

**ECJ decides that deposits retained by hotel are compensatory and therefore outside the scope of VAT and are not VATable consideration for a taxable reservation service**

The ECJ has released its decision in the case of *Société thermale d'Eugénie-les-Bains (C-277/05)*, which concerned the VAT treatment of deposits retained by a hotel and spa operator in circumstances where the customer cancelled a reservation.

Contrary to the opinion of the Advocate General, the ECJ has decided that:

"Articles 2(1) and 6(1) of Sixth Council Directive ... are to be interpreted as meaning that a sum paid as a deposit, in the context of a contract relating to the supply of hotel services which is subject to value added tax, is to be regarded, where the client exercises the cancellation option available to him and that sum is retained by the hotelier, as a fixed cancellation charge paid as compensation for the loss suffered as a result of client default and which has no direct connection with the supply of any service for consideration and, as such, is not subject to that tax."

*Deposits are collected by many businesses in varying circumstances and opportunities may exist to recover of amounts of overpaid VAT, or to review their existing deposit arrangements in order to ensure that they fall within the scope of the ECJ's decision.*