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Submitted via upload

Subject: Accountancy Europe responds to EC public consultation: Evaluation of special VAT scheme for travel agents and tour operators

Dear Mr Pillet,

We are pleased to be able to provide additional comments to support our response to the public consultation.

We believe that issues specific to the business model of tour operators and travel agents warrant a special VAT scheme covering the sector, albeit on an optional basis for the B2B sector. We also believe that the current tour operators' margin scheme (TOMS), over 40 years old, is ripe for change as it renders the VAT system non-neutral, contrary to the established Ottawa Principles.

However, we are not convinced that now is the right time to be pushing forward with any significant amendments to TOMS, for two reasons:

1. The travel/tourism sector is for certain Member States the largest contributor to GDP and is amongst the sectors hardest hit by the coronavirus crisis. Tour operators and travel agents ('operators') of all sizes are focusing all of their attention on survival and trying to restart their businesses, with considerable governmental support. Many of these businesses were struggling before the crisis and are unlikely to make a swift recovery. Consequently, any significant changes made as to how they account for VAT, requiring changes to systems and potential financial impacts, will be most unwelcome to operators in this sector and may even push some businesses into ceasing operations.
2. The European Commission has also commenced a project '*VAT in the Digital Age*', which could introduce fundamental changes to the European VAT system to make it fit for purpose in the 21st Century. There are also fundamental changes proposed under the Definitive Regime – which include the continued move in the place of supply to the country of destination. How this would fit in with the current TOMS (where part of the supply is taxed where provided, i.e. accommodation, and part where the operator is established, which could be the country of location of the customer) would need to be further examined.

We appreciate that fundamental changes to the TOMS will take time to implement. However, in our opinion, it would not be beneficial for the highly stressed travel sector to have to consider fundamental changes to TOMS before further progress on these other files has been made, as this could result in less coherence in the European VAT system. However, this does not preclude introducing quick fixes to those aspects of the scheme creating the most problems for operators.

We address specific aspects of the public consultation below:

1. **Question 3.1** We see the main advantage of TOMS for B2C supplies as being a single point of VAT declaration. However, even this advantage is being eroded by an increasing number of Member States seeking to determine the existence of a fixed establishment on tour operators operating across borders. This creates a high level of legal uncertainty in the current scheme.
2. The VAT declaration process is not substantially simplified by the scheme and margin calculations can often be complicated - especially if undertaken on a transaction by transaction basis - due to the timing differences between expenses being incurred and receipts being taxed.
3. Additionally, the treatment of the package as a single supply should simplify administration but often brings its own complications. Finally, many see the inability to recover input VAT as a disadvantage and not an advantage, especially regarding B2B supplies.
4. **Question 3.3** We do not agree that the way TOMS is applied by Member States greatly simplifies the application of VAT rules in this sector. There are many complexities and uncertainties within the scheme, such as:
 - 1) What supplies are within the scope, e.g. single supplies of car hire or accommodation (with limited other services being provided)
 - 2) What businesses are within the scope – such as event organisers and not for profit organisations
 - 3) Whether businesses are within the first or second paragraphs of article 306.1 – the dividing line is difficult to determine in many cases and is often influenced by national legal regimes
 - 4) The treatment of bought-in supplies when compared to supplies from own generated costs ('in-house supplies')
 - 5) The practical issues related to enforcing the application of the rules on operators based in third countries (assuming changes were to be made in the current rules/legislation) with which the EU does not have a mutual assistance arrangement for the collection of tax debts.
5. If the issues above were to be fixed, and with proper definitions to determine what constitutes a 'travel package', the scheme could be a useful simplification for B2C supplies.
6. Due to the inability to recover input VAT, we do not consider the scheme to be beneficial overall for those operators that make predominantly B2B supplies.
7. **Question 3.5** We do not believe that the TOMS is fit for purpose for the digital age. 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.
8. **Question 3.7** For B2B supplies, we believe that the recovery of input VAT is more important than the simplifications under the scheme. It is also important to note that the question of

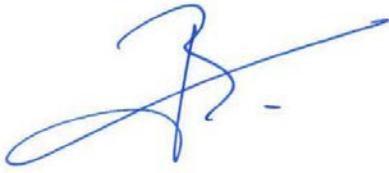
input VAT recovery impacts not only the tour operator on B2B supplies but also the end customer, should they be a taxable person.

