

Saffery Champness

CHARTERED ACCOUNTANTS

The European Tour Operators Association and Saffery Champness:
TRAVEL VAT UPDATE
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of PROVEN QUALITY



AGENDA

- Introduction
- The UK TOMS changes in January 2010
- TOMS in Ireland, Denmark and the Netherlands
- The changes to the place of supply of services rules in January 2010
- The RCI decision
- TOMS: The EU position



The UK TOMS changes

- UK TOMS rules to change on 1 January 2010
- In response to the Commission's action in 2007
- HMRC brief of 9 April 2009
- Three measures:
 - Loss of the TOMS opt-in
 - Loss of the TOMS opt-out
 - Market value for in-house supplies



The TOMS opt-in

- Wholesale supplies do not fall within TOMS.
- But the opt-in allows for the voluntary application of TOMS to wholesale supplies.
- Can be useful as a simplification.
- Can also mean a lower VAT liability in some circumstances, notably where the travel is in the UK and a proportion of costs is not subject to UK VAT.
- To be discontinued on 1 January 2010 so from then TOMS cannot be applied to wholesale supplies.



Loss of the TOMS opt-in

Example 1: purchase of UK land arrangements

	Net	VAT	Total
Hotel	1,000,000	175,000	1,175,000
Coach	150,000	-	150,000
Meals	100,000	17,500	117,500
Tickets	100,000	6,000	106,000
Guides	50,000	1,500	51,500
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	1,400,000	200,000	1,600,000
Total wholesale selling price =			£1,800,000
Margin =			£200,000

NB: VAT @ 17.5%



Loss of the TOMS opt-in

Example 1: purchase of UK land arrangements (cont'd)

VAT liability with TOMS: $£200,000 \times 7/47 = £29,787$

VAT liability with TOMS and transport company scheme:

$£200,000 \times 1,450,000/1,600,000 \times 7/47 = £26,995$



Loss of the TOMS opt-in

Example 1: purchase of UK land arrangements (cont'd)

VAT liability without TOMS:

- 1 Output tax: $\text{£}1,800,000 \times 1,250,000/1,400,000 \times 7/47 = \text{£}239,362$
- 2 Input tax: $\text{£}200,000$
- 3 Net due: $\text{£}39,362$



Loss of the TOMS opt-in

Example 1: purchase of UK land arrangements (cont'd)

Summary

VAT due:

With TOMS but no transport company	£29,787
With TOMS and a transport company	£26,995
Without TOMS	£39,362

NB Normal calculation assumes that proper VAT invoices are held for all VATable costs



Loss of the TOMS opt-in

Example 2: purchase of UK and French land arrangements

UK business as per example 1 but with the addition of business in France:

Total French cost (VAT inclusive): £700,000

Of which the transport cost is: £100,000

Wholesale selling price: £800,000



Loss of the TOMS opt-in

Example 2: purchase of UK and French land arrangements (cont'd)

VAT liability with TOMS: $£300,000 \times 7/47 = £44,680$

VAT liability with TOMS and transport company scheme:

$£300,000 \times 2,050,000/2,300,000 \times 7/47 = £39,824$



VAT liability without TOMS

- Unchanged from example 1 as the French arrangements are outside the scope of UK VAT
- But is there an obligation to register for French VAT?



Summary

VAT due:

With TOMS but no transport company	£44,680
With TOMS and a transport company	£39,824
Without TOMS	£39,362



Loss of the TOMS opt-in

Action points:

- Need to ensure you receive proper VAT invoices
- Need to consider liability and place of supply of services provided
- Approach HMRC for permission to continue a margin-based calculation? For UK travel only.



The TOMS opt-out

- Supplies of travel facilities to a business for its own use do fall within TOMS.
- But the opt-out allows the supplier to disapply TOMS and use the normal rules.
- This means the supplier can recover VAT on costs and charge VAT on a VAT invoice, which often allows the client to recover the VAT.
- As a result, the travel is often cheaper when the opt-out is used.



The TOMS opt-out (cont'd)

- Particularly useful for UK events and other UK business travel (impact on bill-backs??)
- Many event organisers and other suppliers of travel for business consumption use the opt-out.
- From 1 January 2010 this will not be available.
- Supplies of travel facilities for business use will therefore always fall within TOMS.



