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**Saffery Champness**

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# VAT GUIDANCE

## EVENT MANAGEMENT COMPANIES CHANGES TO TOMS AND SUPPLY OF SERVICE RULES

We have just seen the introduction of new VAT rules which will have a significant impact on the events sector.

On 1 January 2010, not only did the VAT rate revert to 17.5%, but there were changes to the Tour Operators' Margin Scheme ("TOMS") and to the place of supply of services rules, which will have a significant impact for many.

### Tour Operators' Margin Scheme (TOMS)

We have just had three changes to TOMS. All three of these affect certain events companies, but the change of most significance is likely to be the loss of the TOMS opt-out. The application of TOMS to B2B supplies is a difficult area, with considerable variation between member states. In the UK, we see a distinction between supplies to a "business consumer" and wholesale supplies. A business consumer is a business which uses a service for its own purposes, whilst a wholesale supply is one made to a business for re-sale by that business. Wholesale supplies do not fall within TOMS, but supplies to a business consumer do. Many event services are sold to a business consumer and this means that TOMS becomes a factor when the event contains travel components. The most common travel components in an event scenario are passenger transport and accommodation.

However, until last month, we had a TOMS opt-out which allowed events companies to elect not to use TOMS in many circumstances. The use of normal VAT accounting usually ensured a better VAT

result as it facilitated the recovery of VAT by the event organiser and by the client. Unfortunately, this was withdrawn on 1 January 2010 and events companies will now find that they need to use TOMS in many more circumstances and this may well mean higher costs for clients and reduced margins for organisers.

The second change is the loss of the TOMS opt-in. As mentioned above, wholesale supplies do not fall within TOMS but the previous opt-in allowed the supplier of such services to apply TOMS if he wished to. This measure has also been lost and this may prove to be inconvenient for many suppliers of wholesale travel.



The third change is the introduction of market valuation. This affects the valuation of various component parts of an event package and the impact of this will need to be considered by many event organisers.

### Place of supply of services

1 January 2010 also saw fundamental changes to the place of supply rules. These are the rules which determine the member state in which a service is subject to VAT. For many businesses, these changes are far reaching but, in fact, for many events services, there will initially be little change in practice. Nevertheless, the rules have changed for intermediaries and this will have implications for many transactions, such as hotel commissions and certain types of management fee charged to clients. There is also a new requirement to complete an EC sales list to report the existence of certain transactions to customers in other member states, and many events companies are now required to submit these new quarterly statistical returns.

There are further changes to the place of

supply rules on 1 January 2011, and for many events services, these changes will be of more consequence. The changes on that date will be good news for many as the rules will be simplified. In many circumstances, VAT will cease to be due in the member state in which an event is held but will become due where the client is located. An event organised for a UK client will therefore attract UK VAT, no matter where the event takes place, and consequently no overseas obligations may exist. There will also be circumstances, however, in which events services continue to be subject to VAT in the member state in which the event is held.

It should also be noted that the scheme by which businesses can recover VAT incurred in another member state has also changed. This affects both events companies and their clients. All claims now fall under the new regime, including those made for calendar year 2009.

### TOMS: Further changes ahead?

The changes to TOMS described above should be seen in the context of the long-

term desire of the European Commission to change the TOMS rules as they operate throughout the EU. In 2003, we came very close to an agreement on a new scheme but unanimity amongst member states was not quite reached. The scheme then being discussed would not have been good news for events companies as TOMS would have been applied to all business transactions with only an extremely limited opt-out. Although agreement was not reached seven years ago, the issue has never gone away and the European Commission is currently taking legal action against nine member states over what the Commission considers to be non-implementation of aspects of the scheme. In the UK, we chose to change various aspects of our scheme rather than face potential legal action. Therefore, the three changes described above are in response to Commission action a few years ago.

Recently, however, the Spanish Presidency of the EU has confirmed that it intends to reopen negotiations on a new TOMS during its time in office in the first half of 2010. This process has the potential to change the way VAT is applied to events quite considerably and it is important that events companies engage in the process in an attempt to ensure that the new rules are as favourable to the sector as possible. One possible approach would be to automatically disapply TOMS whenever the customer is a business. This, together with the changes to the place of supply rules in 2010 and 2011, would promise a much better VAT regime for the organisation of events. Now is the time for events companies to make their views known.

If anyone would like more information on any of the topics covered in this newsletter, please do not hesitate to contact us as detailed below.



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