

VAT ALERT

THE TERMS AND CONDITIONS OF THE OPTION FOR BANKING AND FINANCIAL TRANSACTIONS ARE SPECIFIED

The 5° of I of Article 30 of the 2022 Finance Bill amended Article 260 B of the French tax code ("FTC") so that, from now on, the taxable person who opts for VAT taxation can choose to apply it to the transactions he wishes, except for those referred to in Article 260 C of the FTC. Consequently, on 24 June, the French tax authorities updated the BOI-TVA-SECT-50-10-30-10 and BOI-TVA-SECT-50-10-30-20 to provide the following clarifications:

All taxable persons who carry out banking and financial transactions on a regular basis may opt for VAT.

The taxable person shall make the option in writing to his tax authorities office. Except where the taxable person indicates otherwise, the option is valid for all sectors of his business. However, for a single taxable person constituted in accordance with Article 256 C of the FTC (VAT group), the option applies to its members who are deemed to be sectors of business of the single taxable person. In this case, unless otherwise indicated by the single taxable person, it is also valid for the sub-sectors of the member concerned.

The option applies transaction by transaction as defined in Article 257 ter of the FTC. Thus, each transaction taxable for VAT is deemed to be distinct and independent and follows its own regime determined according to its principal element or its elements other than ancillary. Thus, elements which are so closely linked that they objectively form a single indissociable economic service, which it would be artificial to split, fall within the scope of a single transaction. Moreover, where an element is ancillary to one or more other elements, it is part of the same transaction as those elements.

Each time a taxable person who has exercised the option carries out a banking or financial transaction falling within its scope, he may choose to subject it to tax or to exempt it. In practice, this option may lead him to decide, depending on his own motivations, to apply the option not only transaction by transaction, but also by category or kind of transaction, or even, in a global approach, to apply it to all banking or financial transactions within the scope of the option.

The option comes into effect on the first day of the month following its filing. The taxation of a transaction under the option does not require any specific formal requirements to be met. However, if the taxable person subjects a banking or financial transaction to VAT under the option, the invoice issued by him under the provisions of Article 289 of the FTC must include all the mandatory mentions, in particular the mention of the amount excluding tax and the related tax.

Dominique VILLEMOT
Attorney-at-law
dominique.villemot@villemot-associes.com

Nathalie LAY
Attorney-at-law
nathalie.lay@villemot-associes.com