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TAX SPECIAL



BBO ON NO SHOWS

On July 18, 2007, the European Court of Justice (C-277/05) made an interesting decision regarding Value Added Tax (hereinafter: “VAT”) being due on amounts charged to and paid by no show guests. In this memorandum, we will elaborate on this verdict and the implications it may have for the “belasting op bedrijfsomzetten”, hereinafter: “BBO”.

Case

A thermal resort also operated a hotel and restaurant. If a guest made a reservation, part of the amount due would be invoiced in advance. This advance payment would be offset against the final bill of the guest. Should the guest cancel his reservation, this advance payment is not refunded. According to the French tax authorities, these advance payments kept by the resort when the reservation is cancelled, are subject to VAT. The resort however argued that the advance payment kept when the reservation was cancelled was in fact a payment for damages incurred and not for rendering the service of making a client file and reserving the room.

The European Court of Justice decided that the advance payment is not subject to VAT if and when the guest cancels his reservation. The advance payment can be considered as the payment of damages. There is, according to the European Court of Justice, no direct relation with any service rendered.

Text of the BBO

BBO is due on the sale of a good or the rendering of a service in Aruba. An exemption is introduced however for the renting out of hotel rooms and apartments, in as far as room tax is due. Please note that the explanatory notes mention that room tax has to be paid before the exemption can apply.

Relevance verdict for Aruba’s BBO

In general, any no show guest who is charged for making the reservation, will not pay any room tax. This because room tax is due when the room is actually used. This revenue however is reported as hotel income. Because no room tax is due (or paid), the exemption does not apply and BBO would be due on this revenue.

Based on the above mentioned verdict, it can in our opinion be argued that also for Aruba BBO purposes, the charge to the no show guest cannot be regarded as a payment for rendering a service, but is actually a payment of damages. Based on the Dutch VAT, damages are generally not considered as a payment for rendering a service. In case law (TC 15 november 1960, nr. 9063 O, BNB 1961/54) it was specifically decided that a payment received for not complying with a rental agreement cannot be considered as rendering a service. Since canceling a reservation can be deemed similar to not complying with a rental agreement, no BBO would be due on the payment received from the no show guest who paid. Please take into account that the Aruba tax authorities may take another position.

Please note that no action should be taken on the basis of information contained in this memorandum prior to consulting your tax advisor. The team of **WTS** can assist you with any questions you may have with respect to the above. You may reach us as follows:

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