

# RESEARCH NOTE

## RESEARCH AND DOCUMENTATION DIRECTORATE

Application of the VAT system to the activity of members of the board of directors of a public limited company

[...]

[...]

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[...]



## INTRODUCTION

1. This research note aims to determine whether, in the Member States, the activity of members of the board of directors of a public limited company is classified as activity carried out 'independently' within the meaning of Article 9 of Directive 2006/112<sup>1</sup> and is subject to value added tax (VAT).
2. The research for this note was conducted in two stages. First, a general assessment of the laws of all the Member States of the European Union was carried out.<sup>2</sup> It revealed that the national laws of several Member States<sup>3</sup> do not contain legislation or case-law<sup>4</sup> concerning the VAT liability of activities performed by members of the board of directors of public limited companies. In fact, in most of those Member States, remuneration paid to the members of corporate management bodies is treated as wages and therefore subject to income tax on that basis.<sup>5</sup> Consequently, the fact that income tax is levied on remuneration in the form of wages could explain the absence of legislation or case-law on VAT. Those national laws were therefore excluded from the scope of the present study.
3. 13 national laws, however, revealed aspects deemed relevant for this study in comparative law and were thus selected for assessment: **Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Italy, Luxembourg,**<sup>6</sup> **Poland, Portugal, Spain and Sweden.**
4. It should be noted from the outset that some of the national laws selected provide for a one-tier, or monist, model (a system of management featuring a board of directors) for the governance of public limited companies or their equivalent. Others provide for a two-tier, or dualist, model (a system in which corporate management is entrusted to a management board under the supervision of a supervisory board). In some national systems, those two models coexist. Where that is the case, this study focuses, to the extent possible, on the one-tier solutions.
5. Next, certain national laws provide that both natural and legal persons may be members of the board of directors of a public limited company. This study considers solely cases where natural persons are members of those boards of directors.
6. Lastly, although the concept that will be used in this study is 'member of a board of directors' or 'director', it should be borne in mind that, in this context, that concept is to be understood as also covering, where appropriate, the members of a supervisory board or of a similar body. Specific clarifications will be made where appropriate.

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ 2006 L 347, p. 1](#)) ('the VAT Directive').

<sup>2</sup> [...]

<sup>3</sup> Namely the laws of **Croatia, Denmark, Estonia, Finland, France, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovakia and Slovenia.**

<sup>4</sup> In some cases, the study identified only individual or administrative positions, or ones expressed in legal literature, not allowing for any relevant rules or criteria to be deduced therefrom.

<sup>5</sup> Such was the case for the laws of **Denmark, Estonia, Finland, France, Hungary, Ireland, Lithuania, Romania, Slovakia and Slovenia.** While that method of taxing that remuneration means that the board members in question are regarded as employees for the purposes of direct taxation, that does not, in theory, preclude their activity on the board of directors from being regarded, in certain cases, as an activity that is carried out independently for the purposes of VAT liability.

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## I. EUROPEAN UNION LAW

### A. VAT DIRECTIVE

7. As a preliminary point, it should be noted that the European Union's powers in the field of taxation vary according to the type of tax burden. In this respect, it is necessary to make the traditional distinction between direct and indirect taxation. Direct taxation falls within the competence of the Member States, although they must exercise that competence in compliance with EU law and, in particular, with the fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union (TFEU).<sup>7</sup> Consequently, this aspect of taxation has been harmonised at EU level only in a few areas. By contrast, indirect taxation, which affects the free movement of goods and the freedom to provide services within the single market, has been extensively harmonised by the EU legislature.
8. In the area of indirect taxation, the European Union coordinates and harmonises, inter alia, VAT legislation. The fact that that tax is harmonised means that Member States have only limited discretion in designing their national VAT systems. In this regard, the EU legislation establishing the VAT system, including the VAT Directive, provides a detailed framework specifying, inter alia, the transactions to be subject to VAT and the persons who are to be taxable persons in respect of those transactions, namely any individual who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.
9. Article 2(1)(c) of the VAT Directive provides that 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is, in particular, to be subject to VAT.
10. Article 9(1) of that directive states:

"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

11. Article 10 of that directive provides:

The condition in Article 9(1) that the economic activity be conducted "independently" shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.'

### B. CASE-LAW OF THE COURT

12. It must be noted that the Court has had occasion to examine the liability to VAT of natural persons in their capacity as members of the supervisory board of a foundation.<sup>8</sup> That

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<sup>7</sup> See, in particular, judgment of 24 February 2022, *Pharmacie populaire - La Sauvegarde and Pharma Santé - Réseau Solidaris* (C-52/21 and C-53/21, [EU:C:2022:127](#), paragraph 21).

<sup>8</sup> Judgment of 13 June 2019, *IO (VAT - Activities of a member of a supervisory board)* (C-420/18, [EU:C:2019:490](#)).



supervisory board monitored the foundation's governing body and the members of that body. The foundation was represented judicially and extra-judicially by its governing body. However, representation could also, to a certain extent, be assumed by the supervisory board.

13. After finding that the activity of the members of a supervisory board was economic in nature in so far as it was permanent and carried out in return for remuneration, the Court examined whether that activity was carried out independently, ultimately concluding that that was not the case.
14. Although those members were not bound by means of an employer-employee relationship to the governing body of the foundation in question or to the supervisory board of that foundation as regards the exercise of their activity as members of that board, they were not acting in their own name, on their own account or under their own responsibility. By contrast, they acted on behalf of and under the responsibility of that board and did not bear the economic risk arising from their activity, since they received fixed remuneration which was not dependent on their participation in meetings or hours actually worked.

## II. NATIONAL LAWS

### A. PRELIMINARY CONSIDERATIONS

15. It must be noted, at the outset, that the answer to the question of whether the remuneration paid to members of the board of directors of a public limited company is to be subject to VAT is not readily apparent from the national laws assessed. Above all, the treatment of such remuneration does not appear to be expressly regulated by the laws of the Member States of the European Union. Like Article 9 of the VAT Directive, those national laws are silent on that matter. Nevertheless, in some national laws, this question has been addressed in case-law, albeit sometimes indirectly, since the remuneration in question has been examined through the lens of income tax.<sup>9</sup>
16. In this regard, it must be recalled that, while the interpretation of national laws transposing EU law, in particular those relating to national VAT systems, falls within the remit of national public bodies such as courts and competent authorities, those bodies must bear in mind that, according to the settled case-law of the Court, the terms used in the VAT Directive are to be interpreted autonomously and uniformly, irrespective of their treatment in the Member States.<sup>10</sup>
17. In this context, the relationship between direct and indirect taxation is of interest for this analysis, since, as will be shown below, some Member States may tend to interpret their VAT legislation by taking into consideration criteria established in the context of direct taxation, and more specifically income tax, such as, in particular, tax levied on wages.
18. Lastly, some examples of 'soft' law, in the form of position statements or (non-binding) recommendations issued by the tax authorities, or opinions presented in legal literature, have also been identified.

