Industry stakeholder submission to the Commission on the options for review of the Special Scheme for Travel Agents

25 January 2023

This paper sets out the common views of the main stakeholder associations on the options for review of the Special Scheme for Travel Agents as set out in the Commission's Background Document of 19 October 2022 (taxud.c.1(2022)8070018) prepared for the meeting with stakeholders on 26 October 2022.

The stakeholders include CLIA Europe (cruise lines), ECTAA (European travel agents and tour operators), ETOA (European inbound tourism operators), EU Travel Tech (OTAs, travel tech companies) as well as TTL Net (European tourism tax consultants). Our members / customers represent the vast majority of travel companies that fall under the scope of the special scheme.

Introduction

We set out our detailed position on the reform options in the sections following but our broad approach can be described as follows.

We support the retention of the Special Scheme but agree that reform is required to remove the distortions and weaknesses in the current Directive[1] and to make the rules more compatible with the ways in which the travel sectors now operate.

The Special Scheme should be broad in application, both in terms of the definition of travel facilities and the inclusion of different types of travel businesses. Such a broad application is necessary so that the simplification objective of the Scheme can be achieved. However, a B2B opt out is essential in order to remove the harmful effects of the Scheme when selling to a business client, notably the loss of input tax deduction when a travel agent arranges travel for a business client.

[1] See lack of level playing field highlighted by stakeholders in the report on the evaluation of the Special Scheme, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0032&from=en

The Scheme should apply to packages (referred to as 'bundles' in the GFV document) and to single services. Doing so also promotes the simplification objective of the Scheme. A case should be made, however, for the exclusion from the Scheme of single supplies of flights so that travel agents within the Scheme are not disadvantaged when compared to those arranging flights as a disclosed agent and whose commission or fees can be exempted under Art 153.

We support the desire to eliminate the advantages currently enjoyed by travel agents established outside the EU and agree that an amendment to the place of supply rule is the appropriate way to achieve this. We favour the place of supply of services supplied by non-EU travel agents being determined by the place of residence of the customer. Exemption should apply when the non-EU travel agent sells non-EU travel to an EU customer. The One Stop Shop ("OSS") should be available as a means by which non-EU travel agents can declare the resulting VAT due.

However, we believe that the place of supply for EU travel agents should continue to be the Member State in which the travel agent is established. Again, the margin made should be exempt when earned on a supply made to a non-EU customer. Therefore, regardless of the location of the travel agent, VAT should be payable when the travel is enjoyed within the EU by an EU person and VAT in most cases will be due where the customer is based (i.e. many EU based travel agents have most of their customer base in the Member State where they are based). This achieves the objectives of continued simplification for EU travel agents, achieves in practice the most equality between EU and non-EU travel agents and ensures the continued attractiveness of the EU as a destination.

Agreement on the appropriate treatment of services supplied outside the Special Scheme (for example when the B2B opt-out is exercised) is essential. We believe that single services supplied by a travel agent acting in its own name should fall within the appropriate place of supply rule (i.e. Art 47, 48, 53, 55 or 56 as the case may be). The result would be the payment of VAT in the Member State in which the service is enjoyed.

However, the position of a bundle or package is more complex as a number of possible approaches may be considered. We favour an approach in which the main components of the package are identified and the appropriate value then attributed to each such component. Each component is then subject to VAT in the Member State in which it is considered to be supplied (i.e. by applying the specific place of supply rule for a service of that type) and at the rate in force in the Member State of supply.

The OSS should be available as the means of paying VAT due on the supply of services whenever the Special Scheme does not apply. It is essential that the OSS should allow for the deduction of input tax incurred on related costs.

A global basis of the calculation of VAT due must be available. We support the introduction of a choice so that any travel agent can choose between the global basis and the calculation of VAT on a transaction-by-transaction basis.

Options Area A: scope

A0. Status quo

Under this option, the Special Scheme would (subject to the normal conditions of the Scheme) continue to apply to all forms of travel, i.e. to B2C, wholesale, MICE and business travel. In the absence of a B2B opt out we could not support this approach.

A1. Exclusion of wholesale supplies

We would not support the mandatory exclusion of wholesale supplies. We believe that the simplification benefits of the Scheme should be available to wholesale suppliers (and indeed to all other B2B suppliers).

