ECTAA

THE EUROPEAN TRAVEL AGENTS' AND TOUR OPERATORS' ASSOCIATIONS

PRESS RELEASE

The European Court reshuffles VAT rules for travel agents

The European Court of Justice handed down a decision in 8 cases brought against Member States for the incorrect application of the special VAT scheme for travel agents. Travel agents all over Europe will now have to apply the margin taxation scheme to supplies of travel services to all types of customers and may no longer benefit from the essential simplification of a global margin calculation.

In today's judgement, the Court dismisses the actions brought by the European Commission against Poland, Italy, the Czech Republic, Greece, France, Finland, Portugal and Spain for failure to comply with the special VAT scheme applicable for travel agents, as provided for in article 306-310 of the EU VAT Directive.

The Commission contended that the special VAT scheme for travel agents is applicable solely to sales of travel services to the 'travellers', i.e. legal and natural persons using the travel services. The extension of the special VAT scheme for travel agents to other supplies of travel services, such as supplies to other travel agents (so-called wholesale supplies), is not allowed. This misinterpretation is due to a mistake in the some language versions of the Directive, which incorrectly uses the broader term of 'customer' rather than 'traveller'.

In its judgments, the Court acknowledges the different use of terms in the various language versions and even within the same language version. In light of these divergences, the EU provisions must be interpreted by reference to the general scheme and purpose of the rules of which it forms part. In that regard, the Court considers that an approach consisting in applying the special scheme to any type of customer is the best way of achieving the aims of the scheme. It enables travel agents to benefit from simplified rules regardless of the type of customer to whom they provide their services, while encouraging a fair distribution of receipts between the Member States. Thus the special VAT scheme must apply to *all* sales of travel services in accordance with Article 306 of the VAT Directive and cannot be limited to supplies made to 'travellers'.

The Court's judgment will have far-reaching consequences for travel agents in the other 20 Member States, which will now have to change their legislation to bring it in line with the Court's decision. The extension of the scope of the special scheme to all supplies of travel services in accordance with Article 306 of the VAT Directive will no doubt create distortions of competition between travel agents and the suppliers of the underlying services (e.g. hotel, transport undertaking etc.) as the margin scheme denies taxable customers the right to recover input VAT on the underlying travel services, to the extent that VAT can be partially or fully recovered on such services (there are different rules in Member States on VAT recovery on costs such as hotel accommodation and meals incurred in the course of business), and the VAT on the travel agent's margin. Any cause that inhibits a right to recover VAT that is otherwise deductible in the intermediary consumption stage for a business customer is contrary to the basic principle of neutrality of the Community VAT system and will leave such taxable customers financially better off to buy the services directly from the service suppliers.

ECTAA, AISBL, Rue Dautzenberg 36, B – 1050 Bruxelles, Tel : +32 (0)2 644 34 50 / Fax : +32 (0)2 644 24 21
E-mail : secretariat@ectaa.eu / www.ectaa.eu

As regards Spain, the Commission claimed four further infringements of the EU VAT provisions for travel agents, notably the exclusion from the special scheme of retail agents selling in their own name travel services put together by wholesale agents, the issuance of an invoice with VAT not related to the output VAT due, the right to input VAT deduction restricted to services supplied in Spain and the use of a global margin calculation.

In all four points, the Court upheld the claims of the European Commission. These are issues relating to the specific legislation in Spain, with the notable exception of the global margin calculation. The latter allows travel agents to determine their margin over a period of time rather than transaction by transaction and is current practice in the vast majority of Member States. The calculation of the margin on a transaction basis would be very burdensome and even impracticable due to the fact that the taxable amount cannot be determined at the tax point because of late invoices of suppliers, refunds to or (part) cancelations of customers, additional commissions from suppliers such as volume rebate at the end of the year, etc. It would require many adjustments to invoices and thus the VAT due.

Said ECTAA President, Boris Zgomba: “The special VAT scheme for travel agents is a useful simplification for travel agents. However, the judgement of the ECoJ will bring about far-reaching changes to the national legislation in more than 2/3rd of the EU Member States. Travel agents supplying to taxable persons stand to lose most.” He also added: “The abolishment of the global margin calculation is a non-sense. The determination of the profit margin on a transaction basis would defeat the very essence of the margin taxation scheme which is to simplify the VAT obligations of travel agents”.

•••

Travel agents, who acquire travel services from third parties and sell them in their own name to the customer, benefit from a special VAT scheme, as provided for in articles 306-310 of the VAT Directive 2006/112/EC.

The special scheme for travel agents has been introduced as a trade facilitation measure. Its objective is to prevent the complications that the application of the normal VAT rules would cause travel agents where they sell services supplied outside the Member State concerned. Under the normal VAT rules, travel agents would have to pay VAT on every supply of services made to him and register in each Member State from which he purchased services. But under the special 'margin' scheme all transactions performed by the travel agent in respect of a journey are treated as a single supply of services for VAT purposes, taxable in his own Member State. He has no right to deduct VAT on supplies made to him, but on the other hand he is only taxed on the profit margin realised on the supply of the travel package.

The special scheme also has the advantage that VAT revenues are allocated to the Member State where the final consumption of each individual service takes place, i.e. VAT on the travel agent’s supply goes to the Member State where the travel agent is established and where the profit is generated, while the VAT on the hotel accommodation is allocated to the Member State where the service is rendered.

In 2002 the European Commission presented a legislative proposal to revise the special scheme for travel agents (COM(2002) 64 final). The objective of the proposal was to modernize the special scheme and to ensure a more uniform application of the special scheme across the EU Member States.

ECTAA strongly welcomed and supported the initiative of the Commission on the revision of the margin scheme. The industry would like to see the adoption of a scheme which would retain the existing benefit of simplicity but which would address the distortions and inequities inherent in the current arrangements.

Regretfully, the Member States were unable to find agreement on a compromise text in the Council discussions in 2002-2003 and again 2010-2011.

In 2007, the European Commissionn started infringement proceedings against a number of Member States for the incorrect application of the special scheme. The Court has now rendered its judgment in the 8 cases.

ECTAA regroups the national associations of travel agents and tour operators of 30 European countries, of which 26 are within the European Union, and represents some 70.000 enterprises.

Publication date: 26 September 2013

For more information, please contact:

Christina Russe, Communication Officer
ECTAA - Group of National Travel Agents' and Tour Operators' Associations within the EU
Rue Dautzenberg 36, B-1050 Brussels
Tel: +32 2 644 34 50 or fax: +32 2 644 24 21
e-mail: secretariat@ectaa.org, www.ectaa.org