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<sup>9</sup> It should be recalled that our general assessment found that several Member States subject remuneration paid to members of the board of directors to tax on income in the form of wages, thus treating such remuneration as wages. Nevertheless, that treatment does not necessarily mean that those members are considered to be under a contract of employment. It must also be noted that some Member States, such as, in particular, Sweden and the Czech Republic, have expressly stated that such taxation does not preclude the same income from being, in theory, assessed also from the perspective of liability to VAT.

<sup>10</sup> See Judgment of 3 February 2022, *Finanzamt A* (C-515/20, [EU:C:2022:73](#), paragraph 26 and the case-law cited).

19. Where Member States have adopted positions, either in national case-law or through soft law, on the question of whether remuneration paid to the directors of a company is subject to VAT, certain criteria are used to determine whether those directors are carrying out their activity independently within the meaning of Article 9 of the VAT Directive.
20. The criteria in question have their origin primarily in EU law, more specifically the case-law of the Court of Justice, which has set out criteria distinguishing activities carried out independently from those carried out as in the context of employment.<sup>11</sup>
21. Nevertheless, some other sources also appear to be used by Member States to identify the criteria determining whether an activity is being carried out independently, namely national law on direct taxation as well as labour law. Some of the laws examined thus sometimes refer to an 'employee' status, either pursuant to the law on direct taxation or pursuant to labour law, and use that status to assess the extent to which a member of the board of directors carries out his or her activity independently, as understood in VAT law.
22. This is explained by the fact that, in those two areas of national law, the distinction between activities carried out independently and those carried out as an employed person also plays an important role. The aim, within those areas of law, is to distinguish employed persons from individuals who are engaged in a professional or an entrepreneurial activity.
23. Thus, regarding the use of criteria established in the area of direct taxation for the purposes of income tax (and, more specifically, tax levied on wages), it can be noted, by way of example, that **Austrian** law, which provides for a two-tier system, employs such criteria for the members of a management board ('Vorstand').<sup>12</sup> Thus, a person classified as an 'employee' for income tax purposes cannot be performing an activity classified as being carried out 'independently'. The understanding of the concept of 'independence' in the area of direct taxation would correspond, in that respect, to the one provided for in the VAT Directive. **Greek** law and **Polish** law also include references to the law on direct taxation.<sup>13</sup> By contrast, in **Sweden**, the Skatteverket (Swedish Tax Agency) has pointed out that the question of whether a member of the board of directors carries out the activity independently, within the meaning of the national VAT legislation, must be examined irrespective of considerations relating to the activity being

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<sup>11</sup> See, inter alia, judgments of 25 July 1991, *Ayuntamiento de Sevilla* (C-202/90, [EU:C:1991:332](#)); of 13 March 2014, *Malburg* (C-204/13, [EU:C:2014:147](#)); of 27 January 2000, *Heerma* (C-23/98, [EU:C:2000:46](#)); of 18 October 2007, *van der Steen* (C-355/06, [EU:C:2007:615](#)); and of 29 September 2015, *Gmina Wrocław* (C-276/14, [EU:C:2015:635](#)).

<sup>12</sup> Approach advocated in legal literature. By contrast, for members of a supervisory board ('Aufsichtsrat'), the Umsatzsteuergesetz (Law on turnover tax; 'the Austrian UStG'), read in conjunction with the relevant guidelines, expressly provides criteria defining the status of persons independently carrying out an activity.

<sup>13</sup> Article 15(3)(3) of the ustawa o podatku od towarów i usług (Law on the taxation of goods and services) of 11 March 2004 (Dz. U. No 54, item 535) ('the Polish Law on VAT'), provides: 'The following activities are not considered to be exercised independently within the meaning of the first paragraph of this article [...] activities the revenues from which are listed in Article 13(2) to (9) of the ustawa o podatku dochodowym od osób fizycznych [(Law on income tax on natural persons)] of 26 July 1991 (Dz. U. of 2018, position 200), if the person exercising the activity and the person ordering the exercise of that activity are bound by legal ties that create a legal relationship determining the conditions for the exercise of the activity, the remuneration and the liability of the person ordering the exercise of the activity.'

In this respect, Article 13(2) to (9) of the Law on income tax on natural persons contains provisions relating to the taxation of the income of 'self-employed persons' (namely natural persons pursuing an individual activity). Article 13(9) of that law provides, in particular, for the taxation of income of 'self-employed persons' received under corporate management contracts, management contracts or contracts of a similar nature.

independent in terms of income tax liability.<sup>14</sup> That approach has also been advocated in **Czech case-law**.<sup>15</sup>

24. Therefore, it can be noted that, even though VAT falls within the scope of EU law and the interpretation of VAT-related legislation must be autonomous, direct taxation appears to have a certain influence on that interpretation at national level.
25. Criteria deriving from civil law, more specifically from contract law, are also sometimes used to assess whether a status can be classified as 'independent' with regard to such remuneration, from the perspective of VAT.
26. Where the national laws studied regard the contract binding a member of the board of directors of a company to that company as the primary factor for classifying the activity of the member of the board of directors as one that is carried out 'independently', the substance of the contract, rather than its form, appears to be decisive. Therefore, the situation of that member is, in principle, subject to a case-by-case assessment as regards the various aspects that characterise the relationship between the company and the director and enable its nature to be determined.

#### B. CRITERIA DETERMINING THE STATUS AS TAXABLE PERSON

27. As regards the specific criteria apparent from the sources indicated above, two of them serve to determine whether the activity of persons involved in the management of a company is carried out independently. These are, first, the absence of an employer-employee relationship for the members of, inter alia, a board of directors, and second, the exercise of another activity carried out independently or of a profession. The first criterion is based on multiple aspects, such as risk, liability, whether one acts in one's own name and on one's own account, the scale and nature of the revenue, the existence of multiple mandates, the human and material resources used, the individual's other role(s) in the company and the ability freely to organise the manner in which the work is carried out.

