

Flash Info Tax



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VAT - End of the dispute on rebate agreement agreed with Social Security (“remises conventionnelles”)?

On March 12, 2021, the French Supreme Tax Court has put an end to a long-running dispute with the tax authorities regarding the recovery of VAT on "conventional rebates" paid under agreements signed with the Economic Comity for Health Products (“*Comité économique des produits de santé*”), on its Janssen Cilag's decision.

The French Supreme Tax Court confirmed the decision of the Administrative Court of Appeal of Versailles, which had considered on several occasions that conventional discounts paid by pharmaceutical companies could be deducted from the taxable base for VAT on sales previously made by said companies and for which the discounts were due.

Thus, all levels of administrative jurisdiction have validated the possibility of applying the provisions of the ECJ's Boehringer Ingelheim Pharma ruling of December 20, 2017 (C-462/16) to the French system, while the tax authorities maintained their analysis, which consisted in considering that rebates are financial penalties that cannot reduce the taxable base for VAT. Particular attention will have to be paid to the nature of the rebates paid by pharmaceutical companies; the Conseil d'Etat having ruled in favor of certain rebates.

This decision will allow pharmaceutical companies to reduce their taxable base by the amount of discounts paid, from now on every year. In order to do so, it will be necessary to carefully classify the types of discounts. It should be noted that it will still be possible to reclaim the amounts of VAT overpaid in this respect during the years 2019, 2020 and 2021.

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