

VAT ON EXECUTIVE CONTRACTS

On 6 October 2017, the Minister for Development and Finance issued a public tax ruling on the VAT treatment of management services provided by company directors (management board members) pursuant to civil law contracts (ruling ref. PT3.8101.11.2017).

The ruling says that, in accordance with VAT Act, directors' services will not be subject to VAT if the provider is related to the client (the company that receives the service) by a legal relationship that governs:

- the conditions in which the services are performed,
- the remuneration, and
- the liability to third parties.

Importantly, the ruling offers an official interpretation of all those requirements.

As to the conditions in which the services are performed, what matters is whether or not there is use of company's infrastructure and organisation for the provision of the services. There is such use if the board member (executive) uses the infrastructure and organisation for the purposes of his legal relationship with the company. This is the case, for example, where the executive is provided with technical measures (computer, phone, car, etc.) and other resources (space, training, conference participation, etc.). The range of freedom the executive has about how to organise her work is irrelevant in this context.

In terms of remuneration, it is important to determine whether the contract provides for a fixed fee. If it does, the executive does not really bear the economic risk of his services. This requirement is considered to be met even if the executive's remuneration is split into a fixed and a variable part but the fixed part accounts for a substantial portion of the total.

As to liability, the test is whether the contract relieves the executive from liability to third parties (independently of any director's liability she may bear under mandatory laws in respect of her being a director, such as liability under company law). If it does, the requirement is considered met. As it is also when the contract does not regulate such liability at all.

If all the three requirements are met, the executive cannot be considered to be a taxable person for VAT purposes. But if any of the limbs of the test fails, the person will be treated as such.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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