#### C. LAWS WHERE THE ACTIVITY OF DIRECTORS IS NOT REGARDED AS BEING CARRIED OUT INDEPENDENTLY FOR THE PURPOSES OF VAT LIABILITY

28. In 6 of the 13 national laws studied, the activity carried out by members of the board of directors is not regarded as being carried out independently for the purposes of VAT liability. At the core of the criteria identified in the national laws examined, regarding the requirement of 'independence' for VAT purposes,<sup>16</sup> is the employer-employee relationship criterion. This criterion is in fact present in almost all the national laws examined, whether in applicable national legislation and/or national case-law, and it is reflected in the various sub-criteria referred to in paragraph 27.<sup>17</sup>

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<sup>14</sup> [Position Statement of 2021](#) of the Skatteverket (Swedish Tax Agency) (Dnr: 8-1054864).

<sup>15</sup> The Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) thus ruled that the national VAT law, which provides that economic activity carried out independently is not activity taxed as income from employed activity, is contrary to Article 9 of Directive 2006/112. See [Decision of 22 November 2016](#), No 2 Afs 100/2016.

<sup>16</sup> Or for the purposes of applying the system of direct taxation (i.e. income tax).

<sup>17</sup> Several of the national laws referred to in this study rely specifically on the case-law of the Court of Justice to define the concept of 'employer-employee relationship' and, accordingly, whether or not an activity is carried out independently.

29. Under **Belgian** law, which provides for both the one-tier and two-tier model, directors, in their capacity as members of the board of directors, cannot be bound to the company by a contract of employment.<sup>18</sup>
30. Nevertheless, that does not mean that the activity of a director is to be regarded as an activity carried out independently for the purposes of VAT liability. According to the VAT authorities,<sup>19</sup> directors who are natural persons and are acting within the scope of their mandate are deemed to act as organs of the company,<sup>20</sup> in an employer-employee relationship with that company, and, since they do not have the status of persons carrying out an activity independently, they do not meet the definition of 'taxable person for the purposes of VAT' within the meaning of Article 4 of the Belgian VAT Code.<sup>21</sup> Nevertheless, transactions carried out outside the scope of that mandate are, in principle, subject to VAT, provided that they are not occasional transactions.
31. The same finding was reiterated most recently by the Administration générale de la fiscalité - Services centraux TVA (General Administration of Taxation - Central Services - VAT, Belgium), which stated that '[b]oard members, directors and liquidators of companies who, in their capacity as natural persons, act vis-à-vis third parties as organs of the legal person that they represent, do not, therefore, act independently within the meaning of the [Belgian] VAT Code. It follows from this that, when they act within the scope of their ordinary corporate duties, they are in an employer-employee relationship with the legal person which entrusted them with those duties and are therefore not taxable persons in respect of the duties performed in this context [...]. However, where they provide specific services to the company concerned outside the scope of their corporate duties (e.g. corporate management advice), they are always regarded as taxable persons in respect of those services'.<sup>22</sup>
32. In **Bulgaria**, where the organisation of the governance of public limited companies is mixed, i.e. both one-tier and two-tier in nature, the activity carried out by a natural person in his or her capacity as member of the management board or of the board of directors of a (public limited) company, in the performance of a contract in exchange for remuneration, is an activity linked to the management and control of the company. That activity is not regarded as an economic activity carried out independently and is not subject to VAT.<sup>23</sup>

<sup>18</sup> [Code des sociétés et des associations](#) (Companies and Associations Code) of 23 March 2019 (*Moniteur belge* of 4 April 2019, p. 33239, consolidated version).

<sup>19</sup> The position of those authorities is based on a theory known as the 'Organschaft theory', according to which board members and directors, as organs of the company, cannot act independently of the company that they manage (see De Maeijer, S. '[BTW-plicht van bestuurders en Commissarissen](#)', *Tijdschrift voor Fiscaal Recht*, 2020, pp. 117 to 122, footnote 20, regarding the difference between legal persons (which are taxable persons) and natural persons (with a distinction in the case of directors who are natural persons, depending on whether they act in the ordinary exercise of their corporate duties or, on the contrary, outside the scope of their corporate duties), and Van De Woesteyne, I., *Fiscaal recht in essentie* 2020, Antwerp, Intersentia, 2020, pp. 416 to 417).

<sup>20</sup> It must be noted that several Member States seem to adopt the approach of considering a member of a board of directors to be part of the organisational structure of the company and not carrying out an activity independently within the scope of his or her mandate. In **Polish** law, however, the organisational relationship does not affect the director's status as regards VAT liability, which is defined by the contractual relationship between the director and the company. See judgment of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) of 12 July 2022, I FSK 1585/18, LEX No 3448355, paragraph 12 and the case-law cited.

<sup>21</sup> The [Code de la taxe sur la valeur ajoutée](#) (Value Added Tax Code), established by the Law of 3 July 1969 (*Moniteur belge* of 17 July 1969, p. 7046, consolidated version) ('the Belgian VAT Code').

<sup>22</sup> Paragraph 18 of [Note No 47/2013 \(E.T. 124.411\)](#) of 20 November 2013.

<sup>23</sup> See Position Statement No 04-19-570 of 16 November 2011 of the Executive Director of the Natsionalna agentsia za prihodite (National Revenue Agency, Bulgaria).