Market value

- In-house supplies within a TOMS calculation can be valued by market value.
- Required by ECJ decisions Howden Court Hotel and MyTravel.
- Applies to tour operators with own resources, eg, aircraft, coaches, hotels, river boats, etc.
- Also applies where the supplier applies a “material alteration” to services purchased to create a different supply, eg, a conference or the in-house charter mitigation scheme



Ireland, Denmark and the Netherlands

- Ireland and Denmark are ending their exemptions for tour operators and similar
- The Netherlands is understood to be about to announce that a proper EU law based TOMS is to be introduced in 2011



Changes to the place of supply of services (“PoS”) rules

- New rules to be agreed by all member states
- Major component of the “VAT Package”
- To be introduced on 1 January 2010 (but with further changes in 2011, 2013 and 2015)
- The new general rules:
 - For B2B supplies: where the customer is located
 - For B2C supplies: where the supplier is established
- But there will be a long list of exceptions to the general rules
- New requirement to submit a sales list for services falling under the general rule supplied to a VAT-registered customer in another member state



The General Rule

NOW

Where the *supplier* has established its business

From 1 January 2010

B2B – Where the *customer* has established its business

B2C – Where the *supplier* has established its business



The full list of exceptions

- Services of intermediaries
- Services connected with immovable property
- Passenger transport services
- Freight transport services
- Cultural, artistic, sporting, scientific, educational, entertainment and similar services
- Ancillary transport services, eg, loading, unloading
- Valuations of and work on goods
- Restaurant and catering services



The full list of exceptions (cont'd)

- Restaurant and catering services on board ships, aircraft and trains
- The hire of means of transport
- Electronic services (eg, web-hosting, distance teaching, music / text / picture downloads)
- TOMS supplies



TOMS

- Remember TOMS is a simplification
- It exists largely so that a tour operator can avoid the complexities of the PoS rules. The TOMS rules override the other PoS rules.
- But as soon as TOMS does not apply (eg, wholesale supplies, in-house supplies), the complexities of the PoS rules kick in.
- The PoS for a TOMS supply is where the supplier has established its business or has a fixed establishment from which the supply is made. This will not change in 2010.



Intermediaries

NOW

Where the supply arranged by the intermediary is considered to be made

But if the intermediary's customer has a VAT registration in another state, the PoS can be where that number was issued ("the switch")

From 1 January 2010

B2B – The general rules applies so where the customer has established its business

B2C – Where the supply arranged by the intermediary is considered to be made



Property

Now

Where the land is located

From 1 January 2010

Where the land is located



Passenger transport

Now

Where the transport takes place

From 1 January 2010

Where the transport takes place



Cultural, artistic, sporting, scientific, educational, entertainment and similar services

Now

Where physically carried out

From 1 January 2010

Where physically carried out

From 1 January 2011

B2C – Where physically carried out

B2B – The general rule will apply (ie, where the customer is established) except where the supply involves admission to an event when the PoS will be where the event takes place.



Restaurant and catering services (except on-board)

Now

Where the supplier is established

From 1 January 2010

Where physically carried out



Restaurant and catering services on board ships, aircraft and trains

Now

No specific rules so uncertain and subject to considerable variation throughout the EU

From 1 January 2010

The member state of departure of the journey

Special rules for journeys partly within the EU



Short-term hire of means of transport

Now

Where the supplier has established its business

From 1 January 2010

Where the vehicle, etc, is put at the disposal of the customer



TOMS

Now

Where the supplier has
established its business

From 1 January 2010

Where the supplier has
established its business



Use and enjoyment rules

- Optional rules which allow member states to override the PoS rules in some cases where:
 - the PoS rules would create a PoS in the member state involved but use and enjoyment of the service is outside the EU; or
 - the PoS rules would create a PoS outside the EU but use and enjoyment of the service is within the member state involved.
- Applies potentially to:
 - services falling in the general rules
 - short-term hire of a means of transport



Current issues

- Is a hotel reservation service the service of an intermediary or connected to immovable property?
 - Does it matter?
 - VAT Committee meeting 30 September 2009
 - The RCI decision
- Is an agent making a booking for a non-business customer acting as an intermediary or is he performing a “purchasing service”?
 - Does it matter?
 - VAT Committee meeting 30 September 2009