However, a proper consideration of this option requires an examination of the 'normal VAT' rules that would apply to wholesale supplies and therefore we would welcome the Commission's thoughts on this and indeed what conclusions the consultants reached in this area. We have set out below our own views on this point. These conclusions apply equally to circumstances in which a travel agent has opted out of the Special Scheme (A2. B2B optionality).

We believe it is common ground that 'normal VAT' involves the application of the place of supply, valuation, time of supply and input tax deduction rules. We do not think that any particular difficulties arise in relation to the valuation, time of supply or input tax rules but the place of supply ("PoS") rules do require some consideration. We believe we need to consider the PoS rules separately for single services and bundles.

(i) Single services

We believe the Directive is clear on the rule to apply to single services. A supply of accommodation, passenger transport or short-term car hire should be taxed in accordance with respectively Art 47, 48 or 56 so that taxation occurs where the property is located, where the transport takes place[2] or where the car is put at the disposal of the customer.

It is clear that this rule would require many travel agents to pay VAT in multiple Member States if the Special Scheme was not to apply.

(ii) Bundles

However, we believe that identifying the proper treatment of a bundle when the Special Scheme is inapplicable is considerably more difficult. It is necessary to consider first whether the bundle is to be treated as a multiple supply (i.e. a combination of services comprising two or more separate supplies) or as a single complex supply (i.e. a combination of services which are considered to create a single supply).

We appreciate there is considerable CJEU case law on the circumstances in which a multiple or single supply should be considered to exist. It is necessary to look at the circumstances of each transaction to determine which approach is correct. It is quite possible that one bundle might properly be considered a multiple supply whilst a bundle with a different composition might be considered a single supply.

If a single supply is considered to exist, there appear to be two different approaches which might be taken. These are the predominant supply approach and the Art 44 approach. The predominant supply approach requires the identification of the main item within the bundle and the treatment of the supply then depends wholly on the rules applicable to that main item. Taxation within Art 44 may be appropriate where a combination of services forms a single, indivisible supply from an

[2] Recognising that this rule may be amended as a result of the current review of the treatment of passenger transport

economic point of view which would be artificially split and which does not have a predominant element.

In contrast, where a multiple supply exists, it is necessary to identify the supplies involved, identify the place of supply of each supply, put a value on each supply and apply VAT accordingly.

The financial effects of each approach can be very different, as illustrated below.

Let's say that a wholesale supplier established in Member State A creates a tour bundle to take place in Member State A for supply to a travel agent in Member State B for B2C supply to consumers in Member State B. The travel agent in B is within the Special Scheme but under this option A1. the wholesale supplier is excluded from the Scheme. The costs of the wholesaler are:

Hotel	€20,000 plus 10% VAT of €2,000
Coach travel	€10,000 plus 10% VAT of €1,000
Admissions	€10,000 plus 20% VAT of €2,000
Meals	€10,000 plus 20% VAT of €2,000
	€50,000 plus VAT of €7,000

The wholesaler sells the tour to the travel agent for €60,000 excluding VAT and the travel agent sells to travellers in Member State B for €75,000.

The standard VAT rate in Member State B is 25%.

We need to consider the effects of each of the multiple supply and single supply predominant element and single supply Art 44 approaches.

In each case, the wholesaler is excluded from the Special Scheme and therefore can deduct in full the input tax of €7,000[3].

In the multiple supply approach, the wholesaler apportions the €60,000 selling price on the basis of cost and then adds the appropriate VAT to each value:

Hotel	60,000 x 20/50 = 24,000 plus 10% VAT of 2,400
Coach	60,000 x 10/50 = 12,000 plus 10% VAT of 1,200
Admissions	60,000 x 10/50 = 12,000 plus 20% VAT of 2,400
Meals	60,000 x 10/50 = 12,000 plus 20% VAT of 2,400
	60,000 plus VAT of 8,400

The wholesaler declares output tax of €8,400, deducts input tax of €7,000 and makes a net payment in Member State A of €1,400.

The travel agent pays a total of €68,400, sells for €75,000 and therefore makes a margin of €6,600[4]. With VAT at 25%, the travel agent pays VAT of €1,320 to Member State B.

If instead the tour is considered to be a single supply to which the predominant element approach is to be taken, the wholesaler needs to identify the main item. In this example, arguably there is no predominant element as the single most costly item still accounts for less than 50% of the cost.

