



# Indirect tax treatment of cancellations and 'no-shows': a multijurisdictional analysis

**KPMG Global Indirect Tax Services**

April 2020

KPMG International

—

[home.kpmg/indirecttax](https://home.kpmg/indirecttax)





**Lachlan Wolfers**

Global Head of Indirect Taxes,  
KPMG International  
T: +852 2685 7791  
E: lachlan.wolfers@kpmg.com

# Executive summary

The current challenges that societies and businesses face around the world in light of the Novel Coronavirus (COVID-19) pandemic are significant and unprecedented. The extent of disruption to everyday life is unparalleled, leading to widespread cancellations, 'no-shows' and other forms of disruption and/or interruptions to events, conferences, bookings, subscriptions, and many other forms of contractual undertakings.

Clearly the impact is most widely publicized in areas such as the travel sector, but it extends well beyond this. Whether it's a membership subscription which is affected, an event or conference booking which cannot proceed, a construction contract which is delayed, or even a contract to provide goods or services which cannot be fulfilled - the breadth of impact is significant.

Each of these cases raise specific and oftentimes complex or uncertain indirect tax implications in different jurisdictions around the world. Indeed, KPMG indirect tax professionals have identified that differing implications often arise depending on the precise circumstances – the outcome can be affected by the terms of the contract, the nature or description of the fee or charge imposed in response to a cancellation or 'no-show' event, or the specific legislative provisions in place in each jurisdiction's indirect tax system.

The summary tables below seek to provide high level guidance on the indirect tax position and impacts in each jurisdiction. Importantly, what they highlight is the differing nature of the indirect tax treatment around the world, and in particular, raises key issues for policymakers such as:

1. The extent to which indirect tax systems should seek to tax revenue from unfulfilled supplies in the form of cancellation fees, damages payments or liquidated damages; and
2. The nexus which may be required between the receipt of income and the performance of certain services which still take place despite a supply being unfulfilled (such as the taking of a booking, or the setting aside of stock, or a reserving a seat at an event, on a flight, or a room in a hotel).

It is important to recognize that the information provided in the following summary tables is high-level guidance only – as noted, these are often contentious issues in many jurisdictions. The specific impacts will always depend on the individual circumstances involved. Specific professional advice should always be sought, and no decisions or actions should take place based on the general information provided here.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Australia</b>	<p>Yes. The Australian Taxation Office has a very broad interpretation of whether a fee for cancellation or 'no show' is consideration for a supply, and their view is supported by case law in Australia (Reliance Carpet and Qantas cases). The view is that such fees, even if not for the originally intended supply, will relate to some other supply such as a facilitation, cancellation or release supply. As such, it is very difficult to argue that amounts received as cancellation or 'no show' fees are anything other than consideration for a supply, and that supply will be taxable where either the originally intended supply or facilitation / cancellation / release supply is taxable.</p>	<p>Yes. Where the intended supply does not proceed, the fees may be related to that supply or to a facilitation, cancellation or release supply. As such, it is necessary to consider what type of supply the fee relates.</p> <p>A facilitation supply may include the provision of rights to receive the original underlying supply, and will follow the same treatment of that supply.</p> <p>However, if the fee is more akin to a cancellation or release supply, its GST treatment will depend on the status of the customer. Generally, the supply will be treated as GST-free if the recipient is a non-resident.</p>	<p>Yes. The GST treatment may depend on whether the fee is a facilitation, cancellation or release supply.</p>	<p>Relatively clear. Recent case law has clarified positions.</p>	<p>No. Liquidated damages are generally not consideration for a supply and therefore should not be subject to GST. However, similar to cancellation fees above, payments purported to be damages for breach of contract, may, on closer inspection, be found to relate to a cancellation supply or release from an obligation and therefore may become taxable.</p>	<p>Yes.</p> <p>Cancellation fees: Goods and services Tax Ruling 2009/3.</p> <p>Commissioner of Taxation v. Qantas Airways Ltd [2012] HCA 41</p> <p>Federal Commissioner of Taxation v. Reliance Carpet Co Pty Ltd [2008] HCA 22.</p> <p>Damages / settlements: Goods and services Tax Ruling 2001/4.</p>
<b>Austria</b>	<p>No. According to the opinion of the Austrian tax authorities cancellation fees are not subject to VAT in Austria. They are qualified as real compensation for damages (Austrian VAT Guidelines 2000 No.15).</p> <p>The VAT treatment of 'no shows' is not completely clarified in Austria. The prevailing opinion is that no-show charges are subject to Austrian VAT. If the entrepreneur has done everything possible to perform the service and the acceptance depends only on the service recipient, then the service is subject to VAT in Austria regardless of whether the customer exercises the right.</p>	<p>No.</p>	<p>Yes. Everything can be regulated in the contracts. But it always depends on the facts and the content of the service whether it is qualified as non-taxable compensation for damages or as taxable no-show. We do not consider that the Austrian tax authorities would allow the case of a no-show to be treated as outside the scope of Austrian VAT.</p>	<p>Relatively clear. However, the VAT treatment of 'no shows' is not completely clarified in Austria.</p>	<p>No.</p>	<p>Yes.</p> <p>Cancellation fees: Austrian VAT Guidelines 2000 No.15.</p> <p>Fees for 'no shows': The prevailing opinion that fees for 'no shows' are subject to Austrian VAT follows the CJEU case law (see CJEU 23 December 2015, C-250/14, Air France-KLM; 13 March 2014, C-107/13, Firin; see also Austrian VAT Guidelines no 8).</p>

