ETOA Briefing: German VAT on non-EU sales from 2023

What is proposed?

1. Germany intends to tax non-EU sales of holidays to Germany from January 2023.
2. This will increase the cost of German product by at least 10%.
3. The overall impact will depend on the proportion of the holiday that takes place in Germany and the VAT rate on its constituent parts.

Who will be affected by this?

1. Operators and agents selling German product to consumers in non-EU markets.
2. Any EU-based wholesalers selling German product to their worldwide clients.

How will this work?

1. Any non-EU operator and agent who buys German product for resale to consumers must register for VAT in Germany (the mechanics are still unclear).
2. Sales tax (VAT) will be due to the German government from that non-EU operator or agent on the proportion of the retail price that relates to German product: if the tour is Germany only, VAT will be due on the entire retail cost (excluding flights).
3. Only the VAT on services bought directly by a non-EU operator, e.g. an American operator contracting directly with a hotel, will be recoverable by that operator.
4. A German (or any EU) wholesaler must add a commercial margin and VAT to the package they sell to that American operator.
5. That package will be composed of VAT-inclusive product (e.g. hotel costs which include VAT). That 'input VAT' is not recoverable by the non-EU buyer. This has two effects:

    a. The German (or an EU) wholesaler will become less competitive as the pressure to contract directly will increase, thereby harming a specialist value-adding sector within the European tourism ecosystem.
    b. The American operator will pay sales tax on packaged product that already includes sales tax ('input VAT'), so the proposal will cause double taxation. This is normally something international tax arrangements try to exclude.

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What are the practical objections?

1. Compliance: there has not been any systematic effort to educate the industry about how to comply; international market awareness remains very limited.
2. Financial uncertainty: business does not know if the move will affect product already sold, with departure dates from 2023 onwards.
3. Global enforcement: Germany would have to pursue companies and agents worldwide for non-compliance, which would be very costly and complex.

What will the impact be?

1. Tax loss: Industry calculates that Germany's tax revenues will be hit, and we note that no official impact assessment on the overall effect has been made publicly available.
2. The inbound market will promote Germany less; some are avoiding selling German product altogether. This applies across all market segments: leisure and MICE.
3. While alternative destinations benefit from strong demand for European product, positive experiences there will inform online reviews and future travel sentiment.

Is Germany obliged to do this now?

1. No. The move has been postponed at least twice, which demonstrates Germany's discretionary powers, and perhaps some awareness of the difficulties it would cause.
2. The change appears to be the result of an interpretation of current EU tax law and its impact on packages, operators, and agents, which is currently under EU review.
3. Pending review, any enforcement action against the EU's largest state is highly unlikely, and no evidence of external regulatory activity has been provided.
4. So far as we understand, there is no pressure from Brussels to make the change, and no other EU country plans to tax consumer sales in Europe's source markets in this way.

This briefing has been prepared to the best of ETOA's knowledge to provide guidance to its members. It does not constitute legal advice. Correction or comment is welcome.

ETOA continues to work with its partners in Germany towards a pragmatic resolution.

For further information, please contact policy@etoa.org