9. There is also considerable divergence of practice between Member States in permitting recovery of input VAT. Some countries allow normal input VAT recovery rules on B2B supplies - some of which are subject to VAT where physically carried out and some are treated as falling within article 44 of the VAT Directive. This distorts competition and the issue should be dealt with to reinstate neutrality in the VAT system.
10. **Question 3.8** In respect of B2C supplies, both the simplified rules and access to a reduced VAT rate are important. However, we consider that access to reduced rates is more important - especially if there is a move to only tax such supplies where they are physically performed, as a proxy for the place of consumption. The technology exists today that makes it far easier for operators to deal with reduced rates of VAT and the lower costs that should arise should be passed on to consumers.
11. The current system is also influenced by the business' legal status, such that certain B2C activities fall outside the scope of the TOMS by applying the 2nd para of article 306.1. This impacts on the neutrality of the system and leads to a distortion of competition.
12. **Questions 3.9 & 3.10** The requirement to calculate margins for each supply introduces enormous burdens and complexity into the system and leads to inequity because negative margins on certain transactions are not relieved. Consequently, many businesses use a composite margin calculation to obtain automatic relief on negative margins. They would greatly resist the enforcement of the individual margin rules – unless it were to include a right to carry forward negative margin 'losses'.
13. We understand that Member States agree on the need for reform on this question. This should be expedited to remove the uncertainty inherent from using a practice that is a breach of the law - as determined in the case of Commission v Kingdom of Spain C-193/11 – 26 Sept 2013.
14. **Question 3.11** 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.
15. **Question 3.13** There are many distortions of competition due to differences in treatment between competing operators. We have already mentioned how businesses structure their operations such that certain B2C supplies fall outside the scope of the TOMS (under para 2 article 306.1) - this is easier to do for larger and more complex businesses, giving them an advantage over smaller businesses.
16. A further example of business distortion arises in the field of car rental when there is an intermediary. According to some Member States, car rental services are considered as a single supply. This inhibits input VAT recovery leading to a distortion of competition between different car hire firms.
17. **Questions 3.14 & 3.15** Although the rules bringing operators within the aegis of the TOMS should help in principle to prevent distortions of competition, we are aware that the application of these complex rules is difficult for tax authorities.

18. 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
19. Other distortions of competition arise from misinterpretations of CJEU decisions by some Member States, giving their local operators a competitive advantage.
20. 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 to give rise to competitive advantages between different Member States.
21. **Question 3.16** 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.
22. **Question 3.17 & 3.18** 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.
23. 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.
24. 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.
25. 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.
26. Also, such activities often include a much higher level of bought-in-services than was usual when the TOMS was implemented, which the scheme doesn’t adequately cope with. This leads to a further distortion of competition and potentially stifles further growth in this sector.
27. **Question 3.20** We believe that there is still a role for a specialised VAT scheme for the travel industry, particularly in respect of B2C supplies. However, the usefulness of such a scheme is dependent on a greater level of harmonisation within the EU. The current lack of harmonisation is a key reason why the current scheme is difficult to administer for cross-border operators that make B2B supplies, and results in distortion of competition.

28. There is an argument that even the scheme covering B2C supplies should be optional, benefiting those operators that value the single point of registration and the simplifications over the need to recover input VAT. However, we are aware that this could itself cause distortions of competition and revenue shifts between Member States, so such a proposal would need to be carefully examined.
29. **Question 3.21** We do believe that the rules are coherent and there are other factors, such as those already described, that are stronger drivers for change to the scheme - especially in the B2B sector.
30. The question implies that the place of supply rules will be changed due to the introduction of a more extensive OSS – which is not the case. In any event, under the current TOMS regime, the vast majority of the value of any supplies made falling within the scheme are taxed where they are physical consumed, e.g. hotels, transport etc.
31. **Question 3.22 & 3.23** We believe that the scheme needs significant change, but we appreciate that getting unanimity on such fundamental changes will be challenging. Further we would suggest that any change to the current scheme must, as far as possible, be ‘future proofed’, to take account of evolving business models and new entrants coming into the markets.
32. The travel industry is an important employer in Europe and represents a significant proportion of GDP for certain Member States. It is currently in crisis. Consequently, we believe that it is not the time to make any significant changes to the current TOMS regime. 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:
- 1) 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
 - 2) Exclude, by option, the application of the TOMS to B2B supplies
 - 3) 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
 - 4) 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.
33. 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 travellers 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).
34. 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.

Sincerely,



Olivier Boutellis-Taft

Chief Executive

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