

# Evaluation of special VAT scheme for travel agents and tour operators

Fields marked with \* are mandatory.

## 1

### Introduction

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The objective of the consultation is to obtain the **views of stakeholders on the functioning of the special VAT scheme for travel agents and tour operators**. The views will feed into the evaluation of this special VAT scheme.

When the Sixth VAT Directive (Council Directive 77/388/EEC) was adopted in 1977, a special scheme was introduced for travel agents and tour operators. This special VAT scheme, now set out in Articles 306 to 310 of the VAT Directive (Council Directive 2006/112/EC), was brought in due to the special nature of the industry. The services offered by travel agents and tour operators usually consist of a package of services, in particular transport and accommodation obtained from third parties. The package is then sold by the travel agent or tour operator, in their own name, to their customers. Those are circumstances where it is particularly difficult to apply the normal VAT rules on the place of taxation, the taxable amount and deduction of input tax due to the complexity and location of the services provided.

Under Article 307 of the VAT Directive, all transactions made by a travel agent or tour operator in respect of a journey are regarded as a single service. The taxable amount is the profit margin realised by the travel agent or tour operator on the supply of a travel package and hence the travel agent or tour operator is not entitled to deduct input VAT. The place of taxation for the travel agent's or tour operator's supply is where they have established their business or has a fixed establishment from which they provide the service or, failing this, the place where they have their permanent address or where they usually reside.

The special VAT scheme for travel agents and tour operators has two aims, namely:

(a) simplifying the application of EU VAT rules

- to avoid that a travel agent or tour operator has to register for VAT purposes and claim input VAT in each of the Member States where the services acquired by them are performed, and
- to avoid the complexity of taxing packages under the normal VAT rules;

(b) ensuring that VAT revenue accrues to the Member State in which final consumption of each individual component of the single supply takes place, so that VAT on services enjoyed in the course of the journey, such as hotels, restaurants or transport, goes to the Member State in which the traveller receives the service, whereas VAT on the travel agent's or tour operator's margin returns to the Member State where the travel agent or tour operator is established.

Important remarks concerning the scope of the special VAT scheme for travel agents and tour operators:

- The special VAT scheme does not apply to travel agents or tour operators where they act solely as intermediaries, who act in the name and on behalf of their customers.
- The special VAT scheme does not apply when travel agents or tour operators sell non-EU travel to their customers.

It is also important to note that travel agents and tour operators cannot choose between the special scheme and normal VAT rules. In those cases where the special scheme must be applied, it applies irrespectively of the type of customer of the travel agent or tour operator.

## 2 About you

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### \* 2.1 Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* 2.2 I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* 2.3 First name

Anthony Paul

\* 2.4 Surname

Gisby

\* 2.5 Email (this won't be published)

paul@accountancyeurope.eu

\* 2.7 Organisation name

*255 character(s) maximum*

Accountancy Europe

\* 2.8 Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

2.9 Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

## \* 2.10 Country of origin

Please add your country of origin, or that of your organisation.

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- Bouvet Island
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- Guinea
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- Togo
  
- Tokelau
- Tonga
  
- Trinidad and Tobago
- Tunisia
  
- Turkey
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- Zambia
- Zimbabwe

## \* 2.11 Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

**Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

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## 2.12 What is the main motivation for participating in this consultation?

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To provide the accountancy profession's expert views on the operation of the margin scheme.

## 3 Evaluating the special VAT scheme for travel agents and tour operators

The questions in this consultation are linked to following evaluation criteria:

- **effectiveness**, i.e. the extent to which the special VAT scheme has been successful in achieving its objectives;
- **efficiency**, i.e. the costs and benefits associated with the special VAT scheme and whether they are proportionate;
- **relevance**, i.e. the extent to which the special VAT scheme (still) addresses (current) needs and problems;
- **coherence**, i.e. to what extent the elements of the special VAVT scheme work well together i) between themselves (i.e. internally) and ii) with the normal VAT rules.

