

INFORMATION NOTE

CJEU AIR FRANCE-KLM & HOP!-BRIT AIR SAS CASES

VAT TREATMENT OF “NO-SHOW” IN THE AIRLINE COMPANY SECTOR

On December 23, 2015, the CJEU made its highly awaited decision in the *Air France-KLM, Hop! And Brit Air SAS* case, which is about “no-show” in the airline company sector (*cases C-250/14 and C-289/14*).

This judgment follows the request for a preliminary ruling raised by the Highest Administrative Court in France.

CONTEXT

The context and the main issue of the case are the following ones: with regard to their domestic flights which are subject to VAT, the French airlines kept all amounts paid by their customers on non-exchangeable and non-refundable tickets expired due to absence of the customers on the flights. The amounts kept by these airlines included French VAT. Nevertheless, even if collected from the client, no French VAT was paid to the French Tax Authorities on the basis that the airlines considered these revenues as having no link with a passenger transport service. For that reason, said airline companies considered the payments kept from clients as being without the scope of VAT, arguing that they should be viewed as indemnities.

Conversely, the French Tax Authorities argued that the taxable event corresponds to the moment when the customer acquires a right to be transported, regardless that the transport service is actually rendered or not to the passenger. The reason for this position is mainly that the ticket has not been cancelled by the client, the latter being simply absent at boarding time.

As general VAT principles, a supply is characterized where there is a direct link between a service provided and the corresponding value received. On the other hand, the payment of an indemnity the only purpose of which is to compensate a loss due to a unilateral termination of contract should not fall within the scope of VAT.

In this context, the main question raised here was the following one: can the delivery of a flight ticket be assimilated to the effective execution of the transport service which implies that the amount kept by the airline company, when the traveler does not use its ticket or when the ticket is out of date, would be subject to VAT?

CJEU'S POSITION

An unequivocal answer is given by the CJUE to that question: “*the issue by an airline company of tickets is subject to VAT where the tickets issued have not been used by passengers and the latter are unable to obtain a refund for those tickets*”. Several arguments developed by the Court help in supporting this feared decision:

Firstly, the CJUE considers that **the airline company fulfils a service only by enabling the passenger to benefit from the performance of obligations arising from the transport contract**, regardless of whether the passenger exercises that right in fact.

Secondly, the CJUE notes that an amendment of the characterization of the price paid by the passenger for the ticket according to whether that passenger turns up at the time of boarding would **lead to a difference between the amount of the**



harm alleged by the airline company resulting from the 'no-show' of the passenger and the amount paid at the time the ticket was purchased. The meaning of this is that where the passenger does turn up at the time of boarding, the value of the service would correspond to the **ticket price excluding VAT**, whereas the amount of the compensation claimed by the applicants, as noticed by the CJEU is that **price plus the amount of VAT** which would have been chargeable. The CJUE considers that **nothing justifies that the amount of the compensation is higher than the price paid by the passenger using the ticket.**

Finally, **in the absence of harm incurred by the airline companies** (they notably keep the right, in practice, to resell the unused service to another passenger, without being required to refund the price to the first passenger), **the characterization as an indemnity, as claimed by the airline companies, would be unjustified.**

C O N S E Q U E N C E S

This CJEU's judgment, which was particularly awaited by operators, could have important impacts on several business sectors, not only airline companies. Indeed, the VAT treatment applicable to no-shows could also apply to any service which would not be rendered to the customer but has also impacts on the VAT treatment of vouchers, gift boxes...

One could also consider how these new principles would be reconciled with those arising from CJEU decision "*Eugénie-les-Bains*" (C-277/05).

Laurent Chetcuti, Partner
+33 (0) 1 55 68 14 47
laurent.chetcuti@fidal.com

Romain Dayan, Senior Manager
+33 (0) 1 55 68 17 63
romain.dayan@fidal.com