangements in due time. This may include, amongst others, to start applying for a VAT registration, to issue and receive compliant VAT invoices, to review the remuneration clause in the mandates and to assess any reverse charge VAT liability on directors' fees paid to directors residing outside Luxembourg.

In relation to direct taxes, no changes are expected. Directors' fees should continue being treating as self-employed income at the level of the director and being seen as a (non-deductible and subject to withholding tax) distribution of profits at the level of the company.

Let's talk

Subscribe to our Flash News on
www.pwc.lu/subscribe

Frédéric Wersand	Partner	+352 49 48 48 3111	frederic.wersand@lu.pwc.com
Marie-Isabelle Richardin	Partner	+352 49 48 48 3009	marie-isabelle.richardin@lu.pwc.com

PwC Luxembourg (www.pwc.lu) is the largest professional services firm in Luxembourg with 2,450 people employed from 55 different countries. It provides audit, tax and advisory services including management consulting, transaction, financing and regulatory advice to a wide variety of clients from local and middle market entrepreneurs to large multinational companies operating from Luxembourg and the Greater Region. It helps its clients create the value they are looking for by giving comfort to the capital markets and providing advice through an industry focused approach. The global PwC network is the largest provider of professional services in audit, tax and advisory. We're a network of independent firms in 157 countries and employ more than 184,000 people. Tell us what matters to you and find out more by visiting us at www.pwc.com and www.pwc.lu.

© 2016 PricewaterhouseCoopers, Société coopérative. All rights reserved. In this document, "PwC Luxembourg" refers to PricewaterhouseCoopers, Société coopérative (Luxembourg) which is a member firm of PricewaterhouseCoopers International Limited ("PwC IL"), each member firm of which is a separate and independent legal entity. PwC IL cannot be held liable in any way for the acts or omissions of its member firms.