---

[3] See later comments on the ability to deduct VAT in such circumstances

[4] For the purposes of this illustration, we assume that the travel agent calculates VAT due on a transaction-by-transaction basis

However, if the most-costly item, the accommodation, is considered to determine the taxation of the tour, then the wholesaler will charge €60,000 plus 10% VAT of €6,000. The input tax of the wholesaler now exceeds the output tax due and the wholesaler receives a refund of €1,000.

The travel agent now makes a margin of €9,000 and pays VAT in B of €1,800.

If the Art 44 approach is adopted, the wholesaler charges no VAT as the PoS is Member State B but still recovers the input tax of €7,000. The travel agent now applies the reverse charge at a rate of 25% and thus declares VAT in B of €15,000. The travel agent now has no margin and therefore pays no VAT within the Special Scheme.

The revenue accruing to each Member State in the three scenarios is:

	A	B	Total
Multiple supply	€8,400	€1,320	€9,720
Predominant supply	€6,000	€1,800	€7,800
Art 44	€NIL	€15,000	€15,000

Clearly, the results would be very different if the assumptions were changed. Our purpose with these illustrations is not to identify which approach is the best but merely to illustrate how large an effect on both total revenue and its distribution between Member States the approach taken can have. We do believe, however, that the multiple supply approach is most likely to generate a fair allocation of revenue between Member States. It also has the benefit of being a logical approach and being the approach adopted, in our experience, by many Member States (where bundles fall outside of the Special Scheme).

There are practical difficulties associated with both of the single supply approaches. First, it seems likely to us that often there will not be a predominant element. In our example, the accommodation is the single largest component (by cost) but still accounts for less than half of the cost. We believe this is typical of tour bundles. Can the accommodation really be said to predominate in such a situation? Furthermore, what happens if the tour visits multiple Member States? Should the predominant element then be apportioned between the Member States? This would seem an odd outcome for a single supply.

The Art 44 approach also has inherent difficulties. In our illustration, the Member State of destination (A) receives no revenue whatsoever and this is likely to be the outcome in many cases if Art 44 is applied. This is difficult to justify. The approach is likely to impose an unreasonable cost on the travel agent purchaser (also as illustrated) as standard rate VAT must be paid even if a reduced rate is applied to the components of the bundle. Furthermore, difficulties would arise if the travel agent is established outside the EU. The operation of Art 44 would suggest that no EU VAT would arise: the wholesaler would charge no VAT and no VAT would be due from the non-EU travel agent under the reverse charge. There is a risk that the tour would generate no VAT whatsoever, although the travel agent may of course have a liability to pay VAT under the Special Scheme depending on the circumstances of the supply and on the PoS option adopted for non-EU travel agents (see options area B). This may be overcome by use of the use and enjoyment provisions in Art 59a but, as these rules are optional, there could be uncertainty. And these rules would do nothing to affect the distribution of VAT amongst the Member States.

We believe it would be practical to agree on an approach by which a bundle is considered a single supply of its predominant service if the cost of that predominant service accounts for 70% [to be discussed] or more of the total direct costs of the bundle. In all other cases, the bundle would be

treated as a multiple supply. It would be beneficial if guidance could be given on the approach to be taken (perhaps in the form of an addition to the Implementing Regulations) to provide certainty and to promote harmonisation within the EU.

In our illustration, the wholesaler arranges a tour in its own Member State. That allows for a reasonably straightforward declaration of the output and input tax. However, wholesalers regularly arrange tours in other Member States and tours which visit multiple destinations. Declaration of VAT via the home Member State VAT return will often not be applicable. Therefore, it is important that there should be a straightforward means by which these declarations can be made. We support the availability of the OSS for this purpose.

We have previously advocated an extension to the OSS to allow for input tax deduction and therefore we are pleased to see that this is under consideration[5]. We strongly support the ability to include input tax in the OSS declaration.

Our calculations include the full deduction of input tax by the wholesaler. However, we understand that certain Member States do not allow this recovery of VAT even where the service is re-supplied with VAT. Clearly, such an approach distorts the results as illustrated above and we believe that it is inappropriate. We suggest that reform of the rules in this area might incorporate a clarification that input tax should be deductible whenever a travel agent re-supplies such a service and the Special Scheme does not apply.