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Bahrain</b>	Yes.	No.	Yes.	Uncertain and contentious. There is new VAT law and regulations.	No.	No.
<b>Belgium</b>	No. The Belgian VAT authorities apply the principles as set in the ECJ case law <i>Société thermale d'Eugénie-les-Bains</i> (C-277/05) that a 'no show' fee is compensation for damages and therefore outside the scope of VAT (No. 114, F, 10° of the Belgian VAT Manual).	No.	Yes. It should be clear that it concerns a 'no show' fee / cancellation fee (outside scope of VAT) and not a service subject to VAT.	Uncertain and contentious. There are clear sources which indicate that both 'no show' fees and cancellation fees fall outside the scope of VAT (see below). However, the Belgian VAT authorities did not explicitly comment on the cases ( <i>Air France-KLM C-250/14</i> ; <i>Hop!-Brit Air C-289/14</i> ; <i>MEO C-295/17</i> ), implying a case-by-case approach is necessary in this respect.	No. Compensation for breach of contract is seen as compensation for damages, with the result that breach of contract also falls outside the scope of VAT.	Yes. Cancellation fees: No. 114, F, 10° of the VAT Manual  Fees for 'no shows': No. 353 of Circular 2017/C/70
<b>Brazil</b>	Yes. In Brazil the cancellation fee and 'no show' fees are considered as regular revenue due to the company activity so it must be considered on the PIS and COFINS Calculation basis.	Yes.	Yes. In Brazil the fee must be established in the sales contract and be presented in the invoice.	Uncertain and contentious. We have indirect taxes in the federal, state and municipal levels. Each State has its own tax rules and they are very different from each other. There are more than five types of indirect taxes in Brazil, the main ones are: ICMS (State Sales Tax), PIS and COFINS (Federal Gross Revenues).	No. From a federal VAT point of view (PIS and COFINS) if the damage payment is only to repair or recompose the company' financial loss, then it is not subject to VAT. However if the payment was larger than the financial loss the gain must be considered to PIS and COFINS Calculation.	Yes.  Advance Tax Ruling Request n. 127/2018.
<b>Canada</b>	Yes.	No.	No.	Relatively clear.	Yes. In Canada there is a provision that may deem GST to be included in a payment made by a recipient to a supplier for a breach, modification or termination of an agreement.	Yes.  Excise tax Act (ETA) Subsection 182. (1) Forfeiture, extinguished debt, etc.  GST/HST Policy Statement P-218R: Tax Status of Damages Payments, Whether or not within Section 182 of the Excise Tax Act.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>China</b>	Yes. Whether VAT applies to cancellation fees or fees for 'no shows' depends on the nature of the transaction.	Yes. Whether VAT applies to cancellation fees or fees for 'no shows' depends on the nature of the transaction.	The China tax authorities place a lot of emphasis on the form of the contractual documentation. Careful consideration needs to be paid to the description of the fee in the contract, and in the commercial invoice and VAT invoice.	Uncertain and contentious. There are no specific regulations in relation to cancellation fees or fees for 'no shows' issued by the China tax authorities, though the concept of what is included in the consideration for a supply is very broad.	No. Damages payments for a mere breach of contract should not generally be subject to VAT. However, whether VAT applies to damages payments which have a connection with taxable activities is more contentious.	No. There is no specific regulation in relation to cancellation fees or fees for 'no shows' issued by the China tax authorities.
<b>Croatia</b>	Yes. VAT treatment of 'no shows' and cancellation charges is not directly prescribed by the Croatian VAT legislation or official opinions issued by the Croatian tax authorities. However, we are of the view that if a customer was able to consume the service, i.e. the customer was granted the right to use the service (e.g. hotel room) than the fee should be taxable. In general, 'no show' is taxable, and cancellation fee is not taxable.	No. The same VAT treatment would be applied for the 'no show' as for the main service.	Yes. It is important to determine whether the service was consumed in any way and whether such fee could be considered as compensation for damages which is not taxable. Namely, certain conditions must be satisfied in order for a fee to qualify (that service is not consumed, that process of cancellation is contractually agreed, etc.). We note that such an approach was generally applied in practice and accepted by the Croatian tax authorities.	Relatively clear. However, we cannot eliminate the risk of different interpretation by the Croatian tax authorities, especially in the lack of official opinions or guidelines.	No. Damages payments are exempt from VAT, however certain conditions must be satisfied (as noted before).	No.
<b>Cyprus</b>	Yes. Cancellation fees are in general considered as compensation, hence they are treated as falling outside the scope of VAT in Cyprus. However, 'no show' fees are generally viewed as consideration for the provision of a taxable supply (i.e. hotel accommodation services) and are subject to VAT.	Yes.	Yes.	Uncertain and contentious. Guidance issued by tax authorities is not updated in order to reflect the different treatment between cancellation and 'no show' fees.	No.	Yes. Guidance material issued by tax authorities. Also a judgement was issued by the Cyprus High Court back in September 2017.
<b>Estonia</b>	Yes. No general guidance, but principles of cases C-250/14, C-289/14 are followed in Estonia.	Yes. Depends on contractual terms not dependent on applicable tax rate.	Yes.	Uncertain and contentious.	No.	No.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Finland</b>	Yes. However, when the consideration or deposit is lost specifically due to a cancellation made by the client, VAT does not apply.	No.	No. However, if the deposit were to be agreed and described as a reservation fee or other service separate from the main service, it might affect the VAT treatment.	Relatively clear.	No.	Yes. The guidance from the Finnish tax authorities regarding compensation for damage: <a href="https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48609/vahingonkorvauks_ ja_vahingonkorvauksen_l/">https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48609/vahingonkorvauks_ ja_vahingonkorvauksen_l/</a> and VAT on travel industry: <a href="https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48715/Matkailualan_arvonlis%C3%A4verotus/">https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48715/Matkailualan_arvonlis%C3%A4verotus/</a>
<b>France</b>	No.	Yes. Under French law, there are some uncertainties in the correct VAT regime.  The initial CJEU case law Eugénie-les-bains Thermal Company (Aff. C-277/05) was related to a French case. Based on our experience, the French tax authorities do not contest that these sums are not subject to VAT if it is likely that it does not remunerate a service (no direct link). This case law is still quoted in the tax authorities guidelines whereas Air France-KLM is not. However, they can challenge the qualification and specify that they are 'no show' fees.	Yes. The French judges look into the detail of the terms and conditions. From our experience, the tax authorities also check all the information available to assess the real nature of the transaction. However, the contract is clearly the key document.	Uncertain and contentious.	No. Attention should be paid if the payment is part of the economic balance of the contract (specific concept developed by the French judges), it is very likely that such payment would be subject to VAT. Indeed, the judge would likely check if the payment of a damages is the consideration of a breach of a commitment.	Yes.  CE 30 nov. 2007 Ste thermale Eugénie-les-Bains.  CE 28 mai 2004 Ste Magnetti Marelli.  CE 21 mai 2014 Ste Air France-KLM, Ste Brit Air.