33. Under **Spanish** law, which provides for a one-tier model for corporate governance, it is considered that the contract binding a director and a company cannot, under any circumstances, be regarded as an employment contract. In that regard, in the law on companies <sup>24</sup> and settled case-law, the relationship between a director and a company is, in all cases, classified as being 'organisational'. That stems from the fact that the director is part of a corporate body and, by virtue of being part of it, has powers to manage and represent the company.
34. Accordingly, the activity of the members of a board of directors is not regarded as being carried out independently for the purposes of VAT liability. Pursuant to the case-law, there is a clearly illustrated exception to that general rule. Thus, in a relatively specific case, <sup>25</sup> that is to say, *where the members of a board of directors provide services to the company outside the scope of the tasks inherent in their mandate as directors*, the organisation of own resources is considered to be an essential factor in classifying the activity as being one carried out 'independently' for the purposes of VAT liability. In this sense, directors who provide their services to a company in which the ownership of or right to use the main assets for the exercise of the activity that constitutes the company's object is vested in the company itself are excluded from the scope of VAT. In that respect, with regard to directors who provide their professional services to a company whose object is to provide such services, it is necessary to consider the question whether it is the director him or herself who is the means of production. In the case of services for which the human factor constitutes a significant means of production ('intuitu personae' services) and where, as a result, it is not always easy to differentiate whether the means of production are fundamentally vested in the premises of the undertaking (material assets such as computer hardware, databases and staff such as administrative and support staff), or if they lie with the director him or herself (training, knowledge, professional reputation), the assessment will be done on a case-by-case basis and will also have to take into account other circumstances, in order to determine whether an economic activity is carried out independently. <sup>26</sup>
35. Under **Italian** law, the remuneration paid by a public limited company to a member of the board of directors is generally not subject to VAT. An exception is made where the director carries out in an independent capacity other activities that are subject to VAT. <sup>27</sup> The provision of services inherent in relationships of coordinated and continuous collaboration (treated as income from employment) falls outside the scope of VAT.
36. Under **Portuguese** law, the members of a board of directors are also integrated organisationally within the company, and they carry out their management and representation activities within the scope of their corporate duties. In that respect, their activity is not regarded as being carried out in their own name, but on behalf of, on account of and in the interest of the company, and directors are not carrying out an independent activity. It follows that, for VAT purposes, the

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<sup>24</sup> [Ley de sociedades de capital](#) (Law on Capital Companies) (Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital) (BOE No 161 of 3 July 2010, p. 10544).

<sup>25</sup> It must be emphasised that the general rule in Spanish law is that members of the board of directors of a public limited company are not taxable persons. That approach is based on the idea that those members perform their functions as such in accordance with the organisational criteria laid down by the general meeting of shareholders of the company, that it is the own resources of the company which are made available to them for their function in the company, and that they bind the company vis-à-vis third parties. In this case, the situation concerned a director of a real estate company, to which that director provided her expertise as a geologist.

<sup>26</sup> [Reply of the Dirección General de Tributos](#) (General Directorate of Taxes, Spain) to a consultation (V1785-19 of 11 July 2019).

<sup>27</sup> See 'D. Laws where the activity of directors may be regarded as activity carried out independently for the purposes of VAT liability, based on a case-by-case- assessment.'

performance of the duties of directors who are managers is not regarded as activity carried out independently, and their remuneration is not subject to VAT.<sup>28</sup>

37. In **Swedish** law, which provides for a one-tier system of governance for public limited companies, the Skatteverket (Swedish Tax Agency) has stated in a position statement<sup>29</sup> that being a member of a board of directors may indeed entail a certain degree of personal liability on the part of the member, such as being responsible for the taxes of the company or association. Nevertheless, according to that position statement, the fact that there is such personal liability does not mean that the board member must be regarded as individually liable for all the decisions taken by the board of directors.
38. According to that single legal source identified which expressly addresses whether or not the remuneration in question is subject to VAT, a member of the board of directors of a public limited company may not, in that capacity, be considered to be an employee. Nevertheless, that member is in an employer-employee relationship. That approach applies regardless of whether the individual is simultaneously employed as managing director of the company. The mandate of such a member is regarded as personal in nature. Since the condition of independence laid down in the national VAT legislation is not satisfied, there is no need to examine whether or not that activity is economic in nature.
39. Thus, a member of the board of directors is not regarded as a taxable person acting in that capacity. That approach applies to all the work that such a member carries out under his or her mandate, without any activities that he or she might carry out independently outside the scope of that mandate having an impact. Consequently, the remuneration obtained under the mandate in question must not be subject to VAT.<sup>30</sup>
40. The Skatteverket (Swedish Tax Agency) takes the view that, in order for a member of a board of directors to be regarded as acting in his or her own name and on his or her own account, and under his or her own responsibility, that person must be in a position to exercise alone the powers conferred on him or her by the board of directors. Nevertheless, that is not the case. It is true that the member may, upon delegation by the board, take decisions alone, but it is generally the board of directors which takes the decisions. It is also possible for the member to be personally liable, in particular as regards the unpaid taxes of the company. However, that circumstance does not make him or her liable for all the decisions taken by the board of directors. According to the Skatteverket (Swedish Tax Agency), since the members of a board of directors do not act in their own name and on their own account, or under their own responsibility, there is no need to assess whether a member bears the economic risk associated with his or her activity.

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<sup>28</sup> See [decision of 16 June 2021](#) of the Centro de Arbitragem Administrativa - CAAD (Center for Administrative Arbitration, Portugal), according to which 'remuneration of company bodies is not covered by the incidence rules of the Código do Imposto sobre o Valor Acrescentado [(VAT Code; "the CIVA")] (Articles 1 to 8 of the CIVA).'

<sup>29</sup> Namely a [position statement of 2021](#) of the Skatteverket (Swedish Tax Agency) (Dnr: 8-1054864). It should be noted that such a position statement does not have the force of binding legislation, but that, to date, the approach of that agency, converted into a decision by that authority, does not appear to have been examined by the tax courts in Sweden.

<sup>30</sup> It must be noted that the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) has on several occasions ruled on the tax treatment of the remuneration of the members of a board of directors. However, that case-law concerns only the question of whether or not the remuneration in question is subject to income tax. According to that well-established case-law, it is presumed that the remuneration constitutes income by way of wages and that it is not necessary to assess the extent to which a member of a board of directors is carrying out activities independently. That presumption does not apply to activities that are clearly time-specific and aimed at a specific action. See, in particular, the decision of the Högsta förvaltningsdomstolen (Supreme Administrative Court) in the cases HFD 2017, No 41, and HFD 2019, No 31.