### Effectiveness

3.1 Special rules often seek to address aspects not catered for under the normal rules.

Which **aspects of the special VAT scheme** for travel agents and tour operators do you consider as important?

Only one VAT registration needed

- Simplified VAT declaration
- Simplified margin calculation (i.e. no need to recover input VAT)
- Treatment of a package as single supply
- No need to identify legal status of customer (taxable or non-taxable person)
- Other
- Do not know

3.3 To what extent do you agree that the **special VAT scheme simplifies the application of VAT rules** for travel agents and tour operators:

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- do not know

3.4 Why do you disagree or disagree strongly?

*2000 character(s) maximum*

The answer is customer specific – we would agree that for B2C supplies the scheme does simplify the application of VAT rules and with proper definitions to determine what constitutes a ‘travel package’, the scheme could be a more useful simplification for B2C supplies.

For B2B supplies, however, we would strongly disagree that that the scheme simplifies the application of VAT rules, primarily due to the inability to recover input VAT.

There are also complexities and uncertainties in respect of:

- What supplies are within the scope
- What businesses are within the scope
- Whether businesses are within the first or second paragraphs of article 306.1
- The treatment of bought-in supplies when compared to supplies from own generated costs
- The practical issues related to enforcing the application of the rules on operators based in third countries

3.5 To what extent do you agree that the current rules of the special VAT scheme for travel agents and tour operators is **fit for purpose in the digital age**?

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- do not know

### 3.6 Could you give an explanation?

*2000 character(s) maximum*

The system was introduced in 1977 and since then the travel industry industry has changed enormously – for example in the way customers book travel services, build their own packages etc. The current regime requires a complete rethink.

However, this should only take place after addressing the more fundamental issues of where tourism and travel services should be taxed and how this would affect individual Member States' revenues.

#### Efficiency

Evaluating efficiency requires the perspective of the internal market and that of businesses.

3.7 The special VAT scheme for travel agents and tour operators provides for simplified rules, but **does not allow deduction of input VAT**.

Concerning B2B supplies, what do you consider more important?

- Simplification
- Deduction of input VAT
- Do not know

3.8 The special VAT scheme for travel agents and tour operators provides for simplified rules, but as a result the **margin of a travel agent or tour operator must be taxed at the standard rate** of VAT, whereas accommodation and transport services are often taxed at a reduced rate of VAT under the normal VAT rules.

Concerning B2C supplies, what is most important?

- Access to simplified rules
- Access to a reduced VAT rate
- Do not know

A special VAT scheme for travel agents and tour operators with simplified rules that apply only in specific circumstances can create complexity,

- if the scope of such a special scheme is not clear and

- if it is unclear in how far those normal VAT rules, from which the special scheme does not deviate, can be applied.

3.9 The provisions in the VAT Directive require travel agents and tour operators taxed under the special scheme to **calculate their margin for each transaction separately**. To what extent is such a requirement adding complexity to the simplified rules?

- to a large extent

- to a significant extent
- to a small extent
- not at all
- do not know

3.10 To what extent do you agree with the following statement:

A **separate margin calculation for each transaction** is detrimental to the industry, because negative margins cannot be offset against positive margins.

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- do not know

3.11 A special VAT scheme for travel agents and tour operators with simplified rules that apply only in specific circumstances can create complexity,

- if the scope of such a special scheme is not clear and
- if it is unclear in how far those normal VAT rules, from which the special scheme does not deviate, can be applied.

Do the rules of the special VAT scheme for travel agents and tour operators, as interpreted by the CJEU, **lack clarity**?

- Yes
- No
- Do not know

3.12 Could you give examples?

The issue is not always a lack of clarity from the CJEU interpretations but a lack of clarity and harmonisation about how the CJEU decisions are implemented by Member States.