A2. B2B optionality

We strongly support the ability of travel agents selling to business clients to opt to exclude such supplies from the Special Scheme. Furthermore, we agree that the decision whether to exclude from the Scheme should be made on a transaction-by-transaction basis.

One of the most significant disadvantages of the Scheme is a travel agent's inability to deduct input tax on the costs of services purchased for re-supply to a business client. This is particularly a problem in the TMC[6] and MICE[7] sectors and very often causes suppliers to adopt a business model which they otherwise would not do, namely to act as intermediary to ensure the harmful effects of the Special Scheme are avoided.

As discussed elsewhere, the simplification benefits of the Scheme are appreciated by many, but often not by those in the B2B sectors. The ability to apply the normal VAT rules to such transactions on an optional basis would allow travel agents to apply VAT in a way that is not a barrier to their ability to trade.

We believe that the PoS of supplies opted out of the Special Scheme should be determined in line with our comments in A1. It follows that the multiple supply approach should be adopted when a travel agent supplies a bundle which is opted out of the Scheme unless there is one service type accounting for at least [70]% of cost.

It is also important that the option is introduced in such a way that the payment of VAT can be controlled. We believe this can be achieved. The default position would be the inclusion of B2B supplies in the Special Scheme. The OSS should be available (compulsory??) for the declaration of VAT due where a travel agent opts to apply normal VAT (and the PoS of the supply is not the

---

5 In the commentary on option 1d in the analysis on the VAT rules for passenger transport – page 8 of GFV No 125

6 TMC stands for Travel Management Company and is a travel agency for corporate travel needs

7 MICE stands for Meetings, Incentives, Conferences and Exhibitions

home Member State of the travel agent). We believe therefore that a travel agent would report each supply in one of three ways:

- Within its Special Scheme calculation; or
- If opted out, as a declaration under normal VAT on its VAT return in its home Member State if the PoS is that home State; or
- If opted out and the PoS is a different Member State, within its OSS declaration

The tax authorities within the home Member State should therefore have the means to verify that all supplies have been subjected to VAT via the appropriate means.

We are very conscious that the proposed approach for the treatment of supplies when the Special Scheme does not apply are complex, but they are logical, fair (in terms of a level the playing field with suppliers of the underlying travel services) and necessary (for those who need to allow their clients the possibility to recover input VAT). Travel agents will have to trade off the simplification afforded by the Special Scheme for the advantages of normal VAT.

A3. Exclusion of MICE

We appreciate that there are many circumstances in which a MICE operator would wish to adopt normal VAT principles but still we would not support the compulsory exclusion of MICE from the Special Scheme for the reasons given in A1.

We are puzzled as to why the exclusion of wholesale supplies and MICE is under consideration but without mention of the TMC sector.

A4. Occasional supplies

We have no particular position on this option as our members are unlikely to be affected. However, we would note that such occasional suppliers (for example an hotel making supplies of bought-in passenger transport – as in the Madgett & Baldwin case[8]) may prefer to be able to include such supplies in the Special Scheme, particularly if those supplies are performed in a different Member State. We do accept, however, that such occasional suppliers are perhaps likely to provide those occasional supplies in their own Member State and that, accordingly, the simplification benefit of the Scheme is maybe less important.

Options Area B: Place of supply

B0. Status quo

This option would see no change whatsoever to the place of supply of services falling within the Special Scheme. This would mean that EU travel agents would continue to pay VAT in their Member State of establishment but that non-EU travel agents would continue not to pay VAT on travel facilities enjoyed within the EU. We do not support this option, as it gives non-EU operators a competitive advantage and provides an incentive for EU operators to relocate outside the EU. Whilst the status quo in terms of the place of supply of EU travel agents has much to recommend

[8] C-308/96 and C-94/97

it (see comments below), a continuation of the competitive advantages of non-EU travel agents is unacceptable[9].

B1. Place of traveller's residence for non-EU travel agents, status quo for EU travel agents

This is our preferred option. It combines the current simplicity for EU travel agents (not requiring de minimis rules as we previously suggested) with the inclusion of non-EU agents within the scope of the Special Scheme, thus reducing the circumstances in which EU travel agents enjoy a competitive advantage. There would be circumstances in which non-EU agents would still enjoy an advantage. It is important that new legislation does not perpetuate a competitive advantage for non-EU travel agents and this point is covered below.

