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The Tour Operators' Margin Scheme: a brief guide

The Tour Operators' Margin Scheme (TOMS) is a scheme applied throughout the EU. Essentially a simplification, it relieves many suppliers of travel services of the VAT obligations they would otherwise have.

In many circumstances, the use of TOMS is compulsory. It does not apply just to tour operators, but rather must be used by any business supplying travel in the designated circumstances. The scheme often also applies to travel agents, those selling "dynamic packages" and even events agencies. For the purposes of this guidance, the term "tour operator" should, therefore, be taken to mean any business selling travel.

TOMS imposes a VAT charge on the gross margin made by the tour operator. This VAT is paid by the tour operator in the member state in which he conducts his business. No recovery of VAT on the costs of the travel supplied to the tour operator is possible. In this way, total VAT revenue generated by the tour operator's transactions is shared between the member state in which the operator is based and those in which the services it supplies take place.

Although the scheme is based on EU law, there are numerous differences in application between member states which lead to considerable uncertainty and instances of non-taxation or double taxation. The European Commission has made proposals for an overhaul of the scheme but these have not yet been accepted. The Commission is also taking legal action against a number of member states which, in the view of the Commission, do not apply TOMS correctly. It is likely, therefore, that within a couple of years substantial changes will have been made to the scheme.

When does TOMS apply?

TOMS is compulsory when the following five conditions are all satisfied:

1. There is a supply of travel services.

The term "travel services" is not defined by

law. In the view of HM Revenue & Customs (HMRC), the supply of certain items will always fall within TOMS if the other conditions are satisfied. We might call these the "primary travel services" and they are:

- accommodation
- passenger transport
- the hire of means of transport
- the use of airport lounges
- tour guides
- trips and excursions

In addition, other services are TOMS supplies if supplied as part of a package with primary travel services. These "secondary travel services" include sports tickets and facilities, theatre tickets and catering. In practice, there tend to be few arguments about the meaning of travel services.

2. The supplier is acting in its own name.

This condition is much more contentious and is normally taken to mean that the supplier must act as principal or as an undisclosed agent to fall within TOMS. A supply made on a disclosed agency basis cannot be within the scheme. The distinction between a disclosed and undisclosed agent can be very difficult and many travel businesses display certain characteristics of an undisclosed agent and/or principal but, at the same time, resemble a disclosed agent in other respects. There is often great uncertainty and considerable scope exists for disputes with HMRC, as



demonstrated by the Med Hotels (2010) and International Life Leisure (2006) decisions, both of which considered the meaning of agent in a travel context.

3. The travel services are acquired from a third party.

Accordingly, TOMS does not apply to services provided from own resources. For example, transport on a coach owned by the tour operator cannot be a TOMS supply.

4. The services are supplied without "material alteration" or "further processing".

Accordingly, the services must be supplied in the same form as when supplied to the tour operator, ie there must be no material alteration or processing applied by the tour operator.

5. The services are supplied for the benefit of a traveller.

The final condition limits TOMS to supplies made for the benefit of a traveller. Supplies can be seen to fall into one of the following three categories:

- Supplies to private individuals for their use. TOMS applies in this instance.
- Supplies to a business customer for the use of that customer, for example by an employee of the company. This also satisfies the test and TOMS can apply. Examples include incentive travel, conferences, meetings etc.
- Supplies to a business customer for onward supply by that business. These are regularly referred to as wholesale supplies and do not fall within TOMS as they are too far removed from the user of the service to be seen to satisfy the benefit of a traveller test.

There used to be two trade facilitation measures which introduced a considerable degree of flexibility. The first such measure allowed a supplier of travel services to a business using the service itself to opt the supply out of TOMS so that the business customer could recover the VAT. The second measure allowed a supplier of wholesale travel to opt to use TOMS. Unfortunately, both measures were withdrawn at the end of 2009.

Calculation of VAT due

Where TOMS does apply, VAT is paid on the gross margin made in the member state in which the tour operator is located.

The margin on travel enjoyed in the EU is standard rated and that made on travel outside the EU is zero rated. No regard is taken of the nature of the service supplied by the tour operator: no zero rating is possible, therefore, for the supply of passenger transport (which is normally zero rated when supplied by airlines, rail companies, coach operators etc). However, there are three schemes agreed by ABTA and HMRC which allow a tour operator to avoid paying VAT on passenger transport. The schemes are the transport company scheme, the agency scheme and the charter scheme. The schemes are routinely used by the vast majority of UK tour operators.

The form of calculation adopted to calculate VAT due on the margin is prescribed by law. The tour operator does just one TOMS calculation each year at its financial year end, based on the figures for the year. VAT is paid provisionally on an estimated basis during each financial year based on the results of the preceding year's calculation.



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