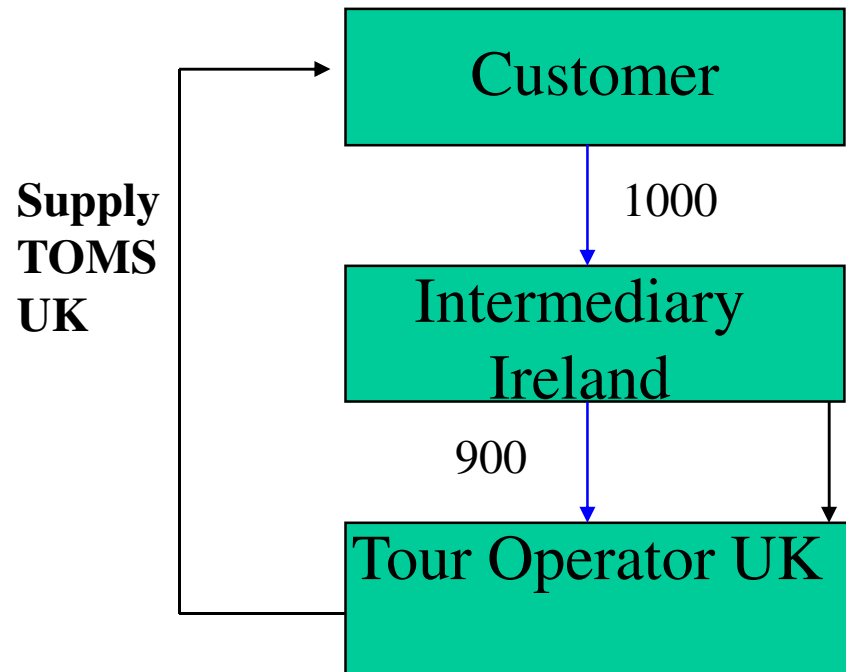
Current issues (cont'd)

- Purchase of cultural, etc, services by a tour operator (from January 2011)
 - Reverse charge
 - Double taxation
 - Services enjoyed outside the EU
 - Services supplied to a non-EU operator
 - VAT Committee meeting 30 September 2009