We believe that this option can be supported for non-EU travel agents on the basis that the service of the travel agent (the organisation and management of the services provided) is only enjoyed in the EU when the customer is resident in the EU. This ensures the best level of equality compared to EU travel agents as in practice most of their customers are located in the same country as where the EU travel agent is based (e.g. a German travel agent organising travel for German tourists to Mallorca would be taxed the same way as a non-EU based travel agent sending German tourists to Mallorca, i.e. German VAT would apply on the margin while input VAT incurred in Spain would in both scenarios stay in Spain as a destination).

Furthermore, this option imposes no VAT obligations or new costs on non-EU agents attracting non-EU based travellers thus helping to protect the attractiveness of the EU as a destination for non-EU travellers. It is important to note that due to the further expansion of VAT on remote and digital services outside the EU which are mostly subject to VAT where the customer is located, it would also limit room for double taxation.

As set out in the above example, it should also be noted that this approach would ensure that non-EU travel agents would be unable to recover the input VAT incurred on their direct EU costs, thereby protecting the revenue of the destination Member States.

Tax authorities would be able to identify those non-EU travel agents with an obligation to pay EU VAT from websites etc aimed towards EU customers so the detection risk would be higher and enforcement much easier. We also believe that the place of residence of the customer can easily be identified from the IP address, credit card payment details, passport etc and in general easier than having to check where the underlying travel takes place (e.g. in case of packages, roundtrips across the EU or in case of underlying passenger transport).

A form of the OSS should be available to facilitate the declaration of VAT due from non-EU travel agents. Moreover, a significant potential drawback of this place of supply change is that it may increase complexity for travel agents which serve customers in several EU Member States and, in these circumstances, this could defeat the purpose of the special scheme. One way of alleviating this complexity is to introduce a 10% de minimis threshold for non-EU travel agents: if a non-EU travel agent derives at least 90% (for example) of its revenue from customers in one Member State, it should be able to pay all its VAT due in that state. We recognise, however, that it may be necessary to impose a value threshold on this relief so that VAT would be paid in the Member State of the customer if the value exceeded a monetary limit despite being less than 10% of the total.

[9] Furthermore, the status quo would allow for the possibility that Member States would argue for the local payment of VAT by non-EU travel agents under normal VAT principles, creating considerable uncertainty for non-EU taxable persons

However, it is important that EU travel agents are not disadvantaged by this. As it stands, under this option supplies of EU travel facilities to non-EU travellers would be subject to VAT when sold by an EU agent but not when sold by a non-EU agent. To overcome this disadvantage, we would suggest that there should be an overriding exemption whenever the customer is a non-EU person. Therefore, our suggested position[10] is that:

- EU travel facilities sold by an EU travel agent to an EU consumer – VAT due on the margin in the travel agents Member State of establishment

- EU travel facilities sold by an EU travel agent to a non-EU consumer – no VAT due on the margin

- Non-EU travel facilities sold by an EU travel agent to any consumer – No VAT due on the margin

- EU travel facilities sold by a non-EU travel agent to an EU consumer – VAT due on the margin in the customer's Member State of residence

- EU travel facilities sold by a non-EU travel agent to a non-EU consumer – no VAT due on the margin

- Non-EU travel facilities sold by an a non-EU travel agent to any consumer – No VAT due on the margin

B2. Place of destination for non-EU travel agents, status quo for EU travel agents

This option would achieve taxation of the margin on all travel facilities enjoyed within the EU; non-EU travel agents would be required to pay the VAT in the Member State of destination whilst EU agents would do so in their Member State of establishment.

We appreciate that this option could generate more revenue for Member States from non-EU travel agents but we believe that it would be a very difficult message to give to non-EU agents that, not only do they need to pay VAT in the EU but that they face a different place of supply logic than EU travel agents and a more difficult administrative task in calculating the VAT due in multiple Member States. The attractiveness of the EU for non-EU travel agents would be significantly reduced, even more so bearing in mind the increasing risk of double taxation. It would also lead to a lack of equality in taxation between EU and non-EU travel agents compared to scenario B1. In short, this may be a very counterproductive measure.

