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in Luxembourg



OUTCOME OF THE ILA/AED MEETING ON CJEU RULING ON VAT



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Recently, the ILA has discussed the impact of the Court of Justice of the European Union (CJEU) ruling of December 21, 2023 on VAT on directors' fees with representatives of the Administration de de l'Enregistrement, des domaines et de la TVA (AED). The AED confirms its intention to comply with the CJEU ruling and the judgment of the Luxembourg District Court which will follow in the next months, in particular regarding the scope of application. For the moment, it is relevant to take note of the fact that AED is not part of the judicial procedure. Also, the AED intends to limit the impact of the VAT regularisation on directors and therefore to cooperate closely with ILA.

The AED has emphasized that Circular 781 has been suspended, i.e. it will not issue reminders for VAT returns not filed by 2024 and will not charge default interest to directors who no longer file VAT returns. However, each director will have to assess for themselves whether their personal case is identical or comparable to the CJEU ruling. The AED estimates that currently around 1,600 directors have a VAT registration number solely for the purpose of acting as a director. In this context, it is important that each director ensures that he or she is registered solely as a director (SIN code 70220), otherwise there is a risk that directors receive reminders for VAT returns not being submitted on time in 2024. It goes without saying that directors who carry out another activity subject to VAT, such as a lawyer, an accountant, a consultant, etc., must keep their VAT number. The AEDT recommends not deregistering for the time being and awaiting further clarification from the Luxembourg court.

The AED is currently working on a MyGuichet application that could be ready by the end of February but will not be available online until after the Luxembourg court's ruling. The goal of this application is to ease the reimbursement of the VAT unduly collected since 2018. Directors would have to enter a certain amount of data into MyGuichet (per financial year) and the AED would reimburse them the VAT collected in the past but no longer due as a result of the court ruling. It is then up to the directors to pass on the VAT collected to their customers. The proposed solution therefore requires the intervention of directors, but should not cause any liquidity problems for them.

ILA understands and has insisted that this is not an optimal solution for directors. However, for various reasons, such as confidentiality of information, the AED believes that this is the only possible solution. The AED will also ensure a follow-up to avoid the risk that directors do not pass on the VAT refunded to them by the AED to the companies.

The aim of the AED is to cover as many situations as possible (the target is 90% of the directors), bearing in mind that there will always be special cases (e.g. a deceased director) which should be discussed on a one to one basis with the AED.



Regarding the VAT deducted in the past by directors, the AED points out that the right to deduct VAT is accepted within reasonable limits to ensure the performance of the director's function (i.e. no excessive expenses). In such case, the VAT deducted by the directors in the past would not be questioned. On the other hand, the law stipulates that VAT on investments must be regulated, so that big amounts will be systematically analysed.

The general message would thus be to be patient i.e. not deregister immediately, not issuing immediately credit notes, not make regularizations in returns, not to take immediate action towards companies and AED, etc.) and wait for further information.

ILA will inform you promptly about further developments. Also, for further clarification, ILA intends to organize an information session for its members after the Carnival holidays. The exact date and time will be communicated shortly.

The image features a large, dark blue diagonal shape on a white background. To the left, there are two smaller geometric shapes: a yellow triangle pointing right and a grey triangle pointing left. The letters 'ILA' are written in a white, elegant cursive script across the blue area.

ILA

www.ila.lu | info@ila.lu | +352 26 49 58 5963