

## VAT ALERT

### **The french tax authorities (“FTA”) rewrites its guidelines on grants and allowances**

The guideline details relating to the taxability of subsidies and compensations to value added tax (“VAT”), which are currently divided between several guidelines, are grouped together in a new document entirely devoted to this subject, the [BOI-TVA-BASE-10-10-50](#).

They provide new illustrations of non-taxable compensations, aids and subsidies in particular in the energy sector. In addition, they draw the consequences of the latest case law developments in this area, in particular the judgment of the European Court of Justice (“ECJ”) of the 23<sup>rd</sup> of December 2015, case C-250/14 and C-289/14, Air France-KLM, and clarify its relationship with the judgment of the ECJ of 18 July 2007, case C-277/05, Société thermale d'Eugénie-les Bains.

They recall that:

- All charges applied by operators in respect of a service, including the right of withdrawal granted to the customer, and retained by the operators in the event of non-provision of the service, are subject to VAT. These charges are to be distinguished from sums whose sole purpose is to compensate for damage, which are not subject to VAT;
- The principles established by these cases are not specifically limited to the hotel or air transport sectors;
- The classification for VAT purposes of a non-refundable sum does not depend on the individual behaviour of the customer. In particular, the fact that the customer does not show up for a service does not change the nature of the sums previously paid. This does not preclude deposits paid in advance and not subject to VAT from being refunded by means of a charge against the price of transactions subject to VAT.

The guideline clarifications relating to the compensation regime are open to public consultation until 31 July 2022.

However, until 31 December 2022, companies may continue to rely on the comments relating to compensations, in their wording prior to this publication, and appearing in X § 260 to 300 of the BOI-TVA-BASE-10-10-20121115, in II § 130 to 190 of the BOI-TVA-BASE-10-30-20140115 and in I-E-2 § 230 of the BOI-TVA-SECT-60-20120912.



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