France (Contd.)	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?	Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?	How clear is the VAT/GST treatment?	Does VAT/GST apply to damages payments for breach of contract?	Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?
		<p>The cancellation charges should be contractually stipulated, be deducted from the price and not exceed the amount of the service excluding VAT. Otherwise, a price that is too high would suggest to the authorities that it is not a question of compensating the service provider, since the price received is higher than the service provider's loss.</p> <p>The fact that the compensation can also be paid by the provider to his client may be an indication (compensation to the benefit of the client).</p> <p>If it is unlikely that the payment is a service fee for being able to benefit from the service, the French tax authorities would requalify this compensation as a service.</p> <p>As a result, the contractual agreement should be analyzed on a case by case basis as the distinction between compensation and fee for 'no show' often remains subjective. As a practical matter, we recommend to request a ruling from the tax authorities for disputed cases in order to obtain a binding position in case of control.</p>				

	<p><b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b></p>	<p><b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b></p>	<p><b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b></p>	<p><b>How clear is the VAT/GST treatment?</b></p>	<p><b>Does VAT/GST apply to damages payments for breach of contract?</b></p>	<p><b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b></p>
<p><b>Germany</b></p>	<p>Yes. From a German VAT point of view 'no show' charges are in general subject to German VAT. In such cases the respective contracts are not being cancelled so that the customer's right for the service remains in place. In accordance with the CJEU decision Air France-KLM (C-250/14, C-289/14), the customer's payment to the service provider is made for keeping the service available, regardless of whether the customer actually demands the specific service or not. In general, the German VAT becomes due at the time the payment is received by the service provider.</p> <p>Please note that cancellation charges where the terms and conditions allow the customer for a cancellation fee to withdraw from the contract are treated by the German tax authorities inconsistently.</p> <p>Depending on the specific case at hand, cancellation charges are qualified either as non-taxable compensation payments or as payments for taxable services. In an example in the hotel industry, fees for the cancellation of hotel rooms are in general considered by the German tax authorities as non-taxable compensation payments.</p>	<p>No. As in case of 'no show' charges the customer's payment to the service provider is made for keeping the service available, no VAT arises. The same is true for cancellation charges as payments for taxable services. Also, no VAT arises if cancellation services are qualified as non-taxable compensation payments.</p>	<p>Yes. As described above the VAT treatment depends on the legal position of the customer and their specific rights established by such contract which needs to be analyzed on a case by case basis. The VAT treatment is, in general, not materially impacted by its description in an invoice. Whether the marketing material might have impact on the interpretation of a contract needs to be analyzed on a case by case basis.</p>	<p>Uncertain and contentious.</p>	<p>Yes. The VAT impact, in general, needs to be analyzed on a case by case basis. According to the German tax authorities e.g. contractual penalties for non-performance are non-taxable compensation payments. However, VAT may occur if a supply was performed and the damage payment qualifies as consideration for such supply or is effected for keeping the service available.</p>	<p>Yes. General statements: Section 1.3 of the German VAT guidelines</p> <p>Fees for the cancellation of hotel rooms: Section 25.1 no. 14 of the German VAT guidelines</p> <p>Cancellation charges of a law firms client for an early termination of a consultant contract: German Federal Tax Court, ruling of 7 July 2005, V R 34/03 (Federal Tax gazette II 2007, 66).</p>



Germany (Contd.)	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?	Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?	How clear is the VAT/GST treatment?	Does VAT/GST apply to damages payments for breach of contract?	Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?
<p><b>Hungary</b></p>	<p>However, in comparable cases, the German tax authorities qualify cancellation charges as payments for taxable services (e.g. cancellation charges of a law firm's client for an early termination of a consultant contract). Accordingly, the specific case should be analyzed in order to determine whether cancellation charges can be considered as compensation payments or not.</p>	<p>Yes.</p>	<p>Yes.</p>	<p>Relatively clear. Contractual terms be checked for determining the precise VAT treatment. In a specific case, consultation with the tax authority might also be advised.</p>	<p>No. Compensation for losses, damages caused is outside of scope of VAT.</p>	<p>Yes. Hungary follows the ECJ judgement of C-277/05 (Société thermale) in respect of retained deposits. Furthermore, ECJ judgement of Air France-KLM (C-250/14 and C-289/14) is followed in respect of tickets (e.g. entry tickets to events/exhibitions) which give right for the customer to benefit from a performance but at the end the customer does not exercise this right.</p>

