

VAT Public Clarification: VAT/PC/19/2
Date: 5 September 2019
Subject: VAT and Directors' Fees

Introduction

This clarification sets out the NBR's position on the VAT liability of fees earned by board members or directors in carrying out their duties as board members of a company, governmental organization, institution or similar body.

Core functions of board members

Board members and directors are considered to be instruments of the entity they represent when carrying out their core duties in their capacity as board members or directors. On this basis, they are not considered to be independent from the entities concerned. Hence, a board member is not regarded as carrying on an economic activity in relation to that activity, and remuneration for services as a board member is outside the scope of VAT.

Core duties are those that are required to be carried out under the Commercial Companies Law (Decree Law No. (21) for the year 2001 and its amendments in Decree No. (50) for the year 2014, Decree No. (27) for the year 2015, Decree No. (1) for the year 2018), as may be amended from time to time.

Other functions

Other functions exercised by persons in an independent way on behalf of an entity of which they are a board member which are not core duties are considered to be an economic activity and may trigger an obligation for these persons to register and account for VAT on the services provided. One example includes the provision of consultancy services for an additional fee. In such a case, the person may be required to register for VAT if the amount of his annual supplies exceeds the mandatory registration threshold. See the "Mandatory VAT registration" section of the VAT General Guide for more information.

Professional directorship services

A third party who, as part of its business and in consideration for a fee or similar payment, offers a service whereby it acts or arranges for another person to act as a board member will be considered to be acting independently. Such a third party may be a trust or company service provider, a law firm or accounting firm. Where the third party provides this service, it is considered to be engaged in an economic activity and may be required to register (if not already registered) and to account for VAT on the services provided.

Where a legal person appoints a board member to an entity by virtue of that legal person having a right to appoint a director (e.g. exercising shareholder rights under articles of association or having a right to

do so under a shareholders' agreement), this will not be regarded as that legal person providing a professional directorship service. This will be the case even if the legal person or the individual appointed receives a fee. In such cases, the legal person will be seen as exercising its shareholder rights to appoint a board member, rather than acting in an independent manner. Hence, any fees paid by the entity to the legal person or the board member will not be within the scope of VAT.

Where a Bahraini organization or entity remunerates a person established outside Bahrain who provides a professional directorship service as discussed above, the Bahraini entity may be liable to account for VAT under the reverse charge mechanism based on the guidance set out above.

Example 1

XYZ Services WLL (XYZ) is a Bahraini based company that provides a range of services including company formation, providing registered offices and office space for companies, and arranging for other persons to act as directors of clients. Fees charged for arranging other person to act as directors of Bahraini entities will be regarded as part of the economic activity of XYZ and will be taxable at the standard rate of VAT.

Example 2

Bahrain Trading Group B.S.C. is a family owned company that holds shareholdings in a number of trading companies. By virtue of its shareholdings, it is entitled to appoint directors to the trading companies. It appoints family members and third parties as board members of these companies. In some cases, the companies pay Bahrain Trading Group B.S.C. a fee for providing the directors and, in others, fees are paid directly by the companies to the directors. The activities of Bahrain Trading Group B.S.C. in appointing the directors and the activities of the directors themselves will not be regarded as an economic activity and neither Bahrain Trading Group B.S.C. nor the individuals will be required to account for VAT on fees received from the companies.

This Public Clarification issued by the NBR is intended to clarify the above matter related to the implementation of the Decree-Law No. 48 for the year 2018 Regarding Value Added Tax and its Executive Regulations.

This Public Clarification states the position of the NBR. It does not serve as an amendment to any provision of the aforementioned legislation. As such, it is effective as of the date of implementation of the relevant legislation, unless stated otherwise.