



VAT Public Clarification [VATP031]

Performing the function of Director on a Board of Directors by a Natural person

Article 3 of the Cabinet Decision No. 52 of 2017 on the Executive Regulation of the Federal Decree Law No. 8 of 2017 on Value Added Tax (“Executive Regulation”) has been amended by Cabinet decision No. 99 of 2022, which introduced a new provision.

Article 3(2) of the amended Executive Regulation states that the functions of a member of a Board of Directors (hereafter referred to as “Director”), performed by a natural person, appointed as Director, for any Government entity or private sector establishment, shall not be considered as a supply of services.

The new provision takes effect as from 01 January, 2023.

Summary

With effect from 1 January, 2023, the performance of a director’s function, by a natural person for a remuneration (monetary or in kind), on a Board of Directors of any Government or a private sector entity, shall not be considered to be a supply of services for VAT purposes. Hence, outside the purview of UAE VAT.

Prior to 1 January 2023, these supplies of services were taxable where the director performed the services on a regular, ongoing, and independent basis, and the total value of taxable supplies and imports made by the director, not limited to but also including the Director services, exceeded the mandatory registration threshold of AED 375,000

Analysis

The following conditions to be met for the directors’ services to be outside the scope of VAT

- The services are provided by a natural person, whether residents in the UAE or not.
- The person is appointed as a director on a Board of any government entity or private sector establishment. Only the services performed in the formal capacity as Director can be excluded from the qualification of “supply of services for UAE VAT purposes”.

For example, free-lance services rendered by a third-party natural person who is not a director during the meetings of a Board of Directors are considered to be supplies of services for VAT purposes and will be taxable subject to meeting other conditions.

Note

- This amendment does not extend to a legal person, whether private or public, who may delegate in its own name a natural person to act as Director.
- In case the services are performed by Directors who are not resident in the UAE, these services will evidently also be excluded from the qualification of “supply of services for UAE VAT purposes”. There will be no application of the reverse charge mechanism or need for the natural person to register in the UAE for VAT purposes.
- Only Director services performed as Director on a Board of Directors of a government entity, or a private establishment can be excluded from the qualification of “supply of services for UAE VAT purposes”.

Other services provided by the member are considered to be supplies of services for VAT purposes and may be taxable subject to meeting conditions for taxable supplies as stated in the VAT legislation.

Transitional Rules

Natural persons performing the function(s) of a Director on a Board of Directors, as defined above, must review their tax obligations for the period both prior to and from 01 January, 2023.

Deregistration

If, because of the coming into effect of Article 3(2) of the Executive Regulation, a natural person who is registered for VAT is not meeting the requirements for mandatory registration anymore, such natural person must deregister for VAT purposes, in accordance with Article 21 of the Decree-Law 4 and Article 14 of the Executive Regulation, without prejudice to Article 18 of the Executive Regulation.

In case the director being the natural person performs other activities which qualify as supply of goods or services or any other activities under article 19, other than performing directors’ services on a board of directors, only the performance of functions as Director on a Board of Directors will be excluded from the calculation of the registration threshold from 01 January, 2023.

For example; the Director may also rent out commercial properties and/or make other supplies through sole establishments. The value of these supplies must still be considered for VAT registration threshold purposes, as well as the value of any other activity as stated in Article 19 of the Decree-Law.

