

VALUE ADDED TRAVEL

Quarterly VAT news for the travel and events sectors

September 2019



Welcome to this September edition of Value Added Travel, my newsletter for those operating in the travel and events sectors. This edition is shorter than normal, reflecting the relative quiet of the summer months, at least as far as VAT developments are concerned!

If you would like to discuss any of the points covered, or indeed any other VAT issue, please do feel free to contact me. My contact detail is set out overleaf.

Previous editions are available [here](#).

Cancellation income

As discussed in previous editions, HMRC announced a new policy under which VAT is due on retained deposits and other forfeited payments in the event of cancellation.

In February, HMRC confirmed that they expected tour operators and others to include such forfeited amounts in their TOMS calculation from 1 March this year.

As reported in the March newsletter, ABTA made representations to HMRC that the new policy was incorrect. It took a while but HMRC have recently announced that their application of this new policy to most accounting within TOMS was incorrect. In a Revenue and Customs Brief dated 6 September (see [here](#)), HMRC announced that the new policy does not apply to those in TOMS, subject to which TOMS tax point rule is used.

ABTA's argued, first, that cancellation income is not consideration for any service provided, as it is compensatory in nature, and therefore should not be subject to VAT, and second that the specific tax points contained in the TOMS rules mean that VAT never becomes due.

There are two tax point rules within TOMS: taxpayers choose either to declare VAT by reference to the departure date or to the receipt of payments (broadly speaking). Where the first approach is taken, no VAT is paid until departure. This is the approach adopted by the majority. Clearly, where a holiday is cancelled, there is no departure and hence the point at which VAT becomes due never arrives.

HMRC have now accepted that cancellation income for a TOMS supply is not subject to VAT provided the departure tax point is used. Therefore, HMRC's revised position means that cancellation fees for most TOMS supplies are not subject to VAT.

It is important to note, however, that HMRC's revised position does not help the minority using the receipts basis – for these, HMRC still expect payments received to be included in TOMS and that the payment of VAT will not be adjusted in the event of cancellation. Such tour operators etc may like to consider if it is beneficial to switch to the departures basis. Neither does it help those who are not within TOMS.

Finally, HMRC have confirmed that those who have overpaid VAT by following their policy are entitled to make a claim for repayment of the overpaid amount.

Brexit

Of course, we still do not know what is going to happen. However, it is worth recalling that we do know what the UK position will be for TOMS in the event of a no deal exit. In such a situation, a new UK version of TOMS would be introduced mirroring the current UK implementation of the EU scheme but with one large difference, namely that the margin on travel in the EU27 would be zero rated.

This change, should it happen, raises a number of transitional measures concerning the calculation for the financial year in which Brexit happens and how the provisional percentage should be applied and calculated. I have written to HMRC on these transitional points but no resolution has yet been reached.

The main concern, however, in terms of the VAT status of tour operators and similar in the event of a no deal Brexit, is the possible need to register and pay VAT in other member states. This point is still unresolved.

I have considered the likely VAT situation in various Brexit outcomes in previous newsletters – please see in particular that for [March 2019](#).

European developments

I have commented previously on the European Commission's desire to harmonise member states' application of the current rules and on the possibility of reform of the EU rules. There are a couple of developments to report.

First, in late August, the Commission announced its intention to continue the evaluation of TOMS. This follows the Commission's [TOMS study](#) of December 2017 (in which I participated and of which a summary is available [here](#)). The first stage will be the publication of a roadmap to define the scope of the evaluation. This is expected this autumn. The second stage will be a public consultation to which any interested person can contribute. This is expected early in 2020. Thereafter, the Commission will decide whether to launch proposals for legislation to amend the scheme or to leave the scheme as it is now.

It may well be that Brexit means this is of less consequence in the UK than it would otherwise be. However, it needs to be remembered that a key issue in the 2017 study (and in other Commission announcements in this area) was the status of non-EU travel suppliers when selling EU travel. We should expect this topic to be prominent in the next round of deliberations. Therefore, this process may still be of real significance for UK tour operators, event agencies etc.

Finally, I have mentioned a few times that Austria is due to change its rules to apply TOMS to wholesale supplies. Austria has just announced a delay to this change, not for the first time, so that the change is now due to take effect on 1 January 2022.

The meaning of agency

In June, I gave an update on the agency cases. These are the cases (involving Hotels4U, Hotelconnect, Lowcost, Opodo and Alpha International) which followed the Supreme Court decision in 2014 on the meaning of agency in the case of Secret Hotels 2 (formerly and better known as Med Hotels).

The Tribunal had followed the Supreme Court in concluding that all five taxpayers had acted as a disclosed agent and were therefore not required to pay VAT on the sale of accommodation. However, HMRC sought a referral of the issues to the CJEU. In March this year, that request was denied but HMRC have now been granted leave to appeal this decision. We do not know yet when this appeal will be heard but of course whether this matter is ever heard at the CJEU is tied into the Brexit process.

David Bennett

Mobile
Email
Web

07795 684 958
david@elmanwallbennett.co.uk
www.elmanwallbennett.co.uk

This newsletter is intended only to be a summary of the points arising and is only a general guide. No liability is accepted for any of the information it contains or for any omissions or errors. No-one should act upon any of the information contained within it without taking professional advice.