ECTAA
THE EUROPEAN TRAVEL AGENTS' AND TOUR OPERATORS' ASSOCIATIONS

PRESS RELEASE

European Court's ruling confirms need for urgent reform of the special VAT rules for travel agents

In its decision rendered on 8 February 2018, the Court held that travel agents' supplies to taxable persons have to be taxed under to the special VAT scheme for travel agents and that VAT must be calculated on a sale by sale basis. This creates serious distortions of competition and is wholly impractical.

The application of the special scheme to all supplies of travel agents, including supplies to taxable persons, will render travel agents uncompetitive, as the special scheme denies taxable customers the right to recover input VAT on both the underlying travel services and the travel agent's margin. Consequently taxable customers will be financially better off buying travel services from providers that are subject to the normal VAT rules or outside EU VAT scope, such as service suppliers (airlines, hotels, etc.), travel agents supplying in-house services or non-EU travel agents. This is the reason why many Member States allow the application of the normal VAT rules for travel agents' supplies to taxable persons.

As for the VAT calculation, the requirement to calculate the VAT due transaction by transaction is extremely burdensome and wholly impracticable for travel agents. Under the special scheme, travel agents are taxed on their profit margin, which is the difference between the total amount, exclusive of VAT, paid by the traveller and the actual cost to the travel agent of goods or services provided for the direct benefit of the traveller. Practical difficulties arise due to the fact that the costs of a single transaction may change several times after the service has been performed requiring the agent to adjust the VAT payable several times. This explains why a lot of Member States allow the calculation of global margin for a period, rather than on a transaction by transaction basis.

When the special scheme was introduced in 1977 it was a welcomed trade facilitation measure, as it avoided the complexity of VAT accounting in multiple Member States where travel services are deemed to be supplied. However, the market for travel services has undergone fundamental changes since 1977 that are not reflected in the VAT rules. The Court ruling demonstrates once again the dire need for a reform of the special scheme.

This is also reflected in a recent study carried out by KPMG on behalf of the European Commission. The study notes that the enormous growth in international travel, changes in technology, widespread deregulation (particularly in the airline industry) and new business models that operate outside the special scheme, coupled with evolving ECoJ case law, require a modernisation of the special scheme. The study concludes that while the special scheme should be retained, it needs to be reviewed to address a number of distortions of competition and material issues, such as the VAT treatment of supplies to taxable persons and the margin calculation.

Said Merike Hallik, President of ECTAA: "It is high time that the EU legislators tackle the problem of outdated VAT rules for travel agents. It is in the interest of the industry and Member States alike to establish a fiscal framework that allows travel agents to compete on a level playing field and avoid complex rules that serve nobody."

Background information

Travel agents, who acquire travel services from third parties and sell them in their own name to the customer, benefit from a special VAT scheme, as provided for in articles 306-310 of the VAT Directive 2006/112/EC.

The special scheme for travel agents has been introduced as a trade facilitation measure. Its objective is to prevent the complications that the application of the normal VAT rules would cause travel agents where they sell services supplied outside the Member State concerned. Under the normal VAT rules, travel agents would have to pay VAT on every supply of services made to him and register in each Member State from which he purchased services. But under the special 'margin' scheme all transactions performed by the travel agent in respect of a journey are treated as a single supply of services for VAT purposes, taxable in his own Member State. He has no right to deduct VAT on supplies made to him, but on the other hand he is only taxed on the profit margin realised on the supply of the travel package.

The special scheme also has the advantage that VAT revenues are allocated to the Member State where the final consumption of each individual service takes place, i.e. VAT on the travel agent's supply goes to the Member State where the travel agent is established and where the profit is generated, while the VAT on the hotel accommodation is allocated to the Member State where the service is rendered.

The special scheme has been working well for the trade and avoiding the need for multiple VAT registrations is much appreciated. However, the market for travel services has undergone fundamental changes since the introduction of the special VAT arrangements in 1977 that are not reflected in the VAT rules. Thus, the scheme is in need of revision.

In 2002 the European Commission presented a legislative proposal to revise the special scheme for travel agents (COM(2002) 64 final). The objective of the proposal was to modernize the special scheme and to ensure a more uniform application of the special scheme across the EU Member States. However, the Member States were unable to find agreement on a compromise text and the proposal was withdrawn in 2014.

In the meantime, the European Commission started infringement proceedings against a number of Member States for the incorrect application of the special scheme. 8 Member States were brought before the European Court of Justice, which handed down its decision in September 2013 (see case C-189/11). However, this judgement causes great prejudice to the travel agents' Community in terms of the following:

- Inclusion of B2B supplies into the scope of the special scheme: All supplies of travel services in accordance with Article 306 of the VAT Directive are caught be the special scheme, including supplies to taxable persons. This means that taxable customers cannot recover input VAT on the travel services, nor on the travel agent's margin. VAT becomes a cost and renders travel agents uncompetitive.
- Prohibiting the use of a global calculation of the margin: The margin must be calculated transaction by transaction rather than globally for all transactions carried out during a determined period. This massively increases complexity of VAT accounting.

In 2016, the Commission referred Germany to the ECoJ for failure to comply with the VAT Directive by (i) excluding travel services used by taxable persons for their business from the special scheme for travel agents and (ii) allowing travel agents to determine on a flat-rate basis the tax assessment base for groups of services and for a taxable period. On 8 February 2018 the Court rendered its decision in the case C-380/16 agreeing with the Commission that supplies to taxable persons are within the scope of the special scheme and VAT must be calculated on a transaction by transaction basis.

End of 2017 the Commission published a study carried out by KPMG on the application of the special scheme for travel agents in Member States and assessment of reform options. It concludes that while the special scheme should be retained, it needs to be reviewed to (i) ensure that TOMS rules are in alignment with the general EU objectives and (ii) address a number of distortions of competition (treatment of B2B supplies and varying definitions of 'travel facilities') and material issues (different VAT treatment between EU / non-EU travel agents and margin VAT calculation) arising from the current application of the special scheme.

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ECTAA regroups 36 national associations of travel agents and tour operators of 30 European and 4 non-European countries. It represents an industry of 70.000 enterprises employing some 500.000 people.

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