

ETOA Brexit Seminar

What the tourism industry needs to know: VAT
and TOMS

31st October 2019

DAVID BENNETT

Elman Wall Bennett Ltd

david@elmanwallbennett.co.uk

07795 684958

Today's agenda



Two issues need to be considered:

- The effect of Brexit on the VAT treatment of travel services; and
- Very briefly, EU plans for reform

Brexit: an introduction



- VAT is an EU tax based on binding EU Directives and Regulations
- Brexit would therefore provide the opportunity to operate VAT in a different way
- But the terms of access/membership of the Single Market and the terms of any trade deal will influence our future VAT system
- The VAT system is an integral part of the operation of the Single Market

Overview of the current position



- TOMS applies compulsorily to much B2C travel and also to B2B travel for own use
- Wholesale supplies are excluded from TOMS (in the UK, but not in many other member states). An option to use TOMS exists in the UK
- Many MICE supplies are also within TOMS

What is TOMS?

- The Special Scheme for Travel Agents in EU terminology
- An EU simplification which avoids the need of travel suppliers to pay VAT separately in each member state in which travel is consumed
- VAT is paid on the margin in the member state of establishment and no VAT recovery on direct costs is permitted
- Applied in all member states (although the detail of operation varies hugely)
- The scheme has been subject to much scrutiny by the European Commission and the CJEU. Strong possibility of reform in the near future

Possible Brexit outcomes



- No deal
- Remain
- The Withdrawal Agreement, transitional period and negotiated future arrangements

No deal

- EU law ceases to apply in the UK
- In the short term at least, most UK VAT law unchanged
- But TOMS would change immediately – see below
- We would be outside the EU TOMS thus introducing the risk of VAT payments in the member state of travel, i.e. the simplification protection of TOMS would not apply. This could apply equally to B2C and B2B suppliers. No clarity on this point – the technical situation is unclear – but it is under consideration
- See the Parliamentary debate 9 May 2019

The new UK no deal TOMS



- Maintains the current rules in all respects bar one
- Only the margin on UK travel would be subject to VAT
- Margin on all non-UK services would be zero rated
- Clearly UK VAT payable would fall hugely for most
- But this is separate to the EU scheme and would do nothing to protect UK tour operators (B2B and B2C) from a need to pay VAT in the EU27
- Wholesale suppliers would remain outside the new TOMS (albeit with an opt-in it is understood)

Remain

- EU law continues to apply in the UK
- UK VAT continues to be an application of EU rules
- EU TOMS continues
- Therefore, no new obligations to pay VAT in the EU27 would be created
- But the UK version would almost certainly need to change to reflect CJEU judgements:
 - Wholesale supplies including the transport company scheme. This would have a large impact
 - Basis of the calculation
 - Tax points

The Withdrawal Agreement



- EU law continues to apply during the transitional period
- So VAT law remains broadly as now
- EU TOMS continues
 - What about the CJEU judgements?
 - No new EU27 obligations during the transition
- And what happens after the transition?
 - Depends on what is agreed between the EU27 and the UK but the VAT outcome could be the same as in no deal
- The position of Northern Ireland

EU TOMS reform



- This has been on the agenda for many years. The Commission study on the application of VAT to travel was published in December 2017. The Commission has stated recently that it will soon publish a roadmap to define the scope of further work and it is expected that a public consultation will take place early in 2020
- One of the key aspects under consideration has been the status of third country travel suppliers. There is a concern that the non-payment of VAT by third country tour operators puts EU competitors at a disadvantage and that EU operators may be encouraged to re-locate
- Therefore, finding a level playing field as part of the reform is seen as important