



## VAT alert Belgium

Payment for a non-refundable transport ticket is subject to VAT, even if unused

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*According to a recent judgment by the European Court of Justice (ECJ) in the joint cases Air France–KLM and Hop!-Brit Air SAS (23 December 2015, C-250/14 and C-289/14), VAT is due on the sale of a transport ticket, even if it remains unused, in cases where passengers are unable to obtain a refund for these tickets.*

The cases regard domestic flights within France, subject to French VAT. International airline transport services are zero-rated.

The airlines qualified non-refundable flight ticket payments, received and legally retained after the traveller's 'no-show' at departure or after the expiration date, as indemnities outside the scope of VAT. The Court rules that tickets issued by an airline company are subject to VAT, even if these tickets have not been used by passengers who were unable to obtain a refund (non-refundable tickets or exchangeable tickets that have expired).

According to the Court, the sum retained by the airline companies is not intended to compensate for damages suffered following a passenger's no-show, but constitutes remuneration for a service, even where the passenger did not actually use the transport. In exchange for the price paid when the ticket was purchased, the passenger obtains the right to benefit from the transport services. Regardless of whether the passenger actually exercises that right, the airline company fulfils the service by enabling the passenger to benefit from those services.

This judgment supplements previous case law by the ECJ in the case C-277/05 (Société thermale d'Eugenie-Les-Bains). In this matter, the ECJ ruled that the deposit, paid upon a hotel booking and retained by the hotel following the cancellation by the client, is not subject to VAT. The Court qualified the retained deposit as a fixed compensation for the loss incurred following the cancellation, and not as payment for a service.

Even if the facts for the different judgments seem quite similar, the Court's analysis is totally different. It seems that in the Air France-KLM case, the Court considers the payment of the ticket's full price combined with the airline's possible retention of that full price to be a key factor. However, the Court does not really justify this differing treatment.

## Conclusion

Following this judgment, it becomes clear that not all retained amounts in cases of customer no shows or cancellations can be qualified as indemnities for VAT purposes. Companies active in the hotel, transport or leisure business, who are entitled to retain amounts for no-shows or unconsumed services, should carefully review their terms governing the cancellation/no show conditions in order to define whether or not they have to pay VAT on these amounts.

## Contacts

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