D. LAWS WHERE THE ACTIVITY OF DIRECTORS MAY BE REGARDED AS ACTIVITY CARRIED OUT INDEPENDENTLY FOR THE PURPOSES OF VAT LIABILITY, BASED ON A CASE-BY-CASE ASSESSMENT

41. This study has identified five laws under which an assessment is conducted on a case-by-case basis to establish, relying on the contract concluded between the director and the company, whether an activity might be regarded as being carried out independently pursuant to the case-law of the Court of Justice on the interpretation of Article 9(1) of the VAT Directive.
42. First of all, according to **German** case-law, it is necessary to determine whether a person who is a member of a governing or supervisory body of a legal person, thus in the context of a two-tier system, must be regarded, for VAT purposes, as performing an activity independently, by taking account of, and weighting, the specific conditions under which that person performs his or her duties as a member. Particular importance is attached to whether that person performs those duties on his or her own account and under his or her own responsibility.<sup>31</sup> Furthermore, the fact that a person providing services is acting on his or her own account is a criterion which must be taken into consideration in order to determine whether he or she is liable to pay VAT or should be exempted from it. The national court also stated that autonomy within the organisation and in the performance of the activity is one of the factors militating in favour of the activity being carried out independently.<sup>32</sup>
43. Likewise, as regards the members of a supervisory board, the Bundesfinanzhof (Federal Fiscal Court, Germany) abandoned its previous case-law, which always classified their activity as being carried out 'independently',<sup>33</sup> and ruled, referring in particular to the case-law of the Court of Justice,<sup>34</sup> that the activity of a member of a supervisory board who receives fixed remuneration and therefore does not bear any risk associated with his or her remuneration cannot be classified as being carried out independently for the purposes of VAT liability.<sup>35</sup> Following that judgment, the Bundesministerium der Finanzen (Federal Ministry of Finance, Germany) stated that a member of a supervisory board must be regarded as carrying out an activity independently where the variable part of his or her remuneration is equal to or greater than 10 % of his or her total remuneration.<sup>36</sup>

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<sup>31</sup> Bundesfinanzhof (Federal Fiscal Court, Germany), [judgment of 14 April 2010](#), XI R 14/09.

<sup>32</sup> Bundesfinanzhof (Federal Fiscal Court, Germany), judgment of 19 January 2017, V R 47/15, [ECLI:DE:BFH:2017:U.190117.VR47.15.0](#).

<sup>33</sup> As regards that old case-law, see Bundesfinanzhof (Federal Fiscal Court, Germany), [judgment of 27 July 1972](#), V R 136/71.

<sup>34</sup> Judgment of 13 June 2019, *IO (VAT - Activities of a member of a supervisory board)* (C-420/18, [EU:C:2019:490](#)).

<sup>35</sup> Bundesfinanzhof (Federal Fiscal Court, Germany), judgment of 27 November 2019, V R 23/19 (V R 62/17) [ECLI:DE:BFH:2019:U.271119.VR23.19.0](#).

<sup>36</sup> [Umsatzsteuer-Anwendungserlass](#) (Ruling on the application of turnover tax) of 1 October 2010 (BStBl. 2010 I, p. 846), paragraph 2.2. In this context, it is useful to point out that German law expressly provides that, for income tax purposes, the remuneration which a member of a supervisory board receives in consideration for that activity is always to be classified as 'income from an activity carried out independently', regardless of whether that remuneration is fixed or variable; see Paragraph 18(1)(3) of the [Einkommensteuergesetz](#) (Law on income tax), in the version published on 8 October 2009 (BGBl. 2009 I, p. 3366), as last amended by the Law of 20 December 2022 (BGBl. 2022 I, p. 2730).

44. Under **Austrian** law, which, like German law, provides for a two-tier system, an employer-employee relationship in respect of a board member<sup>37</sup> is manifested by the right of the employer to influence, inter alia, the manner in which the work is carried out, the use of work equipment, the work schedule or the determination of the place of work.<sup>38</sup> The absence of an obligation to bring one's own work equipment is also taken into account in determining whether there is an employer-employee relationship.
45. Under **Cypriot** law, the members of a company's board of directors may be bound to the company by a contract of employment or by a contract for services. However, Cypriot tax authorities consider that it is sometimes difficult to determine, for the purposes of VAT taxation or exemption, whether services are provided by an employee to his or her employer under the contract for services (which is effectively a contract of employment: services not subject to VAT) or by a worker performing an activity in an independent capacity for his or her client under the contract for services (services subject to VAT). Thus, in a circular concerning services provided by employees in general, those tax authorities specified the criteria to be considered for such determination. Those criteria, although not specifically concerning directors, could nonetheless also prove relevant with regard to the activity of members of a board of directors of a company. The criteria include, in particular, the extent to which a person supplying services acts on his or her own account, whether that person uses his or her own equipment, whether he or she employs his or her own staff, as well as the degree of economic risk that that person bears or of his or her integration into the organisation of the undertaking.<sup>39</sup>
46. In **Greece**, the question of whether remuneration paid to members of the board of directors of public limited companies should be subject to VAT is not covered by any express or unequivocal provision. However, some insight into the impact of the liability borne by board members can be drawn from the legislative history of the law relating to income tax.<sup>40 41</sup>

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<sup>37</sup> Under **Austrian** law, in the case of a managing partner of a limited liability company ('GmbH'), the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) held, referring to the case-law of the Court of Justice (judgments of 25 July 1991, *Ayuntamiento de Sevilla*, C-202/90, [EU:C:1991:332](#); of 18 October 2007, *van der Steen*, C-355/06, [EU:C:2007:615](#); of 29 September 2015, *Gmina Wrocław*, C-276/14, [EU:C:2015:635](#), and of 12 October 2016, *Nigl and Others*, C-340/15, [EU:C:2016:764](#)), that, concerning the question of whether that managing partner must be regarded as carrying out an activity independently within the meaning of Paragraph 2 of the Austrian UStG, it is crucial to identify whether, on the basis of an overall assessment of the situation in that case, a legal relationship exists between the company and the managing partner which creates an employer-employee relationship with respect to working conditions, remuneration and employer liability (see decision of the Supreme Administrative Court of 26 January 2017, Ro 2016/15/0003, [ECLI:AT:VwGH:RO2016150003.J00](#)). It would appear those aspects can be applied to the 'Vorstand' (management board) of a public limited company ('Aktiengesellschaft'), in so far as the Supreme Administrative Court has already applied to such a 'Vorstand' its own tax case-law on managing directors of GmbHs (see decision of the VwGH of 24 February 1999, 97/13/0234, [ECLI:AT:VWGH:1999:1997130234.X00](#), although that concerns income tax).

<sup>38</sup> [Umsatzsteuerrichtlinien 2000](#) (Interpretative guidelines for the Austrian UstG), in the version of 5 December 2022, paragraph 231.

