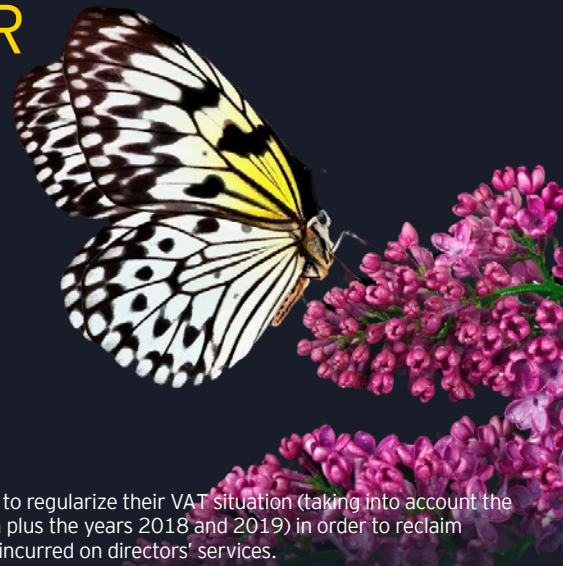


NEW VAT GUIDELINES FOR DIRECTORS IN LUXEMBOURG: COURT RULINGS AND CIRCULAR UPDATES



EXECUTIVE SUMMARY

As expected, the Luxembourg District Court rendered its judgment in line with the CJEU decision¹, confirming that directors' fees are not generally subject to VAT. In response, the tax authorities released a new circular detailing the VAT treatment of directors' fees and offering further clarifications on the regularization process. It is advisable for directors to take timely and appropriate action based on these updates.

NEW CIRCULAR ON DIRECTORS' FEES

In its Circular N° 781-2 of 11 December 2024, the *Administration de l'Enregistrement, des Domaines et de la TVA* (AEDT) confirms that all directors who do not act on their own responsibility and do not bear the economic risk of the performed activity do not exercise such activity independently and are not to be considered as a taxable person for those services. Their services consequently fall outside the scope of VAT and VAT is not due on these services.

The AEDT does not make a distinction between whether the directors are physical or legal persons, or the legal form of the entity for which they act as director.

As long as the directors meet the criteria established by the courts, their services fall outside the scope of VAT and they are eligible for VAT regularization.

In case of Luxembourg directors, a non "bureaucratic" regularization can be done through MyGuichet.lu until 30 June 2025.

Luxembourg entities, which have self-assessed VAT on services received from non-Luxembourg directors, can regularize their VAT situation by way of reporting a rectification in their next VAT return to be filed.

As already announced in the previous Circular, the AEDT has chosen not to enforce the statute of limitation, allowing for regularization for the year 2018 and for the year 2019, provided that the request for regularization is submitted before 1 July 2025.

As of 11 December 2024, Circular N° 781 of 30 September 2016 is reinstated for directors qualifying as VAT taxable persons.

WHAT THIS MEANS

While each case needs to be assessed individually, the courts' decisions will, in principle, have the following consequences:

- Services provided by independent directors should remain subject to VAT (independence conditions to be verified on a case by case basis).
- Directors not qualifying as independent and registered for VAT in Luxembourg should be required to deregister, unless they perform an activity within the scope of VAT.

1. See EY Luxembourg VAT Alert, *CJEU judges that directors' fees might be outside the scope of VAT*

- Companies will have to regularize their VAT situation (taking into account the statutes of limitation plus the years 2018 and 2019) in order to reclaim non-deductible VAT incurred on directors' services.

In this context, the Circular states that directors can use a simplified procedure on MyGuichet.lu in the first half of 2025 to regularize VAT for all relevant years. The simplified procedure will allow directors to claim the VAT collected from their clients and paid to the VAT authorities by submitting claims for all years concerned in one single process.

The Circular further clarifies the following:

- Directors must refund the regularized VAT to their clients, who may need to amend their deducted VAT accordingly.
- The AEDT will not challenge input deduction rights for "simple expenses" of directors who are not considered as taxable persons if such expenses were necessary to the carrying out of their functions. However, material expenses such as investment expenses will be reviewed systematically and may lead to a regularization of input VAT. Also, the Circular recalls that the non-taxable status may affect existing VAT options on real estate lease agreements.
- Directors not established or residing in Luxembourg and whose clients were liable to pay the VAT under the reverse charge mechanism are not subject to the VAT regularization; the client company is responsible for regularizing the declared and paid VAT in one go in the next annual VAT return for all relevant years.

HOW CAN EY HELP?

At EY, we offer comprehensive services that include:

- Assistance with the regularization through the simplified procedure.
- Regularizing past VAT returns and coordinating with the AEDT to recover any VAT incurred on directors' services.
- Regularization for the companies that received and paid directors' services.
- Where applicable, assisting with the deregistration process and managing associated post-filing VAT requirements.
- Ensuring timely submission of deregistration files and remaining VAT returns to facilitate a smooth process and addressing any inquiries from the AEDT.

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