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Ireland</b>	<p>In general no, however the position is not clear cut.</p> <p>Irish VAT law provides that where a business has received a 'deposit' in advance of a supply of goods or services, but that supply does not subsequently take place owing to a cancellation by the customer, then any VAT previously charged on that deposit can be reclaimed by the business. Certain record keeping requirements must be met and no other consideration, benefit or supply must be provided to the customer in lieu of a refund of that amount. The term 'deposit' is not defined.</p> <p>However, the position in respect of other amounts described as 'cancellation fees' or fees for 'no shows' is not specifically addressed in Irish VAT or practice, and these should be considered on a case-by-case basis. In certain cases, cancellation charges may be subject to VAT (e.g. a payment for a customer to exit a mobile phone billing contract).</p>	<p>No. Where the fee is in connection with a VAT zero-rated or exempt supply, no VAT should be applicable regardless of whether the supply goes ahead or not.</p>	<p>Yes. All of these matters would be relevant to VAT treatment of the fee.</p>	<p>The position is not clear cut as the term "deposit" is not defined in the legislation. This should be reviewed on a case-by-case basis.</p>	<p>The position is not clear in all cases.</p> <p>Where the payment can be seen as merely being compensation or liquidated damages and in return for any supply of goods or services, no VAT should apply. However, it will depend on the exact circumstances giving rise to the payment.</p>	<p>Yes. There is little domestic Irish case-law on the topic. However, the Court of Justice of the EU decisions in the Société thermale d'Eugénie-les-bains and Air France-KLM cases are binding in Ireland and will be relevant.</p>
<b>Italy</b>	<p>Yes. Fees for 'no shows' should be subject to VAT, in line with ECJ cases C-250/14 and C-289/14.</p> <p>In general, penalties charged to counterparties on the basis of the contractual arrangement should fall outside the scope of VAT (art. 15 of the Italian VAT Act) unless they are regarded as similar to fees for 'no shows'.</p>	<p>No. The 'no shows' VAT treatment depends on the VAT treatment of the underlying transaction (thus, for instance, no VAT is calculated on a 'no shows' fee due on a zero-rated international flight).</p>	<p>Yes. This is very important to support the position, but not decisive though. The VAT treatment depends on the underlying matter of facts.</p>	<p>Relatively clear. The Italian tax authorities follow the ECJ approach on 'no shows' fees in practice - though there is no official guidance on this. The ECJ approach has also been taken by the Italian case law.</p>	<p>No. Based on art. 15, penalties charged to counterparts on the basis of the contract arrangement fall outside the scope of VAT.</p>	<p>Yes. See decision n. 13495 of 1 July 2015 of the Italian Supreme Court on 'no shows'.</p>

