HMRC - VATSC08000 - Office Holders - Section 94(4)

The law

Under Section 94(4) of the VAT Act 1994, where a person, in the course or furtherance of a trade profession or vocation, accepts any office, services supplied by him as the holder of that office are treated as supplied in the course or furtherance of the trade, profession or vocation.

In general, only persons who are in business to provide professional services, and who continue to provide their services as office holders, are caught by Section 94(4). Both public and private office holders can be affected.

There are special rules applying to ecclesiastical legal appointments, judicial appointments, and similar types of appointment. Further guidance on office holders and these special rules can be found in V1-6 Business Non-Business section 6.

What is meant here by common directorships?

Where an individual is involved in a number of companies he or she may be a director of each. Quite often one company may pay, for convenience, the total emolument the individual receives in respect of all the businesses and then recover appropriate proportions from the others.

What is the VAT position where charges related to common directorships cross between companies?

There may be an argument that these charges are consideration for taxable supplies of the individual’s time or of management services. In general, however, these charges do not represent supplies for VAT purposes because any services to which the charges relate, such as purely attending meetings or approving expenditure, can only be the director’s supplies to the very companies of which he or she is director. These services are supplied directly to the relevant businesses and not across from one to another.

Only if there is clear evidence of a contract for the supply of the individual or his/ her services between companies will there be a supply of services. This approach is supported by the tribunal decision in the case of The Withies Inn Ltd (LON/95/1778).

The tribunal, in dismissing the trader’s argument that the activities of the directors constituted supplies of management services from the parent, held that where directors act in a dual capacity an assertion that one company is supplying services to the other must be viewed with circumspection. However, it did not accept that, as a proposition of law, there could never be supplies in such circumstances.

This was highlighted in the tribunal decision in Bray Walker (LON/00/264). Mr Walker was a director of his company, but accepted a post of director of another. His appeal against an assessment on his fee was dismissed as the tribunal found that he had accepted the directorship in the course or furtherance of his profession within the VAT Act 1994, s 94(4), rather than simply being an employee, and so the fee was taxable.

Where a company is exercising a legal or contractual right to appoint a director to a board of another company, this will normally be seen as a supply. This usually occurs in situations where one company is investing in another and the director is appointed because of their specialist knowledge in order to give expert advice to the investee company. Therefore their services are above that of simply acting as a director and are more akin to a supply of staff. The terms of the appointment and the duties required of the director will give an indication of its treatment.

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