

VALUE ADDED TRAVEL

What happens in the event of a no deal Brexit?

News from HMRC

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Welcome to this special edition of Value Added Travel, focusing solely on the VAT rules in a no deal Brexit scenario.

I hope you find the information here to be useful. If you would like to discuss any of the points covered, or have any feedback on what is proposed, please do feel free to contact me. My contact detail is set out overleaf.

Introduction

In the December edition, I reported that there was still no substantial guidance on what would happen to the travel VAT rules in a no deal Brexit. However, happily HMRC have just announced their plans in this respect and would welcome feedback on what's proposed.

HMRC's overall intention is to maintain the current rules and guidance to the greatest extent possible. Accordingly, a new UK version of TOMS is proposed and the rules used to determine if services fall within or outside TOMS will stay as they are. **Crucially, however, UK TOMS VAT will, in a no deal scenario, only be payable on UK travel.**

What the no deal position would mean for each business depends on the nature of the business conducted. It is appropriate to consider the implications for three broad sectors: tour operators (i.e. anyone selling travel on a B2C basis and in their own name), wholesale suppliers of travel and the business travel and events sectors. For some, what is proposed will be good news whilst others will be disappointed.

It is vital to appreciate, however, that HMRC's announcement applies only if there is no deal. In any other scenario, the way forward may well be different so



we simply do not know yet if these plans will ever be put into place. It is also important that the position described applies upon Brexit but there is no guarantee that this immediate post-Brexit treatment will continue beyond the short term.

A Statutory Instrument to establish the proposed new UK version of TOMS has been published. I also understand that a revised version of the TOMS public notice will soon be published.

Tour operators

HMRC have decided that TOMS should continue in its current form in all respects – bar one. This one change is very significant: whereas the margin made on all EU travel is currently standard rated, in future (in a no deal outcome) only the margin on UK travel will be subject to VAT. The margin on all travel enjoyed anywhere outside the UK will be zero rated.

For most, this would mean a significant fall in UK VAT payable. Indeed, tour operators selling holidays enjoyed wholly outside the UK would (technically) still be within TOMS but would not pay any UK VAT. The treatment of holidays in the UK would remain as now.

The treatment of the margin is the only proposed change. All other aspects of TOMS would remain as now. This means, amongst other things, that wholesale supplies would still fall outside of TOMS, thereby facilitating the continuation of the transport company mitigation scheme (although clearly the benefit of the scheme would be limited to travel within the UK).

Transitional measures would be needed to manage the change in the taxation of the margin.

However, whilst the above all sounds positive, it must be remembered that this would be a new UK version of TOMS which would provide no protection against any need to pay VAT in other member states. It may be that some or even all of the EU27 would expect the payment of VAT.

I understand it is proposed that non-UK tour operators selling UK travel on a B2C basis would not be expected to pay UK VAT (and would not be entitled to any recovery of UK VAT) but I will be looking for HMRC's confirmation of this.

Wholesalers

As above, the new UK TOMS would not apply to wholesale supplies. HMRC have confirmed that the current application of VAT to standalone products and packages would continue.

This would apply regardless of the ultimate use to be made of the services being wholesaled. In other words, the current treatment applies to wholesale supplies of leisure travel, business travel and services for the events sector and this would continue.

At the moment, following the CJEU decisions of 2013, there is an option to use TOMS for wholesale supplies. I understand that this option would also continue.

Again, this approach will be welcomed by many in the wholesale sector. However, those wholesalers supplying travel enjoyed in the EU27 may find, just as described for tour operators above, that there is a requirement to pay VAT in the other member state(s) involved.

Whilst foreign tour operators selling on a B2C basis would not, I think, be required to pay UK VAT, I understand that overseas wholesale suppliers would continue to be subject to the same payment obligations and recovery opportunities as UK suppliers.

Business travel and events

The treatment of B2B supplies for the customer's own use would continue to fall within TOMS, albeit, as above, that UK VAT would only be payable on the UK margin.

Many in the business travel sector currently ensure they fall outside of TOMS by the use of agency models. This would no doubt remain a popular means by which the harmful effects of TOMS are avoided. Any business agent selling otherwise than in a disclosed agency capacity would continue to be subject to TOMS VAT on the travel used within the UK but the margin on such services enjoyed in the EU27 would be zero rated. Once again, however, such a business may be faced with a need to pay VAT in other member states.

I understand that a business agent established outside the UK and selling in his own name would be not liable to pay UK VAT.

In the circumstances in which HMRC currently thinks that events must be included in TOMS, TOMS would continue. The events sector will I expect be disappointed about this. It is true that the margin made on events in the EU27 would become zero rated but TOMS would continue to be a significant issue when organising UK events. Disclosed agency will no doubt remain popular. The need to split many events between the travel and non-travel components, and to apply differing VAT rules, looks set to continue.

Last year, the Office of Tax Simplification ("OTS") concluded that Brexit could provide the basis for the exclusion of events from TOMS. The HMRC proposed no deal arrangements would not achieve this so the events sector may wish to lobby for implementation of the OTS recommendation as soon as possible.

As above, I understand it is planned that events organisers outside the UK would not be liable to pay the UK TOMS VAT.

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