



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-250/14 and C-289/14  
Air France -KLM and Hop!-Brit Air v Ministère des Finances et des Comptes  
publics

## **VAT is chargeable on unused air tickets which are not refundable**

Air France-KLM (Air France until 2004) is a French air transport company. Within French territory, flights operated by Air France-KLM are subject to VAT at a reduced rate of 5.5%. As from 1999, Air France decided to no longer pay to the French tax authorities VAT on the sale of tickets which passengers had not used and for which they could not claim a refund. Since they considered that VAT was payable on those tickets, the tax authorities notified Air France-KLM of additional assessments to VAT amounting to € 4 million (excluding default interest) covering a period of three years.

In addition, a subsidiary of Air France, Brit Air (which became Hop! Brit Air in 2013), performed at that time air passenger transport services in the context of a franchise agreement concluded with Air France-KLM. The latter was responsible for marketing and ticket management on the routes operated as a franchise by Brit Air. Air France-KLM received the price of the tickets before paying it on to Brit Air with respect to each passenger transported. In respect of tickets not used by passengers, Air France-KLM paid Brit Air an annual flat-rate compensation calculated as a percentage (2%) of the annual turnover (including VAT) from the routes operated as a franchise. Since Brit Air did not subject that lump sum to VAT, the tax authorities also sent it demands for VAT.

Ruling at last instance on the dispute between Air France-KLM and Brit Air, on the one hand, and the tax authorities, on the other hand, the French Conseil d'État (Council of State) is unsure whether the unused transport tickets may be subject to VAT.

In today's judgment, the Court of Justice answers that question in the affirmative.

The Court notes firstly that VAT is payable where, first, the sum paid by the customer to the airline company is directly linked with a service (in the present case, air transport) and, secondly, that service is performed. However, the Court states that **the consideration for the price of the ticket** does not depend on the physical presence of the passenger at boarding, but that it **consists of the passenger's right to benefit from the performance of the transport service, regardless whether the passenger exercises that right**. In other words, for VAT to be payable, it is sufficient that the airline company enables the passenger to benefit from the transport service. In that regard, the Court states that VAT becomes chargeable on receipt of payment of the ticket price.

The Court adds that, in the event that a third party (in the present case, Air France-KLM) sells the ticket of an airline company (in the present case, Brit Air) in the context of a franchise agreement and pays that company a lump sum in respect of tickets issued but no longer valid, VAT is also applicable to that lump sum.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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