

Changes to the German treatment of B2B travel services

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Introduction

Germany introduced changes to its VAT treatment of B2B travel supplies on 18 December 2019¹ which have a considerable impact on the taxation of German travel services and also affect the responsibilities of many non-German suppliers of travel services. This paper considers the effect on tour operators and similar established outside Germany but selling German services.

The previous German regime

There are two aspects of the previous German arrangements with which we need to be concerned: the treatment of B2B travel supplies for the purposes of TOMS and the way in which Germany has collected VAT on German services supplied by businesses not established within Germany.

As far as TOMS is concerned, since the introduction of TOMS in Germany, German law has excluded all B2B supplies from TOMS. This meant that supplies of travel services enjoyed in Germany were subject to German VAT under the “normal” rules. Therefore, supplies of German accommodation, passenger transport etc made on a B2B basis were subject to German VAT at the appropriate German rate and that German VAT incurred on the purchase of such services for re-sale on a B2B basis was recoverable.

However, in 2013 the Court of Justice of the European Union (“CJEU”) ruled that B2B supplies should be accounted for within TOMS (subject to the normal conditions of the scheme). In other words, a supply should not be excluded from TOMS merely because it was made to a business client. Clearly, that decision contradicted the German approach but no change was made in Germany and the European Commission took legal proceedings to enforce compliance. The CJEU found against Germany in 2018. The changes made on 18 December 2019 were made to bring German procedures into line with the CJEU judgements.

The way in which Germany has collected VAT on travel services outside of TOMS has been different to that adopted by most other countries. Whereas most require the supplier of a service to register in order to charge and pay the VAT, in Germany, in many situations, it has been the responsibility of the purchaser of the service to register and pay the VAT due. Notably, accommodation and catering fall within this regime. All forms of passenger transport did fall within this approach but the rules changed in 2013: from that date, passenger transport by road fell outside this regime with the effect that the supplier of the transport had the obligation to register in Germany but river cruises remained subject to the reverse charge approach.

It is important to appreciate that this system itself has not changed; in several circumstances it remains the responsibility of the purchaser to pay VAT due on services purchased. What has changed is the type of services which fall within this payment regime. Some examples of the operation of the German rules before 18 December should help to illustrate the effect of the old rules and also of the changes.

1. A non-German business purchases hotel accommodation from the hotel itself and supplies the accommodation to a tour operator which includes the accommodation in a holiday package which it sells on a B2C basis – the hotel is a German business and therefore charges German VAT. The purchaser makes a wholesale supply to the tour operator. As TOMS did not apply to wholesale supplies, that supply was subject to German VAT but,

¹ Although a rumour is circulating in Germany that a transitional period may yet be applied retrospectively

as the wholesale supplier was not a German business, the responsibility to declare the VAT passed to the purchaser. The tour operator therefore needed to register in Germany and pay the VAT due. This VAT was not recoverable as it was attributable to a supply within TOMS. The wholesale supplier, however, was entitled to recover the VAT due as its supply was not within TOMS.

2. A non-German tour operator purchases European river cruises from the non-German operator of those cruises and incorporates the cruises into a holiday package sold on a B2C basis – to the extent that the cruises took place within Germany, German VAT was due. River cruises are not road transport and so it was the tour operator's responsibility to register in Germany to pay this VAT. Again, this would not be recoverable as the cruise cost was a component of a TOMS supply.

The new German rules

As above, B2B supplies are now capable of falling within TOMS. This means that, in many circumstances, payment of German VAT by the purchaser is no longer required. This can be illustrated by looking at the new position of the two situations described above.

1. The German hotel would still charge VAT, but now the non-German wholesale supplier of the accommodation is making a supply which falls within TOMS (for German purposes) and this means that no German VAT is due on the wholesale supply. Therefore, the tour operator no longer has a requirement to be registered in Germany and pay VAT there on the purchase on the accommodation. As the wholesale supplier is now making a TOMS supply, no recovery of the VAT charged by the hotel is now possible.
2. We need to consider the status of supplies made by the cruise operator. It seems very likely that they would be considered to be in-house supplies (as the supplier is the cruise operator) and therefore do not fall within TOMS even after the December change. Accordingly, nothing in this supply chain changes: the cruise operator is still not liable to charge German VAT and tour operator is still expected to pay the German VAT.

We can see therefore that an understanding of the status of supplies received is crucial in identifying the effect of the December changes.

Repayment of past VAT paid

It can be seen that, in some circumstances, businesses no longer have obligations to pay the German VAT that was previously due. As such obligations arose from non-implementation by Germany of binding EU law, it follows that taxpayers who have paid VAT under the German regime should be entitled to a refund of VAT incorrectly paid. The tour operator in 1 above is an example of a business which should be entitled to such a refund.

More information

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