



Indirect Tax

VAT Controversy update

Modération de l'amende TVA par le juge: aucune demande préalable requise en vertu de l'Arrêté du régent

Dans un arrêt du 23 septembre 2022 (F.20.0112.N), la Cour de Cassation a jugé que, même si un contribuable n'a pas demandé la remise d'une amende TVA conformément à l'article 9 de l'Arrêté du régent n° 78 du 18 mars 1831, le tribunal peut toujours contrôler la légalité de la sanction imposée « avec pleine juridiction » et par conséquent modérer ou remettre l'amende TVA imposée.

Il y a eu quelques doutes à ce sujet dans la pratique suite à un arrêt antérieur de la même Cour du 17 janvier 2019 (F.16.0130.F).

Pour mémoire : selon la jurisprudence constante de la Cour de Cassation, le contrôle judiciaire « avec pleine juridiction » revient à permettre au juge de contrôler la légalité d'une amende TVA à caractère pénale au sens de l'article 6 de la CEDH. Cela devrait permettre au juge de vérifier si la sanction imposée est proportionnée à l'infraction et si l'administration de la TVA pouvait donc raisonnablement décider de l'imposer. Dans le cas contraire, le tribunal peut décider de modérer ou de remettre l'amende TVA.

Toutefois, cela ne signifie pas que le tribunal peut simplement modérer ou remettre une amende TVA sur la base d'une appréciation subjective de ce qu'il juge raisonnable, par pure opportunité et à l'encontre des règles juridiques.

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