

Director fees are not subject to VAT

On December 21, 2023 the Court of Justice of the European Union issued its decision (C-288/22) on the VAT treatment of Director fees, relevant for companies with board members.

The decision concerns a lawyer who is a board member of various public limited companies in Luxembourg, including a bank, a holding company within a logistics group, and two holding companies within a pharmaceuticals group. The lawyer participates in decision-making processes related to accounts, risk policy and overall group strategy.

The Court concluded that the activity of a member of the board of directors of a public limited company under Luxembourg law is not carried out independently, where he or she does not act on their own behalf or under their own responsibility and does not bear the economic risk linked to their activity, despite the fact that that member is free to arrange how he or she performs their work, receives the emoluments making up his or her income, acts in his or her own name and is not subject to an employer-employee relationship

Without independence, board members are not considered VAT taxable persons. This means they are not allowed to VAT register for this activity, have no right to deduct input VAT, and are not obliged to issue invoices for their activity.

Whether you require clarification on the impact on your organization or guidance on compliance, we are ready to provide the support you need. Our team of Tax experts is here to assist you with any questions related to this decision and the necessary steps that need to be taken. Feel free to reach out to us:

Ina Nötzel, Partner	ina.noetzel@lu.andersen.com
Matthias Gutknecht, Partner	matthias.gutknecht@lu.andersen.com
Philip Christ, Partner	philip.christ@lu.andersen.com
Christel Begué, Director	christel.begue@lu.andersen.com
Alexia Christodoulou, Director	alexia.christodoulou@lu.andersen.com

