

VALUE ADDED TRAVEL

Quarterly VAT news for the travel and events sectors

December 2019



Welcome to this December edition of Value Added Travel, my newsletter for those operating in the travel and events sectors. Previous editions are available [here](#).

The emphasis this quarter is on developments in the EU but many UK businesses will be affected in either the short or long term.

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.

Germany, Belgium and Austria

Germany has very recently changed its rules to comply with the CJEU decisions of 2013 and 2018 and it is expected that Belgium will follow shortly. To recap, these decisions require the inclusion of all B2B supplies, including wholesale supplies, in TOMS and the calculation of TOMS VAT due on a transaction by transaction basis, i.e. there should be no use of a fixed margin nor aggregation of supplies made in a period.

In Germany, the B2B change took effect on 18 December, although the German travel industry is seeking to delay the implementation until the end of 2020, and the change to the method of calculation will be introduced on 1 January 2022.

Belgian law has been changed – for B2B supplies – but no effective date has yet been announced (but is expected soon).

These changes will be significant for many established in those member states and also for others supplying services enjoyed in the states involved. For example, many non-German tour operators and similar have been registered in Germany in order to pay German

VAT on the purchase of travel. In many circumstances, this is now not required (or even permitted). Indeed, it can be argued that amounts paid in previous years should not have been paid and could now be recovered as the German requirement was contrary to the CJEU decisions. Other non-German suppliers have been able to recover German VAT on travel purchased for re-supply to a business client. This is not possible now for costs incurred on 18 December or later (subject to the outcome of the industry action as above), although recovery should still be possible on earlier costs. Transitional measures are possible.

Austria has not yet adopted the CJEU position but has been referred to the CJEU ([case C-787/19](#)) in relation to both the treatment of B2B supplies and the non-adoption of a sale by sale basis of calculation.

Brexit

It now seems that we will leave the EU on 31 January 2020 and enter a transitional period lasting for just 11 months. EU VAT rules will continue to apply during this period. The current TOMS therefore will continue during this period. We don't know what will happen at the end of the transition. One distinct possibility, as far as TOMS is concerned, is the adoption from the start of 2021 of the new TOMS Order prepared for a no-deal Brexit. This would introduce a new UK version of the scheme mirroring the current UK implementation of the EU scheme but with one large difference, namely that the margin on travel in the EU27 would be zero rated.

Whilst this would mean large reductions for many in UK VAT payable, there remains a concern about the VAT status of tour operators and similar after the transitional period. It is a possible that a need to register and pay VAT in other member states will exist but there is still no clarification on this.

European developments

A regular topic in my newsletters has been the intention of the European Commission to harmonise member states' application of the current TOMS rules. Of course, Brexit reduces significantly the relevance of this in the UK but it is clear that the position of non-EU travel suppliers is a key consideration in this process and therefore it is important to follow what is happening.

In my last newsletter, I covered the Commission's announcement of its intention to continue the evaluation of the operation of TOMS. This follows the Commission's TOMS Study of December 2017 (a summary of which is available [here](#)). The purpose of the evaluation is, as stated on the [EU website](#):

"To assess if and to what extent the special scheme for travel agents is fit for purpose, meets its objectives of having simplified rules for this sector and ensures the VAT is collected by the EU country where the goods or services are consumed".

The Commission will publish a roadmap to define the evaluation's scope. This was due in the late autumn but has not yet appeared. The second stage will be a consultation to which all can contribute and this is still expected to be launched early in 2020.

Once the consultation is complete, the Commission will decide whether to launch proposals for new legislation to amend the scheme or to leave the scheme as it is now (and presumably then enforce compliance in all member states of all CJEU judgements).

A meeting of the Group on the Future of VAT was held in November to consider the future of TOMS and two related documents have been issued which help explain the Commission's thinking. First, the Commission released a briefing paper for the member states on the issues to be discussed. This sets out various matters on which the member states were asked to comment as part of the evaluation and asks for comments on the reform options discussed in the TOMS study.

Of particular interest in the UK, however, is what the paper said on the status of third country travel suppliers. The paper contains the following question:

"Should services provided by non-EU travel agents to customers established in the EU and relating to trips within the EU be subject to VAT in the EU?"

It is notable that the Commission framed this to suggest that VAT would be due only if the travel is within the EU

David Bennett

Mobile
Email
Web

07795 684 958
david@elmanwallbennett.co.uk
www.elmanwallbennett.co.uk

and the customer is an EU person. A new rule to give effect to this would be popular in the UK.

The paper also asks for comments on the TOMS study's proposal to switch the place where TOMS VAT is paid either to the customer's place of usual residence or to the place where the travel is enjoyed. Both were proposed as ways in which the competitive status of EU and third country suppliers might be equalised. The former was the approach recommended in the 2017 study and is consistent with the Commission's question above.

The second document is the minutes of the meeting. These demonstrate a divergence of views amongst the member states on several points including the best way to treat B2B supplies. On the position of third country suppliers, the minutes refer to anecdotal evidence of the competitive advantages enjoyed by those based outside the EU and include a comment to the effect that "a level playing field does not exist".

I will let you know once the roadmap is available.

Agency

Another subject to have appeared regularly is the litigation on the meaning of agency. See in particular the September 2018 edition for a summary of the issues. In September 2019, I reported that HMRC had been given leave to appeal the Tribunal's decision not to refer the matter to the CJEU. I understand that there is still no date for an appeal hearing so this issue is no further forward than it was three months ago.

The inclusion of events in TOMS

One of the most difficult areas of TOMS is its use in the events sector. The rules can be very complex and have the undesirable effect of denying a business customer the right to recover VAT on event costs which should, if it were not for TOMS, be recoverable.

I participated in representations on this to the Office of Tax Simplification ("OTS") in 2017. The OTS concluded that a "potential approach" is the removal of events businesses from TOMS and recommended that the government should consider this whilst recognising that such a change may need to wait until Brexit.

Given that the scheduled end of the transitional period is now just a year away, and as the probable changes to TOMS (as discussed in the Brexit section above) would perpetuate the current situation for UK events, it would seem appropriate for the events sector to lobby the government now on this point.