VALUE ADDED TRAVEL

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Quarterly VAT news for the travel and events sectors

November/December 2020

Welcome to this November/December edition of Value Added Travel, my newsletter for those operating in the travel and events sectors. Previous editions are available here.

The end of the Brexit transitional period is now very close. Fortunately, we do now have clarification of the rules that will apply next year in the UK for tour operators and others selling travel services. In short, a new UK version of TOMS will take effect on 1 January 2021. A summary of the new arrangements and a brief look at some implications is set out below.

Much of the detail is based on the outcome of negotiations conducted by ABTA with HMRC. I will be happy to provide further detail on any of the issues covered below.

The new UK TOMS arrangements

HMRC's intention has been to change as little as possible, but it is inevitable that the TOMS arrangements must change. To effect the necessary changes, HMRC have just confirmed that The Value Added Tax (Tour Operators)(Amendment)(EU Exit) Regulations 2019 (hereafter "the new TOMS Order") will be adopted from 1 January 2021. You can also see my comments written when the Regulations were first published here in my January 2019 newsletter.

By way of background, the new TOMS Order was introduced last year in preparation for a possible no deal Brexit. As we did not leave last year, the Order was not given effect but will now be implemented from the end of this year. It is important to note that this will apply regardless of whether there is a deal with the EU (unless, and this is a remote possibility at best, there is a little minute agreement that the UK will continue to participate in EU schemes such as TOMS).

The effect of the new TOMS Order is to create a new UK version of TOMS. In most respects, this will be the same as the existing UK scheme (i.e. the UK's interpretation of the EU scheme) but there is one very significant change. As you will be aware, the effect of the current scheme is to levy UK VAT on the gross margin made on travel enjoyed anywhere in the EU. Under the new scheme, however, VAT will only be due on the margin made on UK travel. For many tour operators and similar, it is clear that UK VAT payments will fall very significantly, possibly to nil. Only those selling UK destinations will continue to pay UK TOMS VAT.

The EU angle

In itself, this of course is good news for many. However, we must remember that we will not be within the EU TOMS arrangements and this may have repercussions. To recap, the main purpose of the EU TOMS is simplification: namely, to ensure that tour operators do not need to account for VAT in each member state in which their services are enjoyed. It is inescapable that there will be a greater risk of registration and payment of VAT in individual member states.

I have written about this before – for example, see Value Added Travel of March 2019. Unfortunately, there is still no new information on this and therefore it is increasingly likely that we will get to 1 January with no clarification of whether UK businesses will be expected to pay VAT in the EU.

More detail on the new UK scheme

So we will have a new version of TOMS. As above, whilst the headline is reduced UK payments for most, many practical features will not change. For example:

- calculation of the VAT due will continue to be made by reference to the financial year and VAT will be paid provisionally during each year using a provisional percentage based on the preceding year's result;
- TOMS will continue to apply compulsorily (subject to the normal TOMS conditions) to B2C supplies and supplies to business for their own use. Wholesale supplies will continue to be outside of TOMS but there will still be an option to use TOMS. Please see overleaf for more detailed comments on the position of wholesalers;
- the treatment of in-house supplies will not change. Therefore, an existing obligation to pay VAT on in-house supplies (in the UK or elsewhere) will continue next year; and
- the TOMS tax points will be unchanged.

Treatment of the UK margin

HMRC have confirmed that the existing transport mitigation arrangements (the transport company scheme and the transport agency scheme) can be used for UK travel. They can also be used, for the time being, for the services – accommodation, catering, admissions – currently taxed at the reduced rate.

However, ABTA requested a simplification of the new UK arrangements to allow an apportionment of the UK margin (on the basis of cost) between the services taxed at different rates. This would allow the margin on passenger transport to be zero rated and that on the reduced rate services to attract 5% (until the reduced rate is withdrawn) and thereby remove the need to use a mitigation scheme. HMRC have not yet approved this but it is thought likely that they will.

Transport mitigation arrangements

The above paragraph looks at the ability of tour operators and others selling UK travel to ensure that the VAT due on the margin reflects the rates applied to the services involved when supplied outside the scheme. Most tour operators have used the transport company scheme (or the agency scheme) to ensure that the margin on passenger transport, in effect, is not subject to VAT. As the margin next year on all travel outside the UK will be zero rated, there will be no benefit to be derived from the continued use of the mitigation arrangements. It is envisaged, therefore, that transport company and transport agency structures will cease.

Transitional arrangements

Depending on individual circumstances, there will be issues to consider about the transition from the current to the new scheme. ABTA has negotiated with HMRC on this area and agreed that:

- tour operators have a choice of approaches for the annual calculation for a year straddling 31 December. (There is a cleaner cut-off for those with a 31 December year end.) Whichever method is adopted, the principle is to tax the margin on EU travel where the departure is in 2020 and to zero rate the margin on 2021 departures (assuming that the departure tax point is in use);
- the provisional percentage should be calculated on the basis of the UK margin only. Therefore, the percentage calculated for 2021/22 should reflect the UK margin only achieved in the 2020/21 financial year. In addition, the existing provisional percentage can be adjusted in January 2021 to ensure that VAT is only paid provisionally in 2021 on UK departures.

More detail on these points is available in ABTA's Guidance Note on the new scheme.

Wholesalers

As described above, wholesale supplies will continue to fall outside TOMS, albeit with the option to apply TOMS voluntarily. HMRC have confirmed that the application of VAT (outside of the new TOMS) will continue as at present. Therefore, I understand that there will be no change to the treatment of UK travel (both packages and otherwise) supplied on a wholesale basis. Wholesale suppliers, however, should be aware that the increased risk of registration and payment of VAT in the EU also applies to them.

EU TOMS reform

Finally, a brief update on the possible reform of the EU TOMS arrangements. The European Commission's public consultation (part of their evaluation of the current scheme) concluded in September. There has since been no communication from the Commission but it is still expected that the results of the evaluation will be published this year.

You will recall that one of the main issues covered in the evaluation was the level playing field, i.e. the desire to treat EU and third country travel suppliers equally. Therefore, despite Brexit, we need to continue to follow developments in this area as any changes will be very influential in determining the future VAT status of UK tour operators etc selling travel enjoyed in the EU.

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