Effect of the place of supply changes

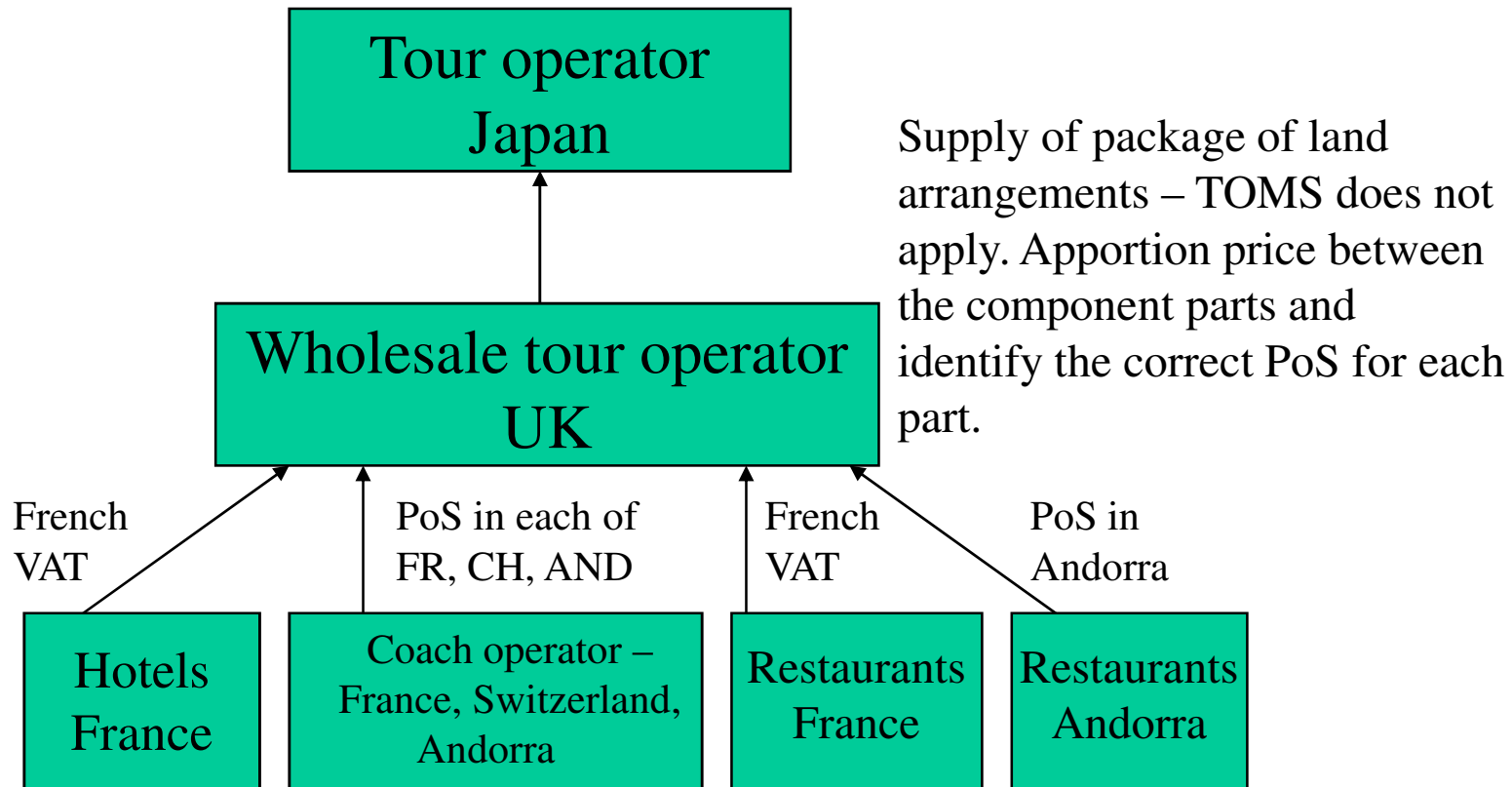
Example 1 – Intermediary services



Supply of intermediary services valued at 100. No local VAT but tour operator declares UK VAT on a reverse-charge basis, ie, 17.50, which can be recovered.