In the case of C-552/17 Alpenchalets Resorts, the Court reaffirmed the primacy of the TOMS regime and the requirement to split a single price charged (e.g. single package price) between the TOMS regime supplies and any 'in-house' services. In practice, Member States diverge considerably in how this split is done, even after the Court has had to consider the issue in cases such as MyTravel C-291/03.

3.13 Do you know of **distortions of competition** due to differences in VAT treatment between competing travel agents and/or tour operators?

- Yes
- No
- Do not know

### 3.14 Which are the **reasons for a distorted competition?**

- The rules of the special VAT scheme for travel agents and tour operators as interpreted by the Court of Justice of the European Union (CJEU)
- Rules being implemented and applied differently by Member States
- Travel agents and tour operators located in third countries are not covered by the special scheme
- Other reasons
- Do not know

### 3.15 Please specify further the **reasons and give specific examples:**

*2000 character(s) maximum*

As a point of clarification, operators in third countries ARE covered by the scheme (i.e. Viking Catering case in France), which prevents input VAT recovery and may, depending on local rules, result in the margin made being subject to local VAT/GST. The issue is often the lack of enforcement of the rules by Member States. We are aware that the application of these complex rules is difficult for tax authorities.

Certain third countries do not have a VAT/GST regime, and some do not have a local equivalent of the TOMS, although some do tax (VAT or equivalent) the margins made locally. This can create a distortion of competition between EU and non-EU operators

Other distortions of competition arise from misinterpretations of CJEU decisions by some Member States, giving their local operators a competitive advantage.

The lack of clarity in the rules, particularly in the definition of a “travel package” (i.e. the supplies that fall within/outside the TOMS regime) can also give rise to competitive advantages between different Member States.

### 3.16 Please describe the **impact(s) of such distorted competition:**

*2000 character(s) maximum*

The consequences of such distortions of competition are to make some Member States more attractive than others for operators to locate in. Also, smaller operators are unfairly disadvantaged as they will have less flexibility in ensuring that certain supplies that they make do not fall under the TOMS (depending upon the Member State in which they are based). This is because smaller businesses will rarely have the resources to choose the Member State in which to base their operations and enact the legal structures that larger operators can put in place to separate different types of supply.

### **Relevance**

### 3.17 Since first put in place in 1977, how have the **needs of businesses evolved** with respect to the VAT rules?

*2000 character(s) maximum*

The way in which needs have evolved depends whether you are referring to operators, in particular in the B2B sector, that fall under the TOMS or customers of travel related services. In both cases we believe that the TOMS as it is currently applied (with the lack of definitions and varying interpretations) no longer responds to those needs.

Operators that fall within the TOMS have seen the market change dramatically since the scheme's introduction. The primacy of 'bricks and mortar' travel agents and tour operators in the travel market has dramatically decreased with the internet enabling customers to make their own travel and accommodation arrangements directly with the end supplier.

We now have many C2C suppliers of travel and, especially, accommodation that are not subject to the same VAT rules as B2C supplies and may not be subject to VAT at all. This has led to a distortion in competition that adversely affects 'traditional' operators. The issue of whether C2C services should be brought into the VAT system should be addressed by the broader European Commission review under the 'VAT in the Digital Age' project. In our view, to make substantial changes to the existing TOMS regime before that project has been concluded would be premature.

Another significant change is the enormous growth of the MICE (Meetings, Incentives, Conferences and Events) sector. The huge market for large international cross-border events did not exist at the current scale in 1977 and the TOMS struggles to cope with the demands of this sector. The customers for these travel services (frequently including travel and accommodation) are usually businesses that want to recover input VAT on the costs incurred.

Also, such activities often include a much higher level of bought-in-services than was usual when the TOMS was implemented and which the scheme doesn't adequately cope with. This leads to a further distortion of competition and potentially stifles further growth in this sector.

