

ECJ Decides on Qualification of Member of Board of Directors as Taxable Person if Personal Economic Risk Is Not Present and Member Does Not Act on Own Initiative: *Administration de l'enregistrement, des domaines et de la TVA (TVA – Membre d'un conseil d'administration)* (Case C-288/22) (VAT)

21 December 2023

Report from IBFD Knowledge Centre

On 21 December 2023, the Court of Justice of the European Union (ECJ) gave its decision in *TP v. Administration de l'enregistrement, des domaines et de la TVA* ([Case C-288/22](#)) based on a number of grounds.

"On those grounds, the Court (Third Chamber) hereby rules:

1. Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that the member of the board of directors of a public limited company under Luxembourg law carries out an economic activity, within the meaning of that provision, where he or she supplies services to that company for consideration provided that that activity is effected on a continuing basis and for a remuneration for which the procedures for fixing that amount are foreseeable.

2. The first subparagraph of Article 9(1) of Directive 2006/112

must be interpreted as meaning that the activity of a member of the board of directors of a public limited company under Luxembourg law is not carried out independently, within the meaning of that provision, where – 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 – 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."

For a previous TNS regarding the case, see [European Union-2, News 29 September 2023](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

European Union; Luxembourg - ECJ Decides on Qualification of Member of Board of Directors as Taxable Person if Personal Economic Risk Is Not Present and Member Does Not Act on Own Initiative: Administration de l'enregistrement, des domaines and de la TVA (TVA – Membre d'un conseil d'administration) (Case C-288/22) (VAT) (21 Dec. 2023), News IBFD.

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