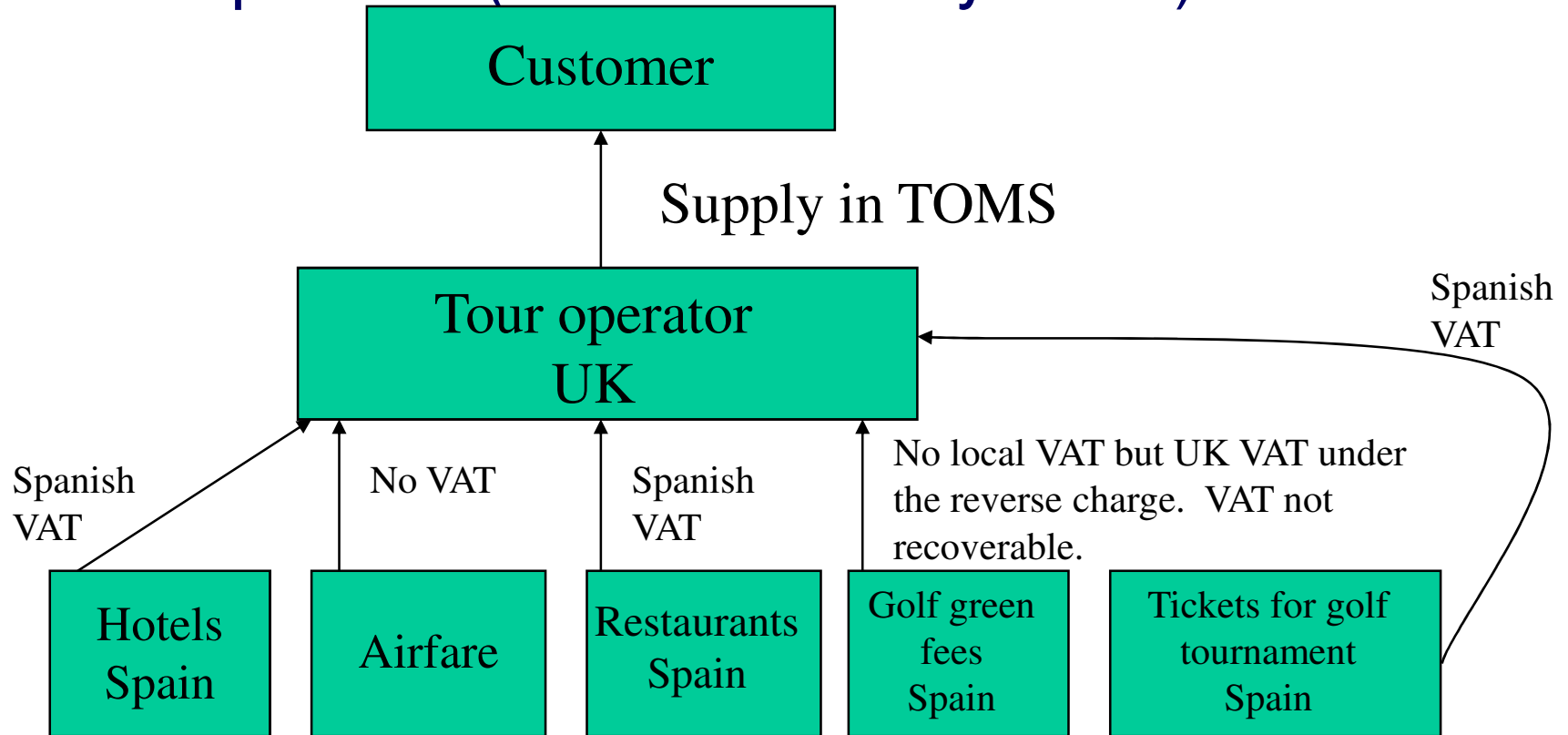


Example 2 – Wholesale tour operating



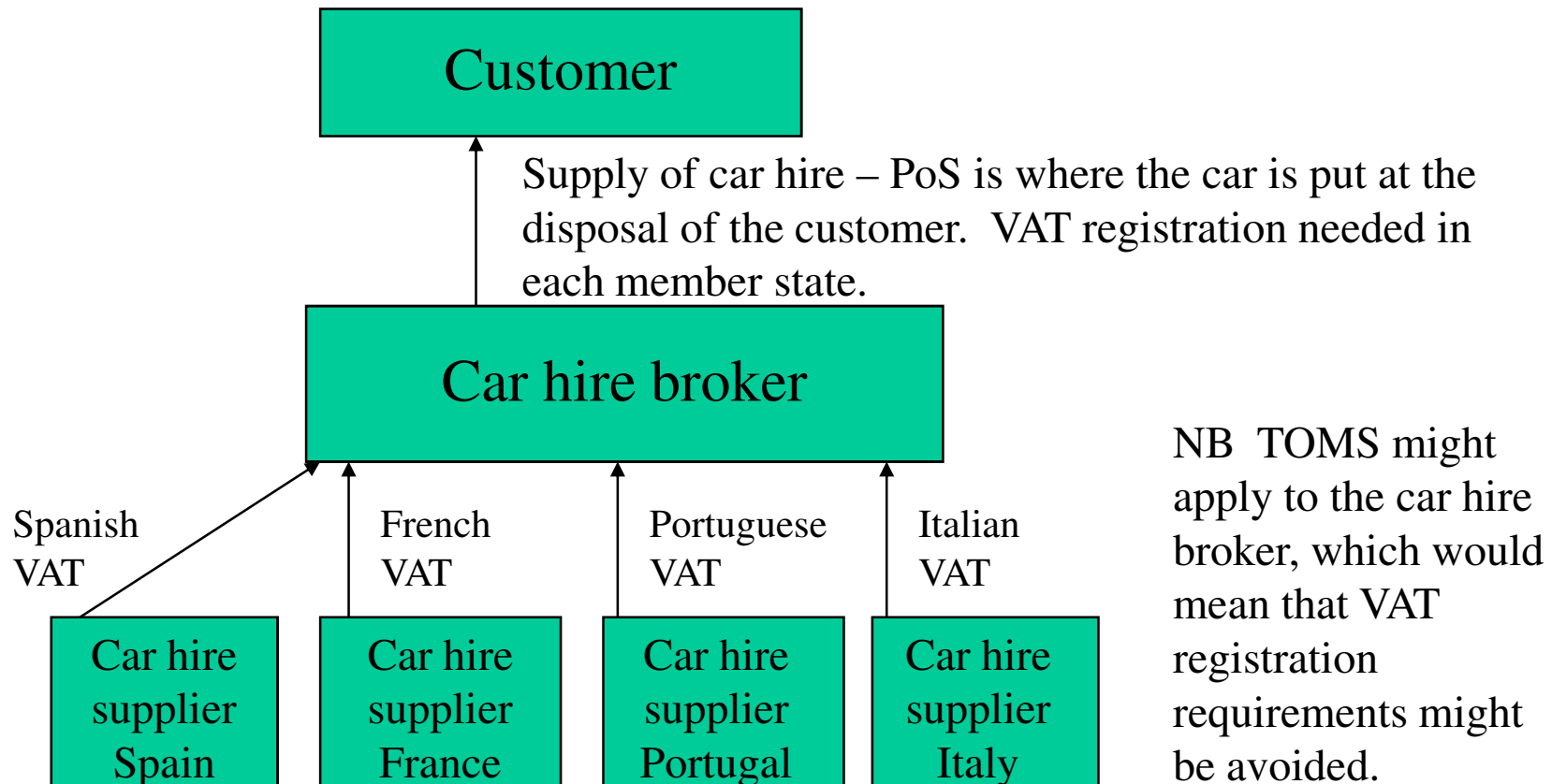


Example 3 – Purchase of holiday services by a tour operator (from 1 January 2011)





Example 4 – Car hire





EC Sales Lists

- From 1 January 2010 taxpayers will need to submit a new monthly or quarterly statistical return with details of services supplied to businesses in other EU member states.
- The following must be reported:
 - the VAT registration number of each customer; and
 - the value of services supplied to each such customer in the period.
- Supplies must only be included if the customer is required to account for VAT on the services via the reverse charge.
- Need to consider systems issues and the obtaining of information now.



The RCI Europe decision

- Decision of the ECJ released on 3 September 2009
- Concerns fees for the exchange of timeshare property rights
- Enrolment, annual membership and exchange fees considered
- All held to be connected to immovable property
- Specifically the property “owned” by the member wishing to make the exchange



TOMS: The current position at an EU level

- European Commission proposals 2002
- Extensive negotiations 2002/2003
- Italian Presidency compromise text late 2003:
 - Not agreed
 - No negotiations since 2003
 - But is that about to change?



The current position at an EU level (cont'd)

- Many trade associations want change.
- And now a growing number of member states want to negotiate, partly in response to the Commission's infringement actions.
- TOMS not on the agenda of the current Swedish Presidency.
- But Spain has said that:
 1. It will include TOMS in its Presidency agenda (first half of 2010); and
 2. Negotiations will start with the Italian compromise text from 2003.



The current position at an EU level (cont'd)

- Spanish Presidency will be followed by Belgium, Hungary and Poland, all of which are thought to favour a new TOMS.
- There may therefore be a two-year or more window of opportunity to push forward with negotiations.
- But there will only be change if all 27 member states agree.



Infringement proceedings

- The Commission took the first stage of infringement proceedings against 13 member states, including the UK, in 2007.
