

# VALUE ADDED TRAVEL

## Quarterly VAT news for the travel and events sectors

**June 2019**

Welcome to this June edition of Value Added Travel, my newsletter for those operating in the travel and events sectors.

If you would like to discuss any of the points covered, or indeed any other VAT issue, please do feel free to contact me. My contact detail is set out overleaf.

All previous editions are available [here](#).

### **Brexit**

In the March newsletter, I commented on what may happen to the travel VAT rules in four different possible Brexit outcomes. Much has changed in the intervening three months but there seems no more certainty on what happens now. Inevitably, the future VAT rules remain very uncertain.

There is not a great deal therefore to add on this subject since March. I will, however, mention the proceedings in Parliament on HMRC's plans for TOMS in a no deal situation. You will recall that one of the concerns in the event of a no deal departure is the possible obligation of UK suppliers of travel of all types to register and pay VAT in other member states. In May, the plans for TOMS in a no deal outcome (see my January newsletter for detail [here](#)) were debated in Parliamentary Committee. The Financial Secretary to the Treasury explained the proposed changes and emphasised that zero rating the margin on travel in the EU27 would protect UK taxpayers from the threat of double taxation should the member states decide that VAT should be paid there.

The Labour Shadow Treasury Minister highlighted the practical difficulties and costs that would arise if tour operators and events agencies had to pay VAT in other member states. The Financial Secretary replied that he



did not think that likely and implied that the UK would require EU27 businesses to pay UK VAT on UK travel if the EU27 looked for VAT from UK suppliers. He also said the UK would be willing to look, with the EU, at alternative arrangements to alleviate the compliance difficulties.

### **Changes elsewhere in Europe**

Returning to another subject covered in this newsletter previously, we continue to see the effects of the European Commission's desire to drive greater harmonisation by the member states of the travel VAT rules.

As reported previously, Germany lost its case against the European Commission last year at the Court of Justice of the European Union ("CJEU") on its implementation of the TOMS rules. As a result, Germany announced recently that its approach to travel VAT will change in two ways:

- All forms of B2B supply, including wholesale, will fall within TOMS; and
- The TOMS calculation will be performed on a sale by sale basis.

I understand that the B2B change will take effect as soon as the law is passed (i.e. the draft law contains no transitional period), although representations are being made on this point. The change to the method of calculation is stated, however, to take effect on 1 January 2022.

The change to the basis of the calculation should only affect those businesses registered for VAT in Germany, but the B2B point will have wider effect. For example, this proposed change will bring to an end the ability of

UK B2B travel suppliers to recover German input VAT. It also means that the end of the German system by which, in certain circumstances, purchasers of German travel services from non-German suppliers must register to pay the VAT due on the supply to them of the travel. Indeed, it is thought that this system is unenforceable even before this German rule changes as it is contrary (in many circumstances) to the judgment of the CJEU.

Belgium has also announced an intention to bring all forms of B2B supply within TOMS. Once again, the effective date is not yet known.

Austria is also in the news in this respect. At the start of June, the Commission announced that it is taking legal action against Austria on its alleged non-compliance on the same two points as in the German case, i.e. the exclusion of B2B supplies from TOMS and the calculation of the margin. We should therefore expect similar changes in Austria in due course.

If anyone would like to speak to an adviser in any of these countries, please let me know and I can put you in touch.

If it were not for the UK's proposed departure from the EU, it is highly likely that similar action would be required here.

### **Cancellation income**

As discussed in both the December and March editions, HMRC have announced a new policy under which VAT is due on retained deposits and other forfeited

payments in the event of cancellation. This changed many years of accepted practice in this area. In February, HMRC confirmed that they expect tour operators to include such forfeited amounts in their TOMS calculation. Doing so will of course increase payments due, quite significantly for some.

As reported in the March newsletter, ABTA has made representations to HMRC that the new policy is incorrect. HMRC have not so far responded. I am aware, however, that HMRC are now writing to tour operators to ask about their treatment of cancellation income and whether they intend to adopt the new HMRC policy.

### **The meaning of agency**

The March edition included an update on the agency cases. These are the cases (involving Hotels4U, Hotelconnect, Lowcost, Opodo and Alpha International) which followed the Supreme Court decision in 2014 on the meaning of agency in the case of Secret Hotels 2 (formerly and better known as Med Hotels). The Tribunal had followed the Supreme Court in concluding that all five taxpayers had acted as a disclosed agent and were therefore not required to pay VAT on the sale of accommodation. These decisions are important for many in the travel and the events sectors.

In March, I reported that HMRC had failed in their attempt to have the issue referred to the CJEU but that they had the right to seek leave to appeal that decision. HMRC duly did seek leave. No decision has yet been made on HMRC's application. This issue is still not finally resolved, therefore.

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