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Japan</b>	No. The treatment depends on the nature of the payments. If it is a damages payment for breach of contract, it is not treated as a supply that is subject to Consumption Tax (CT), i.e. the payment is out of scope. On the other hand, if a payment is for the cancellation processing services, it is treated as a taxable supply where such a service is originated in Japan. If the latter is not explicitly charged separately from the former, it is usually the case that the whole amount would be treated as the former.	No.	Yes.	Relatively clear. The damages payment is stipulated in CT Basic Circular 5-2-5 and the cancellation processing service payment is stipulated in CT Basic Circular 5-5-2 respectively.	No. CT is not applicable to a damages payment.	Yes. The damages payment is stipulated in CT Basic Circular 5-2-5 and the cancellation processing service payment is stipulated in CT Basic Circular 5-5-2 respectively.
<b>Luxembourg</b>	Yes. VAT on cancellation and 'no shows' should depend on the nature and qualification of the transaction considered. The VAT treatment of cancellation / 'no shows' is not straight forward and depends on the facts / agreements.	No.	In case the transaction would be considered as part of a service provided against remuneration, VAT should apply on the cancellation / 'no show' fee. Otherwise, the cancellation / 'no-show' fee could fall outside the scope of VAT. However, this should be subject to a case-by-case analysis. In this respect, the wording of the agreement or how the fee is described could help characterize the nature of the transaction.	Relatively clear. No specific national provision related to cancellations and no-shows. Therefore, this should be subject to a case-by-case analysis. However, in this respect, the application of CJEU case-law gives guidance (e.g. C-277/05 Société thermale d'Eugénie-les-bains; C-250/14 Air France-KLM & Hop Air Britain).	No. In principle indemnities as such should fall outside the scope of VAT (as they are not considered as remuneration for a specific service rendered).  However, their VAT treatment is not straightforward and the application of VAT on such payments should depend on the qualification of the transaction considered (as mentioned for cancellation / 'no-shows').	No. In Luxembourg, as there are no specific regulations included in the law, CJEU case-law prevails for interpretation as regards the qualification of indemnities for VAT purposes.
<b>Malaysia</b>	No. Cancellation fees or fees for 'no shows' should be shown separately in the invoice from the principal supply.	No.	Yes. Cancellation fees or fees for 'no shows' should be clearly described and disclosed separately from the principal supply.	Uncertain and contentious.	No.	No.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Malta</b>	Yes. There are no specific guidelines issued by the Maltese VAT authorities and the treatment of 'no show' and cancellation fees depends on the nature of the fees and the manner in which they are determined. Therefore these need to be analyzed on a case by case basis. However, Maltese VAT authorities tend to follow conclusions of the Court of Justice of the EU and therefore, we expect the Maltese VAT position to be in line with the conclusions of the CJEU in the Air-France-KLM, Hop!-Brit Air SAS, MEO and the Société thermale d'Eugénie-les-Bains cases depending on whether the underlying payment was a deposit or a payment for a service. Making reference to the Société thermale d'Eugénie-les-Bains case (C-277/05) one could argue that cancellation fees represent compensation for the loss suffered as a result of client default and therefore they are outside the scope of VAT. Having said this, all the facts of the case need to be analyzed in light of the more recent MEO case.	No. There are no specific guidelines issued by the Maltese VAT authorities on the matter, however, our expectation is that the Maltese VAT authorities either regard a 'no show' fee or a cancellation fee as a compensation for the loss suffered by the supplier as a result of a client default falling outside scope of VAT or as a payment for the underlying service and therefore following the VAT treatment of the underlying service.	Yes, insofar as the description reflects the underlying economic reality.	Uncertain and contentious. There are no specific guidelines issued by the Maltese VAT authorities and the treatment of such fees has to be analyzed on a case by case basis.	Yes. There are no specific guidelines issued by the Maltese VAT Authorities on the VAT treatment of damages and therefore these need to be analyzed on a case by case basis. The treatment would highly depend on the nature of the damage payment. Following from case law of the CJEU we would expect the VAT treatment of damages to be determined on the basis of whether the underlying payment was a deposit or a payment for a service.	No. There are no specific guidelines issued by the Maltese VAT authorities. However, the VAT authorities tend to follow the conclusions of the Court of Justice of the European Union.
<b>Mexico</b>	Yes.	No.	Yes.	Relatively clear.	No.	Yes.