B3. Place of traveller's residence for all travel agents

This approach would certainly achieve the desired equality between EU and non-EU travel agents. However, we prefer the approach described in our response to B1. above.

In practice, many EU agents sell mostly to customers in their own Member State, with the exception of larger tour operators. Therefore, we believe there would be little difference in the allocation of revenue between Member States between options B1. and B3. However, B3. would introduce the potential complication where an agent does sell to customers in a different Member

[10] Assuming that this option can be shown to be compatible with the rules of the World Trade Organisation

State and might act as a disincentive to looking for customers resident outside the home Member State.

B4. Place of destination for all travel agents

According to the EU commission's Action Plan for fair and simple taxation to support the recovery strategy (COM(2020) 312 final of 15 July 2020) the "Commission aims to lead the transition into a greener and more digital world that is compatible with the principles of our social market economy. Fair, efficient and sustainable taxation is central in delivering on those ambitions: EU tax policies have to ensure that everyone from individuals to corporations pays their fair share. At the same time, EU tax policies have to be designed so that businesses and citizens alike can fully reap the benefits of the Single Market, work and invest cross-border, innovate and create jobs." The action plan "sketches out measures aimed at reducing tax obstacles for businesses in the Single Market. Tax simplification will improve the business environment, enhance business competitiveness and contribute to economic growth."

This option would extend the complexity discussed in B2. to all travel agents. This could seriously erode the simplification benefits of the Special Scheme and we see no advantage in this option. It also questions the relevance of the Special Scheme if the margin is to be taxed in the same country as the underlying services. The aim of the current rules is to simplify and avoid VAT registrations in other countries and the administration that comes with keeping record of which country's VAT is applicable to each transaction. It could also remove the current simplification that the package can be seen as one single supply.

Any change of the place of supply rules for EU travel agents will cause significant implementation costs for the businesses in terms of system development and administration.

We believe that the current approach achieves a fair allocation between the destination Member State (in terms of lost input VAT) and the Member State in which the travel agent is located (via the taxation of the margin). This ensures that most of the VAT generated is enjoyed by the Member State of destination (as input VAT is considerably greater than VAT due on the margin). However, this approach does recognise that the value added by the travel agent (as measured by the margin) is subject to VAT where that value is added.

This option would involve a re-distribution of revenue to the Member States which enjoy the greatest inflow of travellers and could create a barrier to the acceptance of the wider proposals in this area which we believe would be regrettable.

Options Area C: Definitions

We welcome the desire to harmonise the application of the Special Scheme via the clarification of a number of important aspects of the Scheme. Our comments on the proposed approaches are described below.

Disclosed intermediary vs. Undisclosed intermediary/Principal

We will provide further comments on this shortly.

Definition of travel facilities

Two approaches are proposed under this heading. Approach 1 states that:

"A travel facility consists in a bundle of services that includes at least two of the following items:

- *Accommodation*
- *Passenger transport*
- *Other travel services to the benefit of a traveller"*

Approach 2 states that:

"A travel facility consists in a bundle of services that include at least two touristic services, listed in the Implementing Regulations (i.e. no obligation for either accommodation or transport to be required)"

Of the two, we prefer Approach 2, as this appears to offer a broader scope of circumstances in which services can qualify as "travel facilities" and we believe that the simplification objective of the Scheme is best served by a broad scope.

However, this issue must be considered in combination with the treatment of single items covered below. We believe that single items should be included within the Scheme and therefore we do not agree with either of the proposed definitions of "travel facilities" suggested under this heading. We will elaborate on this below in response to the suggested approaches for single items.

MICE

Again, two approaches are suggested, this time to maintain the status quo (i.e. that MICE should remain within the scope of the Special Scheme) or to introduce a new approach that event organisation should not be considered a travel facility, unless it is ancillary/marginal to the provision of transport or accommodation.

This appears to be a similar proposal to that covered at A3 (exclusion of MICE). We previously concluded that we would not support the exclusion of MICE and therefore our response in this section must be that we do not consider it appropriate to exclude event organisation from the definition of travel facilities.

In addition, we foresee practical difficulties in determining when event organisation might be ancillary to the provision of transport or accommodation. Moreover, the definition of "event organisation" might also be difficult in certain circumstances.

Single items

The two approaches suggested here are to exclude all single items from the Scheme or to allow for the inclusion of accommodation supplied as a single item but no other.

