

DIRECTORS' REMUNERATION SUBJECT TO VAT?

Luxembourg *Tribunal d'arrondissement* requests for a preliminary ruling to the Court of Justice of the European Union (Case C-288/22, lodged on 29 April 2022)



The VAT treatment applicable to Directors' remuneration has been found unclear because of the lack of rules, in the Luxembourg and EU legislation, encompassing the specificities of Directors' mandate. In order to address the lack of legal certainty, the Luxembourg VAT administration issued Circular n° 781 on 30 September 2016, which specified the applicable VAT treatment.

According to the Circular, the activity performed by Directors qualifies as an economic activity in the sense of the VAT legislation, irrespective of the status of the Director being a legal person or an individual. The remuneration received by Directors thus has to be subject to Luxembourg VAT when the services fall within the Luxembourg VAT scope.

The Court of Justice of the European Union (CJEU) decided in the IO case (C-420/18 dated 13 June 2019) that a member of the Supervisory Board of a foundation, who, does not act in his own name, on his own behalf or under his own responsibility, but on behalf of and under the responsibility of that Supervisory Board and does not bear the economic risk arising from his activities, since he receives a fixed remuneration which is not dependent on his participation in meetings or hours actually worked, does not carry out an economic activity independently.

After having unsuccessfully filed an appeal to an *ex-officio* taxation, assessing VAT on his fees, and based on the similarity of the circumstances in the IO case, a Director introduced an appeal before the Luxembourg *Tribunal d'arrondissement*. This Tribunal decided to refer the following questions to the CJEU.

- ▶ Is a natural person who is a member of the board of directors of a public limited company incorporated under Luxembourg law carrying out an "economic" activity within the meaning of Article 9 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, 1 and more specifically, are percentage fees received by that person to be regarded as remuneration paid in return for services provided to that company?
- ▶ Is a natural person who is a member of the board of directors of a public limited company incorporated under Luxembourg law carrying out his or her activity "independently", within the meaning of Articles 9 and 10 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax?

IMPLICATIONS

Currently the position of the Luxembourg VAT authorities is clear and director fees are subject to VAT. It may take some years before the CJEU will have made its judgment. If the CJEU would decide that Director's fees are not subject to VAT, entities with no or limited VAT deduction right receiving Director's services would be released from the cost of unrecoverable VAT.

For further information please reach out to your usual VAT contacts.

CONTACTS



Olivier Lambert
Partner
+352 42 124 7361
Olivier.Lambert@lu.ey.com



Yannick Zeippen
Partner
+352 42 124 7362
Yannick.Zeippen@lu.ey.com



Jacques Verschaffel
Partner
+352 42 124 7219
Jacques.Verschaffel@lu.ey.com