<sup>39</sup> [Interpretative circular 43](#) of 9 June 1997 concerning services provided by employees. It must also be noted that, in assessing the nature of services being provided, the Cypriot labour courts have looked, albeit in a different context, at whether the person providing services is able freely to determine the conditions and arrangements for the performance of his or her work, the arrangements for payment of his or her remuneration and the degree of control or participation he or she has in the management of the company. See, in that regard, Δικαστήριο Εργατικών Διαφορών (Labour Court, Cyprus), judgments of 30 March 2018, *Konteatou v. Kyriakos Organismos Tourismou*, No. 1035/2013, [ECLI:CY:DEDLEF:2018:18](#) and of 31 August 2020, *X.D. v. Tameio Pleonasmou*, No. 563/2014, [ECLI:CY:DEDLEF:2020:40](#).

<sup>40</sup> [Report of the Scientific Service of the Greek Parliament](#), observations on Article 12 of the draft Nomos yp'arithmon 2238 — Kyrosi tou kodika forologias isodimatos (Income Tax Code; 'the Greek Income Tax Code'), p. 12. The Greek Income Tax Code, as adopted in its final version by the Greek Parliament, contains a provision stating that that income is to be treated as income obtained in the course of paid employment 'for the purpose of applying the [Greek] Income Tax Code' (Nomos 4172/2013, Kodikas Forologias Eisodimatos (Law 4172/2013, Income Tax Code), FEK A' 167/23-07-2013).

47. Under the Greek Income Tax Code, remuneration in cash or in kind provided to members of the board of directors of a public limited company is classified as ‘income from paid employment for the purpose of applying the [Greek] Income Tax Code’, which implies an employer-employee relationship with the persons to whom those members provide the services. For this reason, it was considered appropriate to question whether such income can be regarded, for VAT purposes, as being obtained in the course of paid employment.<sup>42</sup>
48. Furthermore, according to the case-law of the Areios Pagos (Court of Cassation, Greece) relating to contracts applicable in corporate law (and not relating to tax case-law) under the former law on public limited companies, a member of the board of directors of a public limited company is in principle bound to that company by an agency contract. Where that member receives remuneration, the fact that he or she exercises the powers of management and administration under his or her own responsibility and on his or her own initiative will have the effect of that person’s relationship with the company being classified as a ‘hire of independent services’, with the member in question being regarded as an organ of the company. Consequently, that person is subject to the regime governing the board of directors, and provisions of labour law do not apply.
49. In **Polish** law, an activity is not regarded as being carried out independently if it involves no liability on the part of the service provider vis-à-vis third parties for any damage that might result from the activity performed, and if it entails no economic risk for the service provider.<sup>43</sup> Those circumstances are also taken into account by the administrative courts when assessing the nature of the activity carried out by a director of a public limited company.<sup>44</sup> In line with that approach, the Ministra rozwoju i finansów (Minister for Development and Finance) provided an interpretation<sup>45</sup> in which it was determined, with regard to the condition relating to the liability of the service provider vis-à-vis third parties, that that condition is not satisfied when it is clear from the provisions of the contract (the provisions of the Companies Code<sup>46</sup> being irrelevant) that the director’s activity incurs liability on the part of the company and not on the part of the director. The same applies where the contract simply does not provide for liability on the part of the director vis-à-vis third parties. In those situations, the director’s activity cannot be described as being ‘exercised independently’. It must also be noted that, in the decision of 12 January 2009<sup>47</sup> on which that interpretation is based, the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) relies on the case-law of the Court of Justice<sup>48</sup> to specify

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<sup>41</sup> For a special case, see ‘E. Laws where the activity of directors may be regarded as being carried out independently for the purposes of VAT liability due to the exercise of another activity carried out independently or of a profession’.

<sup>42</sup> It would appear that, unlike **Swedish** and **Czech** law, **Greek** law can apply the approach whereby liability for income tax excludes liability for VAT on the same income.

<sup>43</sup> [Decision](#) (interpreting judgment) of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) of 12 January 2009, I FPS 3/08, ONSAiWSA 2009, No 3, item 46.

<sup>44</sup> See decisions of the administrative courts: Wojewódzki Sąd Administracyjny w Gdańsku (Regional Administrative Court, Gdansk, Poland), judgment of 24 September 2013 (I SA/Gd 792/13, Monitor podatkowy 2013, No 11, headings 27 to 32); Wojewódzki Sąd Administracyjny w Gliwicach (Regional Administrative Court, Gliwice, Poland), judgment of 3 April 2014 (III SA/Gl 212/14, LEX No 1463762), and Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), judgment of 16 June 2016 (I FSK 83/15, LEX No 2080535).

<sup>45</sup> [General interpretation](#) of 6 October 2017, Nr PT3.8101.11.2017.

<sup>46</sup> [Kodeks spółek handlowych](#) (Companies Code of 15 September 2000) (consolidated version, Dz. U. of 2022, item 1467).

<sup>47</sup> [Decision](#) (interpreting judgment) of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) of 12 January 2009, I FPS 3/08, ONSAiWSA 2009, No 3, item 46.

<sup>48</sup> The judgments in *Ayuntamiento de Sevilla* (C-202/90, [EU:C:1991:332](#)); of 26 March 1987, *Commission v Netherlands* (235/85, [EU:C:1987:161](#)); and of 20 November 2003, *Unterperinger* (C-212/01, [EU:C:2003:625](#)); as well as the order of 21 May 2008, *Mihal* (C-456/07, not published, [EU:C:2008:293](#)), were cited.



the criteria according to which an activity may not be regarded as being carried out independently.<sup>49</sup>

50. Thus, an activity carried out using the infrastructure and internal organisation of the entity where it is performed is not regarded as being carried out independently within the meaning of Article 9(1) of the VAT Directive.<sup>50</sup>
51. The case-law of the Polish courts cited above appears to demonstrate that, in so far as the required criteria are satisfied, the activity performed by members of the boards of directors of Polish companies may be regarded as being carried out independently for the purposes of VAT liability.
52. In the **Czech Republic**, where one-tier and two-tier systems are in place, case-law provides a concrete example of where the remuneration of board members of companies is subject to VAT. Thus, the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) examined the activity of a chairperson of a management board (or of a board of directors, in the one-tier system). That activity, in principle, is no different from that of other board members, whether in the two-tier or the one-tier system. The Nejvyšší správní soud (Supreme Administrative Court) ruled that such activity cannot be regarded as being carried out in the capacity of employee,<sup>51</sup> insofar as the chairperson of a board of directors partially carries out his or her activities under his or her own responsibility<sup>52</sup> while at the same time bearing the economic risk associated with the performance of those activities.<sup>53</sup>
53. The Nejvyšší správní soud (Supreme Administrative Court) outlines in its case-law the criteria for classifying an activity as being carried out independently by referring to the case-law of the Court.<sup>54</sup> Accordingly, that national court concludes that, in order to determine whether a person carries out an economic activity independently, it is essential to establish whether he or she is in an employer-employee relationship with another person. To assess whether such an employer-

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<sup>49</sup> The decision in question *does not concern directors of commercial companies*, but experts hired by ordinary courts. Thus, the interpretation provided is rather general. However, that decision serves as the point of reference for all subsequent case-law, including that concerning members of a board of directors. Thus, it is cited in all the decisions referenced in footnote 35, which specifically concern directors of commercial companies.