As a matter of principle, we do not believe that single items should be excluded, with the exception of flights supplied on its own. The Special Scheme exists as a means to simplify the VAT obligations of a supplier of travel services. In particular, the normal principles of VAT are set aside in order to overcome the practical difficulties which would often exist for travel agents given the type of services provided and the places in which they are provided. This was the conclusion reached in several CJEU judgments concerning the Special Scheme but see for example that of

Van Ginkel[11] in which it was concluded that accommodation sold as a single item could be within the Scheme. The same conclusion was reached in the much later case of Alpenchalets[12].

The exclusion of single items from the Scheme, or the possibility to include only accommodation as a single item, would both represent a serious restriction on the availability of the Special Scheme and must be seen to contradict the often stated objectives of the Scheme.

The exclusion of some, or all, single items would create significant additional compliance burden for many travel agents. We appreciate that the ability to report transactions via the OSS would reduce the compliance, and the cost of the compliance, but it would still nevertheless represent a considerable increase on the current position. It would be very important in this scenario that the OSS supported input tax deduction.

The exclusion of single items from the Scheme would place a burden on both EU and non-EU travel agents. Whilst we could expect EU travel agents to be compliant, we are concerned that knowledge of the new requirements amongst non-EU agents in this regard would not be great and that in practice EU agents would often be placed at a competitive disadvantage due to their understanding of and compliance with the requirements.

Accordingly, we favour the inclusion of single items. Indeed, we would support a wider inclusion of single items than is currently widely assumed. We would advocate the inclusion of the hire of a means of transport and other single items of a kind frequently provided by travel agents. Such an approach would help to maximise the benefits of the Special Scheme.

A definition of the circumstances in which the Scheme applies might be along the following lines:

“The Special Scheme shall apply to the supply of goods or services by a travel agent where the travel agent deals with customers in his own name and uses the supplies of goods or services provided by other taxable persons in order to make his supply. Travel agent includes a tour operator and any other taxable person acting in his own name and supplying goods and services of a type commonly provided by travel agents.”

An alternative option could be to include single items within the Scheme where the supplier is a taxable person who habitually provides travel services.

A presumption could be included in an Implementing Regulation indicating that a taxable person who:

- normally require an authorisation by the public authorities to act as a travel agent; or
- falls under the combined nomenclature (CN or NACE) codes for travel agents or tour operator; or
- is subject to the EU Travel Directive and regularly acts as a Package Operator

should be able to apply the Special Scheme when single items are offered (with the exception of flights supplied on its own).

[11] C-163/91 Van Ginkel Waddinxveen BV

[12] C-552/17 - Alpenchalets Resorts

Mixed supplies

Again, two approaches are suggested. We prefer the second approach, namely that a combination of bought-in and in-house services should be included in the Scheme and that the value should apportioned based on market value but, if market value cannot be used, then on a cost basis. The apportioned values for the in-house and margin services should be taxed according to the normal and Special Scheme rules respectively.

Options Area D: Margin calculation

Three options are suggested.

D0. Status quo

This would involve the compulsory calculation of VAT separately for each transaction and the payment of VAT on an assumed margin included within payment on account received. We do not support this option. As has been argued comprehensively previously, this approach would ensure the continued complexity associated with this approach.

D1. Mandatory global margin

We have always supported the calculation of VAT due under the Scheme on the basis of the inclusion of all supplies – and associated costs – in a single calculation covering a period. We note that this option envisages such a calculation for a period of a year and that the time supply should be recognised by the date of commencement of the travel facility (so that the calculation for a year includes the selling price of travel facilities commencing within that year and their associated costs). We support both features of the calculation.

We also accept that there will be occasions where a calculation needs to be adjusted, for example where a rebate is received from a supplier after the annual calculation has been completed but which reduces the value of a cost which has been included in the calculation.

D2. Optional global margin

This approach would allow travel agents a choice between the use of the global and the transaction-by-transaction basis. Given the complexity of the transaction-by-transaction basis, we do not expect that many travel agents would opt for the latter approach but we do believe that this option should be available to those who wish to use it, perhaps because they welcome the ability to identify the VAT cost for individual transactions or have adapted accounting systems to accommodate the current requirements.

Therefore, we support this option D2.