

Luxembourg News

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VAT ON DIRECTORS FEES AND STATE AID: ECJ IS PLAYING SANTA FOR LUXEMBOURG!

The tax year 2023 is ending with a final word on the question of VAT charged on directors fees, and with favorable rulings on State Aid.

Since the Circular letter of 30th September 2016, entering into force on the 1st of January 2017, the Luxembourg VAT Administration has taken the view that directors fees invoiced to Luxembourg resident entities by either individual directors or management companies, had to be subject to VAT. While a certain number of exceptions applied, this was perceived as an earthquake in the so far peaceful world of Luxembourg VAT.

Such move was much criticised by the most expert doctrine but the *Administration de l'Enregistrement et des Domaines* stuck to it until a court ruling of the European Court of Justice on the 21st of December 2023 (C-288/22) followed the conclusions of the Advocate-General, ruling out the application of VAT on directors fees based on the fact that such economic activity is not carried out independently.

The Luxembourg *Administration de l'Enregistrement, de la TVA et des Domaines* was extremely quick to react by issuing a Circular Letter no later than today, announcing that the effects of Circular Letter nr 781 of 30th September 2017, are “suspended”. Therefore, VAT should not be applied anymore as from December 2023.

As the Court ruling has been issued pursuant to a preliminary question, the main case has been referred back to the national Luxembourg court, but the *Administration de l'Enregistrement, de la TVA et des Domaines* states that it would seek to “regularise the situation in a non-bureaucratic way” with respect to VAT paid in the past, as long as the situation is not foreclosed. Rapid action has therefore to be taken with respect to VAT charged for financial year 2018.

Together with the widely commented rulings in the State Aid cases Engie (5th December 2023) and Amazon (14th December 2023), this third Luxembourg-related ECJ decision comes as very good seasonal news for Luxembourg.

See you in 2024 for further comments and precisions!



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