<b>Mongolia</b>	Yes.	No.	Yes.	Uncertain and contentious. Tax legislation is relatively undeveloped and with many uncertainties.	Yes.	No. Updated tax legislation was released recently and is effective from January 2020. Also ruling procedure is newly introduced to taxpayers who might be seeking confirmation or guidance from the authorities. So the whole procedure is in its early development and implementation stage.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Netherlands</b>	Yes. A charge levied by a supplier when a customer makes a cancellation ('cancellation fee' or fee for 'no show') and as a result a supply does not take place, can potentially be treated as falling outside the scope of VAT. If so, no Dutch VAT is due on the charge levied. This is to be determined on a case by case basis.	No.	Yes. Payments made for no-shows may be subject to VAT if there is a direct relationship between the payment and a service. An important element is whether the customer reserves the right to take advantage of an unused service (it is irrelevant whether the client actually claims their right). All facts and circumstances are relevant in order to assess whether a direct relationship between the payment and the service exists. The description/wording of the fee is an element, but is not necessarily decisive.	Uncertain and contentious.	Yes. If businesses are forced to terminate a contract, the payment (damages or termination fee) that must be made in this respect may, under certain conditions, not be subject to VAT. It is advisable to establish the VAT aspects in advance in order to avoid wrongly invoiced VAT not being able to be reclaimed from the Dutch tax authorities.	Yes. CJEU cases (Air France-KLM / Société thermale). There are also multiple Dutch court cases.  There is however no further policy / guidance issued (e.g. by the tax authorities or Ministry of Finance) in the Netherlands.
<b>New Zealand</b>	Yes.	Yes. The cancellation fee itself may be zero-rated if zero-rating conditions are met.	No.	Relatively clear.	No. The exception will be if the damages amount is paid by an insurer under an insurance contract held by the party in breach of contract.	Yes. Inland Revenue Interpretation Statement IS3387 'GST Treatment of Court Awards and Out of Court Settlements'
<b>Norway</b>	No. A cancellation fee and similar normally does not represent a sale of a service, as long as the fee constitutes compensation due to loss of disposal etc. However, if the fee is considered to be payment for services that have been rendered, or payment for administrative services etc., it will be subject to the standard VAT rules.		Yes, such information would be relevant.	Relatively clear.	No. Damages payments are normally not considered as fees for services rendered. Liquidated damages in the construction industry has specifically been considered as not subject to VAT by the Ministry of Finance, cf. a statement from 16 January 1976. However, if the payments are actually costs in connection with the supply, it may be deemed as VAT liable.	No.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Poland</b>	No. As a rule - no. Assuming that no transaction took place (i.e. no goods were delivered, no services were rendered, etc.), such charge should be generally out of scope of Polish VAT.		Readiness to provide services to the customer might be also treated as a taxable activity. However, this should be analyzed case-by-case.	Uncertain and contentious. In many cases the standpoint of the Polish tax authorities is changeable and not uniform.	No. As a rule - no. Such fees (compensations, penalties, etc.) should be generally out of scope of Polish VAT. Please note however that in some cases e.g. giving a consent to termination of the contract might be also treated as a taxable activity. However, this should be analyzed case-by-case.	No. However, each taxpayer is allowed to apply for a bidding (individual) ruling.
<b>Qatar</b>	Not applicable. VAT has not yet been introduced in Qatar yet. As a consequence of the current COVID-19 crisis, it is very likely that the introduction will not happen as per 1 January 2021.					
<b>Singapore</b>	Yes. Generally, where a hotel charges a 'no show' or cancellation fee ('fee') to the customer who fails to take up the room although room reservation has been made, such a fee will be subject to 7% GST.	Yes. Depends on the nature of the transaction. If the fee is charged for international air-tickets, such a fee will be subject to 0% GST. If the fee is charged for outbound tour packages, such a fee will be subject to 7% GST.	Yes.	Relatively clear.	No. No. Such payment is usually regarded as compensatory in nature for breach of contract provided this is provided on the original contract.	No.
<b>Slovakia</b>	Yes.	No.	No.	Uncertain and contentious. There is no specific regulation in relation to cancellation fees or fees for 'no shows' in Slovakia.	No.	No.
<b>South Africa</b>	Yes. Maybe an argument to zero rate if the customer is non-resident.	No. Potentially except in the case of supplies to South African residents.	No. The revenue authority will look to the substance.	Relatively clear.	No. Providing it is adjudicated by a court as pure damages and not related to the performance of a specific service.	No.

