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ETOA

Tax and Tourism – EU
options for change to
VAT, and Germany's
plans for 2023

14 November 2022

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Today's discussions

Three topics to be covered today:

1. The current position on the Commission's plans to reform TOMS
2. The Commission's proposals for the taxation of platforms
3. A recap on Germany's planned changes for 2023

Time for Q&A later

Platforms

TOMS will be our focus today but it is appropriate to start with a brief consideration of the Commission's plans for platforms

Various aspects of the treatment of services provided via platforms have been under consideration. The Commission is due to present legislative proposals on 7 December

It is expected that a deemed supplier regime will be a key part of the proposal. This will make the platform responsible to pay VAT on the value of services provided via the platform when the service provider does not itself pay the VAT

This obligation will apply regardless of the location of the platform

The deemed supplier regime (“DSR”)

Likely to be introduced where a platform:

1. Sells short term accommodation or passenger transport which in principle is subject to VAT in the EU
2. The service provider does not account for VAT (typically because the provider is not VAT-registered)
3. The platform does not sell in its own name. (If the platform does sell in its own name, the platform makes an ‘actual’ supply of the service and is responsible anyway for the payment of VAT)

Under the DSR, the platform will be required to pay VAT on the full selling price at the appropriate VAT rate in the member state of supply

Expected that there will be many practical issues to consider. But more to follow once we have the proposals

TOMS reform: introductory comments



The Commission is part way through an economic study to:

1. Evaluate the functioning of the current rules in the travel and tourism sectors
2. Develop options for simplification and modernisation
3. Analyse benefits, costs, opportunities and risks of the reform options

The Commission's contractors presented their interim report in late summer. The final report is due in early 2023. Legislative proposals are then expected, perhaps in late 2023

Meeting with stakeholders on 26 October. Background document released by the Commission on 19 October. Further representations are invited

Subject matter of the study

The study team is considering three VAT areas relevant to travel and tourism:

1. TOMS
2. The rules for passenger transport
3. Exemption for goods sold to non-EU travellers

Our focus today is on TOMS

The document of 19 October describes the objectives of the work as:

“to address the distortions arising from the current VAT rules and provide the sector with modernised rules based on fair, simple and more efficient taxation. Any future proposal will also aim at ensuring a more uniform application of the VAT rules applicable to travel and tourism services, while adapting regulations in place to the digital dimension of the travel and tourism market ...”

Overall conclusion of the interim study



“The assessment carried out so far has revealed the need to reconsider the overall VAT regime applicable to travel and tourism in a comprehensive manner. Overall, the VAT rules applicable to the travel and tourism sectors are not fit for the digital market of travel services. Digital technologies have radically transformed the sectors creating new business models (eg online travel platforms, digital refund systems) that both pose challenges and offer opportunities for tax administrations and businesses, such as new possibilities to facilitate VAT compliance”

TOMS: four areas under consideration

1. Scope of TOMS
2. The TOMS place of supply, i.e. where the TOMS VAT is payable
3. Definitions of various concepts central to the scheme
4. The nature of the TOMS calculation

We will now consider each of these in turn

Scope of TOMS

The aim here is to address distortions caused by member states' unharmonised approach to the current rules. Four changes are being considered:

1. Exclusion of wholesale supplies – “normal” VAT would then apply compulsorily to all wholesale supplies. But what does “normal” mean in this context? A very important issue
2. Option for B2B – introduce a transaction by transaction ability to exclude B2B supplies from TOMS and then apply “normal” VAT to those excluded
3. Exclusion of MICE – again, this category of business would compulsorily be excluded from TOMS and “normal” VAT applied
4. Exclusion of occasional supplies – services meeting the TOMS conditions would be excluded if they represent only a small part of the supplier's business (up to 5% of turnover possibly)

But maintaining the status quo (all forms of travel remain within the scheme) is also a possibility

The place of supply ("PoS")

The current PoS is considered to create a price advantage for businesses established outside the EU. Five approaches are being considered:

1. Maintain the status quo – VAT remains due in the member state in which the supplier is established and margins of third country suppliers remain untaxed
2. Change the PoS for all to the place of the traveller's residence – VAT is due on the margin in the member state in which the customer lives. The margin on sales to non-EU customers is untaxed regardless of where the travel takes place
3. Change the PoS for all to the member state of destination – VAT is due on the margin in the member state(s) in which the travel takes place. Would apply equally to all travel suppliers regardless of place of business
4. A hybrid approach in which EU suppliers continue with the status quo but place of the traveller's residence becomes the test for third country suppliers
5. A different hybrid in which EU suppliers again continue with the status quo but VAT becomes due on the margin made by third country suppliers in the member state of destination

Definitions of concepts

Five concepts are listed:

1. Meaning of agent/principal – a list of “presumptive behaviours” is suggested as a means to help determine if a business sells as agent or principal
2. Meaning of “travel facilities” – TOMS can only apply to a supply of “travel facilities” but this term is not defined and significant differences in approach exist. Two approaches are suggested but both limit TOMS to “bundles” of services.
3. Single items – as above, consideration is being given to the limiting of TOMS to the supply of a “bundle”. Single item supplies would therefore fall outside the scheme (and “normal” VAT would apply). However, one approach under consideration seems to be inclusion of a single item supply within the scheme provided that supply is of accommodation
4. MICE – consideration of the exclusion of MICE (i.e. that event organisation should not be a travel facility)
5. Mixed supplies – this refers to the combining of bought-in services with those provided on an in-house basis. The work here seems to focus on accounting options to determine how VAT should be assessed on the two categories of supply

Nature of the TOMS calculation

Three approaches under consideration:

1. Maintain the status quo – the margin must be calculated separately for each transaction and VAT is due on the perceived margin included within each payment on account
2. Move to a compulsory global margin basis, calculated on an annual basis with VAT due by reference to the departure date
3. Introduce a choice – suppliers can choose between the global margin basis and the transaction by transaction approach

Germany

Anticipated change in policy to take effect on 1 January 2023 so that third country suppliers are no longer considered to be within TOMS

This would require the payment of German VAT on all travel services with a German PoS

However, there is still no guidance available on what is expected in practice

And it is still not certain that the change will happen

But if it does happen, it is expected that suppliers of German travel services in many circumstances – particularly B2C supplies – will need to register in Germany and declare local VAT

The reverse charge is expected to apply to many B2B services

This would be an enormous upheaval in the taxation of services enjoyed in Germany – but here we are 7 weeks from introduction and we still don't if it will happen and, if it does, what will be expected of non-EU suppliers of German travel. Indeed, recently it has been suggested that the need to pay German VAT may be limited to sales made to EU residents, adding to the current uncertainty.

It is understood that the German tax authorities will consider these points later this month