



**K. TREPPIDES  
& CO LTD**

**Indirect Taxation**

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***VAT treatment for the provision of directorship services***

***Case 288/22 of the Court of Justice of the European Union***



We would like to inform you that on the 23<sup>rd</sup> of December 2023, the Court of Justice of the European Union (“CJEU”) has issued a ruling in relation to the TP case (C-288/22) providing clarifications on the VAT treatment to be applied for the provision of directorship services in accordance with the interpretation of Articles 9 and 10 of the Council Directive 2006/112/EC (“EU VAT Directive”).

The CJEU raised the question whether a member of the board of directors of a public company carries out an “economic activity” and “independently” within the meaning of Articles 9 and 10 of the EU VAT Directive for concluding if the remuneration received by a natural person for being a member of the board of directors constitutes an economic activity.

### **Facts of the TP case**

The applicant who is a lawyer, is a member of the board of directors of several public limited companies incorporated under Luxembourg law and as a member

of the board takes part in decisions concerning the accounts, risk management policy and the strategy to be followed by the group as well as in developing proposals to be put to shareholders' meeting.

The applicant for the provision of the services received fees as a percentage of the profits achieved by those companies. In respect of this activity, the Luxembourg tax authorities issued a tax assessment for VAT purposes on the ground that the members of the board of directors of a public company incorporated under Luxembourg law carried out an independent economic activity and as a result the remuneration received is subject to VAT.

### **The decision of the CJEU**

The CJEU has ruled that a member of the board of directors carries out an "economic activity", within the meaning of the EU VAT Directive, where he/she supplies services to that company for a consideration provided that the activity is effected on a continuing basis and for a remuneration to which is foreseeable.

Nevertheless, the CJEU has ruled that such activity is not carried out "independently", within the meaning of the EU VAT Directive, where -despite the fact that the member performs the activity freely, receives emoluments making up his/her income, acts in his/her own name and is not subject to any employment agreement- he/she does not act on his/her own behalf or under his/her own responsibility and does not bear economic risk linked to his/her activity.

The CJEU in the specific case has ruled that the applicant did not carry out his activity independently because he did not bear any economic risk through his activity, as per the meaning of the EU VAT Directive. Consequently, the remuneration received for the provision of the directorship services should not have been subject to VAT.

### **Possible effects in Cyprus VAT framework**

The ruling of CJEU has provided important interpretations to the definitions of "economic activity" which is carried out "independently" as per the provisions of the EU VAT Directive.

Although, the Cyprus Tax Department has previously issued Circular 205 which provides clarifications in which instances being a part of the board of directors does or does not constitute an economic activity, it should be now reviewed in conjunction with the judgment issued by the CJEU in order to be harmonised with the VAT treatment ruled by the CJEU.

Our Indirect Taxation team is ready to discuss with you the content of this newsletter and provide any consultation required for better understanding of its content and how this could affect your business. Please do not hesitate to contact us at [VAT@treppides.com](mailto:VAT@treppides.com).

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