3.18 Do you agree that the special VAT scheme for travel agents and tour operators **still responds to those needs**?

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- do not know

3.20 To what extent do you agree that the travel industry **continues to need** special VAT rules?

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- do not know

Coherence

3.21 Within the special VAT scheme for travel agents and tour operators, the margins are taxed in the Member State where the travel agent or tour operator is established.

Within the wider VAT system and considering the implementation of the One-Stop-Shop in 2021, services are to be taxed where the final consumption takes place.

In this specific context, to what extent do you consider the **special VAT scheme** for travel agents and tour operators is **coherent with the wider VAT system and its rules?**

- coherent to a large extent
- coherent
- neutral
- not coherent
- not coherent to a large extent
- do not know

3.22 Would there be a **need for amending the special VAT scheme** for travel agents and tour operators?

- Yes
- No
- Do not know

3.23 Please specify why, or the scope of the amendment needed.

*2000 character(s) maximum*

We believe that amendments are urgently required in respect of B2B supplies. In respect of B2C supplies, however, the need for reform is not so urgent and operators in this sector would currently struggle to deal with significant amendments in addition to all the issues they are facing from the Coronavirus crisis. Consequently, any significant changes proposed to B2C supplies should be carefully considered and their timing should be delayed until the sector has recovered.

If, however, the Commission believes that changes are urgently, then in our view that the following four issues should be addressed to improve the current scheme:

- A clear and harmonised definition of 'travel services' falling within the scope of the regime and a clearer distinction between supplies falling within the first and second paras of article 306.1
- Exclude, by option, the application of the TOMS to B2B supplies
- A review as to how compliance can be improved – by such measures as the One Stop Shop, for example, if the existing special scheme were to be modified for B2C
- The margin for B2C supplies (and B2B supplies not subject to the option) should be calculated on a global and period basis rather than on each and every transaction. However, operators should retain an option to calculate the margin on a transaction by transaction basis.

## 4 Further comments

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### 4.1 You can add further comments or here or upload a file.

*2000 character(s) maximum*

More generally, we would recommend that the Commission investigate the advantages to the European economy by reducing the rate of VAT (and thereby the cost to the consumer) on certain travel services pertaining to travelers from 3rd countries (or alternatively, these supplies could be treated as outside the scope of EU VAT by changing the place of supply to one of taxation at the customer's place of residence). The Commission should ascertain whether the other economic activity generated from the increase in tourist numbers that a cost reduction may bring would be greater than the loss of that the VAT revenue. If demand for EU tourism from 3rd countries could be boosted by a VAT reduction, this could be especially important for the long-term health of the travel and tourism sector in the EU, struggling to survive the coronavirus crisis.

### 4.2 Please upload your file

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

**a4d2ce14-0075-424d-9269-91bf2525e16f/20200902\_VAT\_TOMS\_cover\_letter.pdf**

### Useful links

[Taxation and Customs Union Taxation and Customs Union Study on the review of the VAT Special Scheme for travel agents \(https://ec.europa.eu/taxation\\_customs/sites/taxation/files/travel\\_agents\\_special\\_vat\\_scheme\\_en.pdf\)](https://ec.europa.eu/taxation_customs/sites/taxation/files/travel_agents_special_vat_scheme_en.pdf)

[Roadmap for the evaluation of the special scheme for travel agents \(https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11883-Evaluation-of-the-special-VAT-scheme-for-travel-agents\)](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11883-Evaluation-of-the-special-VAT-scheme-for-travel-agents)

[VAT Directive \(https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11883-Evaluation-of-the-special-VAT-scheme-for-travel-agents\)](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11883-Evaluation-of-the-special-VAT-scheme-for-travel-agents)

[Special VAT schemes \(https://ec.europa.eu/taxation\\_customs/business/vat/eu-vat-rules-topic/special-schemes\\_e\)](https://ec.europa.eu/taxation_customs/business/vat/eu-vat-rules-topic/special-schemes_e)

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