<sup>50</sup> Decision (interpreting judgment) of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) of 12 January 2009, I FPS 3/08, ONSAiWSA 2009, No 3, item 46.

<sup>51</sup> [Decision of 21 June 2021](#), No 3 Afs 82/2019.

<sup>52</sup> Those individuals do not conduct their activities on the basis of instructions. According to Paragraph 435(2) and (3) and Paragraph 456(2) and (3) of the zákon č. 90/2012 Sb., o obchodních společnostech a družstvech (Law No. 90/2012 on trading companies and cooperatives) ('Law on trading companies and cooperatives'), the management board/board of directors is responsible for the business management. Similarly, it is prohibited to give to its members instructions regarding business management. They freely organise the manner in which they work. They are liable for breaches of their duty of care as prudent businesspersons within the meaning of Paragraph 159 of the občanský zákoník (Czech Civil Code) and Paragraph 52 of the Law on trading companies and cooperatives and, in specific cases, may be liable vis-à-vis third parties.

<sup>53</sup> They may lose the right to remuneration for the exercise of that activity in accordance with Paragraph 61(2) of the Law on trading companies and cooperatives; they may be obliged to transfer any profit deriving from their contract concerning the performance of their duties to the insolvency estate in the event of the company's bankruptcy, where their breach of duties contributed to the insolvency, under Paragraph 66 of the Law on trading companies and cooperatives; they may be held liable vis-à-vis third parties in specific cases concerning bankruptcy, in accordance with Paragraph 66 of the Law on trading companies and cooperatives, or the insolvency procedure under Paragraph 99 of the zákon č. 182/2006 Sb. o úpadku a způsobech jeho řešení (Law No. 182/2006 on bankruptcy and the modes of its resolution). Furthermore, they may be prohibited from performing their duties in the organs of the company. An identical approach appears to have been adopted in **German** case-law; see Bundesfinanzhof (Federal Fiscal Court, Germany), [judgment of 14 April 2010](#), XI R 14/09.

<sup>54</sup> Judgments of 18 October 2007, *van der Steen* (C-355/06, [EU:C:2007:615](#)), and of 29 September 2015, *Gmina Wrocław* (C-276/14, [EU:C:2015:635](#)).

employee relationship exists, it is necessary to ascertain whether the person concerned carries out his or her activities in his or her own name, on his or her own account and under his or her own responsibility; whether he or she bears the economic risk associated with the performance of the activities; whether he or she is free to arrange how he or she performs his or her work and whether he or she directly receives the emoluments that make up his or her income. The national court held that it is important to determine whether the person in question bears the economic risk associated with carrying out his or her activities and whether his or her personal liability for any damage arises from the performance of his or her activities.<sup>55</sup> More specifically, the ability of a person freely to organise the way in which his or her work is performed. In that regard, the Nejvyšší správní soud (Supreme Administrative Court) emphasised that that factor is decisive in establishing whether the person carries out an economic activity independently.

E. LAWS WHERE THE ACTIVITY OF DIRECTORS MAY BE REGARDED AS BEING CARRIED OUT INDEPENDENTLY FOR THE PURPOSES OF VAT LIABILITY DUE TO THE EXERCISE OF ANOTHER ACTIVITY CARRIED OUT INDEPENDENTLY OR OF A PROFESSION

54. A particular situation arises regarding the independent nature of the activity of a member of the board of directors of a public limited company: individuals representing certain professions who serve as a member of a board of directors, and are considered liable to VAT on their remuneration. Furthermore, the remuneration of individuals who do not practice such professions may also be subject to VAT, in so far as those persons provide to the public limited company of whose board of directors they are members professional services outside the scope of their assigned duties as directors.
55. Thus, under **Cypriot** law, if the activity of directors is not subject to VAT by virtue of an express provision or case-law, this may still be the case in certain circumstances and under certain conditions. Therefore, if the duties of director are carried out by lawyers, accountants, consultants or other similar professionals who, at the time they take up their duties, are practising their profession or engaging in any other economic activity and continue to do so after they take up their duties, the exercise of the activity of director is considered an economic activity<sup>56</sup> and, accordingly, a taxable transaction. However, exceptions to that rule are provided, in particular in the case of an employee who is bound to the company by a contract of employment or by any other relationship involving an employer-employee relationship as regards working conditions, remuneration and employer liability.
56. In addition, Cypriot law provides for a specific rule regarding the situation of directors appointed to the board of directors of a company by natural or legal persons who have invested in those companies and therefore have the rights to appoint directors. In such circumstances, the remuneration received by those directors is not subject to VAT if they do not provide specialist advice or play an active role in the management of the company. Otherwise, their remuneration is subject to VAT.<sup>57</sup>
57. Lastly, Cypriot law provides for another specific situation, relating to the activity of a member of the board of directors: multiple mandates. It is possible that the number of mandates as a

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<sup>55</sup> [Decision of 22 November 2016](#), No 2 Afs 100/2016.

<sup>56</sup> [Interpretative circular 205](#) of 7 October 2016 amending interpretative circular 151 with regard to the appointment of members of the board of directors and other officers.

<sup>57</sup> [Interpretative circular 205](#) of 7 October 2016 amending interpretative circular 151 with regard to the appointment of members of the board of directors and other officers.

director in different companies may affect that person's liability to VAT. Thus, under Cypriot law, it is considered that a person who is appointed to the boards of directors of several companies and who personally receives remuneration from those companies is liable to VAT if the value of such remuneration exceeds a certain threshold.