- In 2008, the Commission announced that it was taking formal actions against 8:
 - France
 - Greece
 - Portugal
 - Czech Republic
 - Poland
 - Italy
 - Netherlands
 - Finland



Infringement proceedings (cont'd)

- The actions concerned those member states' application of TOMS to wholesale supplies, ie, supplies to other businesses for their onward supply.
- France, Italy, Greece, Poland, Czech Republic are known to be strongly opposed to the Commission's position and believe they are right.
- But the threat of impending action seems to have made those countries more supportive of the TOMS negotiations – which is what the Commission wanted all along!



The Italian Compromise Text

- Had the last text put forward under the Italian Presidency been accepted the main effects would have been:
 - Taxation of non-EU operators
 - End the Irish, Dutch and Danish exemptions
 - Wide scope of TOMS: to apply to both B2C and B2B but with a very limited opt-out for B2B supplies
 - Most notably, the transport company scheme would no longer work
- Remember this is the position which Spain has said it will take at the start of the negotiations.



The ETOA position

- Believes there are several defects in the current scheme
- Believes there is likely to be a period of negotiation soon
- And it is therefore sensible to try to influence the outcome



ETOA's proposals

- ETOA has been working with ECTAA since the 2002 proposals to influence thinking and put forward business-friendly measures.
- ETOA has formulated a set of measures which it believes would benefit its members. These are supported by ECTAA and other representative bodies both in the UK and elsewhere in the EU.



ETOA's proposals cont.

- The main elements of ETOA's proposals are:
 - All B2B transactions should be excluded from TOMS but with an opt-in available in all member states.
 - It should be possible to apportion the margin between the different VAT rates appropriate for the component parts of a package.
 - There should be a system of fixed margins available to aid simplicity.
 - EU travel sold to non-EU customers should be zero rated to promote inbound tourism.
 - Non-EU destinations should continue to be zero rated.



Q & A