	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?</b>	<b>Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?</b>	<b>Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?</b>	<b>How clear is the VAT/GST treatment?</b>	<b>Does VAT/GST apply to damages payments for breach of contract?</b>	<b>Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?</b>
<b>Sweden</b>	<p>Yes. If a cancellation fee is included in the price of a good or a service, and the customer has no possibility to waive the fee, the cancellation fee would be considered an underlying cost to the good or the service, hence the supply would be considered a single supply.</p> <p>However, a cancellation fee which is separately paid in connection with other goods or services should be considered a separate supply of an insurance service exempted from VAT.</p> <p>Please note that there could be a distinction between a cancellation fee and a fee for a 'no show'. If a customer doesn't turn up to utilize a service, e.g. a hotel room, and at the same time hasn't cancelled the hotel room (a 'no show'), the supplier should be liable to charge VAT on the service.</p> <p>However, if the customer cancels the hotel room, and the customer is obliged to pay a cancellation fee due to an agreement between the supplier and the customer, the fee should be considered a claim for damages exempted from VAT.</p>		<p>Yes. If a customer and a supplier have an agreement that stipulates a right for the customer to cancel a service, and the customer chooses to cancel, the cancellation fee should be considered a damages claim exempted from VAT. This is provided that the cancellation fee is less than the original price of the service.</p> <p>However, if there is no agreement between the parties, which gives the customer the right to cancel the service, the supplier should be liable to charge VAT on the service.</p>	Relatively clear.	No. As a main rule, payment for damage claims are exempted from VAT. However, there is a distinction between a damage claim and a price adjustment that must be considered.	Yes. The Swedish tax authority has released guidelines regarding cancellation fees and 'no shows'. There is also a ruling by the Supreme Court in Sweden (RÅ 1994 not.11) that addresses cancellation fees.
<b>Switzerland</b>	No. Accommodation (eventually including breakfast) is taxable at 3.7%. Deposits retained (i.e. not reimbursed) and pre-paid full rates are also taxable at 3.7% unless any original invoice is credited and a cancellation charge is raised. Cancellation charges are free of VAT and no reduction of VAT recovery needs to be made. The issuance of the cancellation note needs to be evidenced, e.g. by a copy of the cancellation note raised.	No.	Yes. If the fee is due regardless of whether or not the supply is actually received, the VAT treatment of the fee is determined upon the supply that was ready to be provided. Also, if only a part of the supply was received and the parties conclude that it stops there and the fee compensates for work in progress, VAT is due. To the contrary, if a fee is due as compensation for a damage caused by the failure to receive the supply, no VAT is applicable to the fee and no reduction of VAT recovery is required.	Relatively clear.	No. As long as the payments are provided for in the original agreement, no VAT is applicable and no reduction of VAT recovery is necessary.	Yes. A number of practice leaflets for specific industries, issued by the tax administration.
<b>Turkey</b>	Yes. Cancellation fees are out of the scope of VAT. However, fees for 'no shows' are subject to VAT.	No.	Yes.	Relatively clear. For 'no shows', a tax ruling is recommended.	No.	Yes. VAT Circular No.60 for cancellation fees.

