

# ECJ Advocate General Opines on Qualification of Activity Performed by a Member of Board of Directors as Independent Economic Activity: *Administration de l'Enregistrement, des Domaines et de la TVA* (Case C-288/22) (VAT)

13 July 2023

Report from Martha Caziero, VAT Associate, IBFD

On 13 July 2023, Advocate General Kokott of the Court of Justice of the European Union (ECJ) gave her opinion in the case of *TP v. Administration de l'Enregistrement, des Domaines et de la TVA* (Case C-288/22) on the qualification of the activity performed by a natural person, who is a member of a board of directors, as an independent economic activity under articles 9 and 10 of the [VAT Directive \(2006/112\)](#).

The Advocate General's analysis answered the question from three perspectives. First, she states that it is doubtful that their activity falls under the definition of independent economic activity, given that they do not assume their own economic risk, they cannot offer their services on the free market to third parties, nor is their remuneration subject to negotiations with the service recipient. Second, the fact that a member of a board of directors also performs an ancillary independent economic activity does not in itself change the fact that the activity performed as member of a board of directors is not independent. Thirdly, she concludes that the neutrality of the legal form would be breached if only companies that by order of the law need to act through a body, like for instance a board of directors, are charged VAT by the members of such body.

Therefore, the Advocate General proposed that the ECJ answer the questions referred to as follows:

- "(1) Article 9(1) of Directive 2006/112/EC on the common system of value added tax [[VAT Directive \(2006/112\)](#)], read in conjunction with Article 10 thereof, must be interpreted as meaning that the existence of an independent economic activity must be determined by means of a typological comparison. The decisive factor in that regard is whether, in the context of the necessary overall assessment, the person concerned, as a typical taxable person does, bears an economic risk personally and acts on his own economic initiative, which it is for the referring court to ascertain.
- (2) In that regard, it follows from the principle of neutrality of legal form that a natural person who is a member of a body of a company which is required by law and who receives remuneration for that activity as a member of that body cannot in this respect be regarded as carrying out an independent economic activity."

A more substantial report containing details of the Advocate General's reasoning will be published subsequently.

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