

REGULATORY NEWS

Manco/AIFM

END OF VAT ON DIRECTORS' FEES

As you may have heard, on 21 December 2023 the Court of Justice of the European Union issued its ruling on the "TP vs Administration de l'Enregistrement, des Domaines et de la TVA" judgment (C-288/22) and the VAT treatment applicable to directors' fees.

IT CONCLUDED THAT :

- A member of the board of directors of a public limited company carries out an economic activity.
- However, this activity as a member of the board is not exercised independently.

BY INDEPENDENT EXERCISE:

It is understood that when this director freely organizes the manner in which he carries out his work, collects the emoluments constituting his income himself, acts in his own name and is not subject to a hierarchical relationship of subordination, he is not acting on his own behalf or under his own responsibility and does not bear the economic risk associated with his activity.

With this explanation, a member of the Board of Directors cannot therefore be considered as a taxable person for VAT purposes. VAT would therefore not apply to the remuneration paid by the company (outside the scope of VAT).

AT THE PARLIAMENTARY MEETING OF JANUARY 22TH 2024

Minister Gilles Roth replied to question no. 136 of 22 December 2023 and analyzed the VAT refund:

- The initial invoice, including VAT, must be paid by means of a credit note (both to the administrator and to the person liable to pay the fees).
- The administrator pays the percentage debtor the amount of VAT reimbursed to him by the AED.
- A rectifying invoice must be issued for the original amount of the fees excluding VAT and must be accounted for by the administrator and the fee debtor.

MARKETING MATERIALS' UPDATE FOR DISTRIBUTION

As you may already be aware of, marketing communication is the new "hot" topic for the regulatory authorities.

The FSMA as well as the CSSF have published guidelines that must be followed without exception by all the regulated entities responsible for distribution of marketing supports to investors.

These examples of documents may be considered as marketing communications:

- Press article.
- Interviews.
- Documents made available on the internet (webpages, factsheet).
- Live presentations.
- Messages broadcasted on any social media platform.
- Presentation made available to investors or potential investors.

- Pitchbooks.
- Etc.

In a nutshell, any communication mentioning a UCITS or an AIF must be fully compliant with the applicable legislation.

Both regulatory entities are now performing controls on marketing communications and fines have already been addressed to companies which do not fully comply with the applicable rules.

The AIFM/ManCo being fully responsible for the compliance of any marketing communication with these rules, we inform/remind you that it is mandatory to obtain the green light from the legal department of Pure Capital for all marketing communications before their release to the public.

You can send the draft to the following e-mail address: marketing@purecapital.eu / crm@purecapital.eu .

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*Chaperoning is a service where an EU regulated firm carrying out the marketing activities but with the Partner being part of such activities. The non-MIFID licensed Partners must be chaperoned at all times by an individual from the EU regulated firm.

SUPPLEMENTARY INFORMATION

For more information, please do not hesitate to consult our website <http://www.purecapital.eu>. You are also welcome to contact us by e-mail at info@purecapital.eu or by phone at [+352 26 39 86](tel:+352263986).

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