United Kingdom	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?	Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?	How clear is the VAT/GST treatment?	Does VAT/GST apply to damages payments for breach of contract?	Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?
	<p>Yes. HMRC (the UK tax authorities) revised the UK VAT treatment due on all retained payments for unused services and uncollected goods. This change in policy was completed to (in HMRC's view) bring consistency to the VAT treatment of all payments for goods and services where there is an unfulfilled supply. This revision was made to reflect the CJEU decisions in Air France-KLM (C-250/14 and C-289/14) and Firin OOD (C-107/13). As such, this includes charges for 'no shows' and cancellations from 1 March 2019. Any retained deposits or 'no show' charges will be subject to UK VAT at the standard-rate (20%) since this date. Any amount paid on account is regarded as consideration for VAT purposes in respect of the customer's right to benefit from the performance of obligations arising from the contract to provide services, regardless of whether the customer exercises that right. When the payment is taken (or a credit card guarantee is made), it creates a chargeable event and UK VAT at the standard-rate becomes due. This payment cannot be retrospectively re-characterized as an 'outside the scope' compensation payment.</p>	<p>No. We anticipate such charges would be zero rated on the basis they are would be regarded as consideration in respect of the customer's right to benefit from the performance of obligations arising from the contract to provide the zero rated services, regardless of where the customer benefits that right.</p>	<p>No. Whilst there is debate in the UK if you can make it clear in the contracts that any cancellation charges are in fact a 'breach of contract' or 'damages', following HMRC's policy change, we do not consider HMRC would allow such a position to be treated as outside the scope of UK VAT. We consider that HMRC's position is not wholly in line with ECJ case law (e.g. Société thermale d'Eugénie-les-Bains (C-277/05)), or the EU VAT Directive and there would need to be a challenge through the UK Court system to challenge the position taken by HMRC.</p>	<p>Relatively clear.</p>	<p>No. Damages will be outside the scope of VAT where these are not consideration for supplies for VAT purposes but instead are financial settlement of losses caused by breach of agreement, or infringement of rights. However, HMRC consider that there are some circumstances when such payments are consideration for taxable services by the recipient of the payments.</p>	<p>HMRC references the treatment of damages in their internal guidance at VATSC06710.</p> <p>There is also a Revenue and Customs Brief 13 (2018) which also outlined their change of policy (to be in line with the CJEU decisions in Air France-KLM (C-250/14 and C-289/14) and Firin OOD (C-107/13)).</p>



United States	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are subject to VAT/GST?	Does VAT/GST apply for cancellation fees, or fees for 'no shows' where such fees are paid in connection with activities which are zero-rated or exempt from VAT/ GST?	Is the VAT/GST treatment likely to be materially impacted by how the fee is described in a contract, in an invoice, marketing materials etc.?	How clear is the VAT/GST treatment?	Does VAT/GST apply to damages payments for breach of contract?	Is there a specific regulatory provision, court or tribunal decision, or tax authority ruling / guidance material issued covering this area?
	<p>Yes. The US of course does not have a national VAT/GST. Indirect retail sales taxes are levied at the state level. Taxability varies substantially in certain areas across states. The answers should be considered general in nature and not related to a specific jurisdiction. Cancellation fees (e.g., for lodging services) are likely taxable in many states if they are based on the rental charge that would have been charged. If characterized as a penalty or damages, the fees would likely not be taxable. Note that federal law prohibits states from taxing passengers traveling via air or the sale of air transportation services.</p>	<p>Yes. If the transaction would otherwise have been exempt from tax, any cancellation fee is likely also not taxable.</p>	<p>Yes. The charge will likely be taxable if based on the charge that would have been levied and not framed as a penalty or damages. Contractual provisions will be quite important.</p>	<p>Uncertain and contentious. Will be heavily dependent on contractual provisions and how invoiced.</p>	<p>No. Unlikely.</p>	<p>No.</p>

# Contact us

## Lachlan Wolfers

**Global Head of Indirect Taxes  
KPMG International**

**T:** +852 2685 7791

**E:** lachlan.wolfers@kpmg.com

[home.kpmg/socialmedia](https://home.kpmg/socialmedia)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.