58. Under **Italian** law, remuneration paid by a public limited company to a member of its board of directors is generally not subject to VAT. However, services that are not provided by persons who carry out as their habitual profession, in an independent capacity, other activities subject to VAT, are subject to VAT also within the framework of coordinated and continuous collaborative relationships.<sup>58</sup>
59. Given the strictly personal nature of the roles of director, statutory auditor or auditor, those duties are characterised by independent liability, including criminal liability, linked to the performance of specific tasks, undertaken with the express acceptance of the duties. As a result, individuals performing those duties are bound to the company in which they perform them by a *particular* organisational link, manifested through the performance of actions that can be classified as 'typical independent activities'.
60. However, according to case-law,<sup>59</sup> income not strictly attributable to the exercise of those professions is excluded from VAT. More specifically, the concept of professional activity (subject to VAT) must also be understood to include, in addition to the provision of typically professional services (that is to say, activities reserved for members of the relevant professional registers), the performance of activities which, although not typical for those professions, nevertheless have a 'link' with the professional activity in the strict sense, because they require the same technical skills that the professional usually employs in the exercise of his or her professional activity and for which he or she draws (also) upon the specific knowledge stemming from the training characteristic of the profession.
61. The same applies in **Greece**, when a member of a board of directors provides his or her services as an independent service provider, for example as a legal or tax adviser. That person receives remuneration based on a special legal relationship, such as an employment contract or an agency contract, in accordance with the specific conditions set out in the law on public limited companies.<sup>60</sup> In such cases, the member's activity could be regarded as an economic activity carried out independently within the meaning of the second subparagraph of Article 9(1) of the VAT Directive.<sup>61</sup>

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<sup>58</sup> Article 5 of [Decreto del Presidente della Repubblica n. 633 Istituzione e disciplina dell'imposta sul valore aggiunto](#) (Presidential Decree No. 633, establishing and governing value added tax) of 26 October 1972 (Ordinary Supplement to GURI No 292 of 11 November 1972) and [Circolare 17/332689](#) of 26 February 1985, issued by the Ministero delle Finanze - *Direzione generale delle tasse* - Amministratori e sindaci (Ministry of Finance - Directorate-General for Taxation - Directors and Auditors, Italy).

<sup>59</sup> Corte di Cassazione (Court of Cassation, Italy), judgment of 11 March 2013, No 5975.

<sup>60</sup> Article 99 and Article 109(3) of Nomos 4548/2018, Anamorfosi tou dikaiou ton anonimon Etairion (Law No 4548/2018, Reform of the law on public limited companies).

<sup>61</sup> And within the meaning of the second subparagraph of Article 4(1) of the Κώδικας Φόρου Προστιθέμενης Αξίας (Greek VAT Code), which transposes it into Greek law, according to which '[a]ny activity of producers, traders or persons supplying services, including [...] the professions, shall be regarded as "economic activity"'.

F. LAWS WHERE THE ACTIVITY OF DIRECTORS IS GENERALLY REGARDED AS ACTIVITY CARRIED OUT INDEPENDENTLY FOR THE PURPOSES OF LIABILITY TO VAT

62. **Luxembourg** law appears to be an example where members of the board of directors of a public limited company are generally regarded as carrying out an activity independently. VAT liability for such activity is explicitly provided for. The act subjecting the remuneration of those directors to VAT does not specify the concrete criteria leading to that solution. It merely states that the activity of such a member is deemed to constitute in itself an economic activity consisting in the provision of services, and confers on that member, in accordance with the general provisions of national VAT legislation and related EU law, the status of taxable person for VAT purposes.<sup>62</sup> That VAT liability does not apply to small businesses or honorary mandates.

## CONCLUSION

63. An assessment of the laws of the Member States of the European Union reveals that the laws of 13 Member States (**Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Italy, Luxembourg, Poland, Portugal, Spain** and **Sweden**) contain aspects that are relevant as regards VAT liability in respect of remuneration paid to members of the board of directors of a public limited company.
64. Those aspects are not generally apparent from legislation in the strict sense, given that what has been identified are rather position statements or recommendations issued by the tax authorities of the Member States. The case-law identified relates both to one-tier and two-tier systems and does not always concern the boards of directors of public limited liability companies. However, it concerns situations which may be treated in the same way as duties existing within public limited companies.
65. In six of these Member States (**Belgium, Bulgaria, Spain, Italy, Portugal** and **Sweden**), members of a board of directors are not regarded as persons carrying out activities independently for VAT purposes, with some very specific exceptions.
66. In six other Member States (**Germany, Austria, Cyprus, Greece, Poland** and the **Czech Republic**), the activity of directors can be regarded as activity carried out independently for the purposes of VAT liability based on a case-by-case assessment. That assessment aims to determine whether the directors are in an employer-employee relationship vis-à-vis the company. That is based on several criteria, such as: risk, liability, whether one acts in one's own name and on one's own account, the scale and nature of the income, the possible existence of multiple mandates, the human and material resources used, the role that the person concerned has in the company and whether that person is able freely to organise the manner in which the work is carried out.
67. Moreover, under three national laws (**Cyprus, Greece** and **Italy**), the activity of directors may be treated as activity carried out independently for the purposes of VAT liability on account of the exercise of another activity in an independent capacity, or of a profession.

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<sup>62</sup> [Circular No 781](#) of 30 September 2016, issued by the direction de l'enregistrement et des domaines (Registration Duties, VAT and Estates Authority, Luxembourg). Applicable from 1 January 2017, last updated on 26 February 2021.

68. Lastly, the law of **Luxembourg** is the only one in which the activity of directors appears, as a general rule, to be regarded as an activity carried out independently for the purposes of VAT liability.

[...]



**OVERVIEW TABLE**  
**‘RELEVANT CRITERIA FOR DETERMINING THE VAT SYSTEM RELATING TO THE ACTIVITY OF MEMBERS OF A BOARD OF DIRECTORS’**

Member State	Employer-employee relationship					Exercise of another activity carried out independently/of a profession
	Risk and liability	Whether one acts in one's own name and on one's own account	Scale and nature of the income	The existence of multiple mandates	Human and material resources	
Austria		x			x	
Belgium		x				
Bulgaria	x					
Cyprus		x	X	x	x	x
Czech Republic	x	x				
Denmark	x	x			x	
Germany	x	x	X			
Greece	x					x
Italy		x				x
Luxembourg <sup>63</sup>	x	x			x	
Poland	x				x	
Portugal	x	x			x	
Spain	x	x				x
Sweden		x				

<sup>63</sup> [...]