ECTAA
THE EUROPEAN TRAVEL AGENTS' AND TOUR OPERATORS' ASSOCIATIONS

GUILD OF EUROPEAN BUSINESS TRAVEL AGENTS

Associations Internationales sans but lucratif

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ECTAA AND GEBTA CALL FOR THE REVISION OF THE SPECIAL VAT SCHEME FOR TRAVEL AGENTS

What is the special VAT scheme for travel agents and why is a revision required?

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.

The special scheme has been working well for the trade and avoiding the need for multiple VAT registrations is much appreciated. However, the scheme also creates certain competitive distortions which need to be eliminated. In addition, the market for travel services has undergone fundamental changes since the introduction of the special VAT arrangements in 1977 that are not reflected in the VAT rules. Furthermore, the application of the special scheme among the Member States is divergent. Thus, the scheme is in need of revision to reflect market changes and also to remove the distortions created by the scheme both in terms of its divergent applications and the weaknesses inherent in the current scheme.

The European Commission has taken account of this and presented end of 2002 a Commission 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 and GEBTA welcomed the Commission proposal and supported the new provisions introduced by the Commission.

Rue Dautzenberg 36, B – 1050 Bruxelles, Belgique, Tel: +32 2 644.34.50, Fax: +32 2 644.24.21
E-mails: secretariat@ectaa.eu / gebta@gebta.eu, Websites: www.ectaa.eu / www.gebta.eu

Regretfully, the Member States were unable to find agreement on a compromise text in two successive rounds of negotiations in 2002-2003 and 2010-2011.

Meanwhile, in 2007 the European Commission started infringement proceedings against a number of Member States for the incorrect application of the special scheme. 8 Member States were brought before the European Court of Justice, which handed down its decision in September 2013 in favour of the 8 Member States (see case C-189/11). However, this judgement causes great prejudice to the travel agents' Community in terms of the following:

- Inclusion of B2B supplies into the scope of the special scheme:

  The inclusion of B2B supplies in the margin taxation scheme will cause massive distortions of competition between travel agents compared to 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, 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.

  Even in cases where the VAT cannot be recovered on the travel services, travel agents would still be at a competitive disadvantage compared to the suppliers of the underlying services, as the margin made on services (in so far as they are enjoyed within the EU) is always subject to standard VAT rate while the underlying services are often subject to a reduced VAT rate or VAT exemption.

  The distortions of competition resulting from the inclusion of B2B supplies into TOMS will lead in the long-run to disintermediation. Customers will buy directly from suppliers and become captive customers. This will stimulate concentrated markets, less price transparency and ultimately less consumer choice, undermining the achievements of the Single Market.

- Prohibiting the use of a global calculation of the margin:

  The calculation of the margin on a transaction basis will be very burdensome and even impracticable due to the fact that the taxable amount cannot be determined at the point of sale / issue of invoice because of late invoices of suppliers, refunds to or (part) cancelations of customers, additional commissions from suppliers such as volume rebates at the end of the year, etc. Moreover, it is not possible to allocate the costs accruing over a period of time to transactions, until the end of the period when the number of transactions are known (e.g. leasing of a coach). It will require many adjustments to invoices and thus the VAT due.

- Entitlement of taxable customers to recover input VAT:

  The Court estimated that input VAT reclaimed by taxable customers must correspond exactly to the amount of the input tax due or paid. By doing so, the Court affirms that the principle of the right to deduct VAT, as laid down in Article 168 of the VAT Directive, applies and thus that taxable customers have a right to deduct input VAT on the travel agent's margin. This means that travel agents would have to issue a VAT invoice and consequently disclose their margin. We are not aware of any other industry where businesses are required to disclose their profit margin to their customers.

In 2014 the Commission has announced its intention to withdraw the 2002 proposal on the revision of the special scheme as the proposal is obsolete and may consider adopting a new proposal.

ECTAA and GEBTA are strongly calling for the Commission to adopt a new proposal revising the special scheme for travel agents. From an industry perspective, the new proposal should retain the objective of simplicity but address the distortions and inequities inherent in the current arrangements. The latter have been explained in detail in the ECTAA document CR14-113/422 included in annex.

ECTAA and GEBTA are advocating the adoption of a flexible approach to the revision of the scheme that would benefit both industry and Member States. A revised scheme must as a priority allow for the possibility of excluding B2B supplies and the calculation of a global margin, as ECTAA and GEBTA have been advocating for the last 12 years.

Please find hereafter proposals that would address the shortcoming identified by ECTAA and GEBTA.

Scope of the special scheme for travel agents

As mentioned previously, the special scheme for travel agents has been introduced as a trade facilitation measure to avoid travel agents having to register and account for VAT in all the Member States, where the individual travel services are deemed to be supplied under the normal VAT rules. The complexity of multiple VAT rules of the underlying travel services is overcome by treating the travel agent's supply as a single service VATable where the travel agent is established. This simplification measure has, in many respects, been a successful system and there is no desire within the industry to see the scheme brought to an end. However, this simplification comes at a cost, especially for B2B supplies which have been brought into the scope of the margin scheme as a result of the recent ECoJ decision, as they now contain irrecoverable input VAT.

For that reason, ECTAA and GEBTA believe that for B2B supplies the margin taxation scheme should only apply where simplification is required.

One situation in which simplification is arguably not required is where the travel agent already has, or chooses to obtain, a VAT registration in the Member State in which the travel services are deemed to be supplied under normal place of supply rules.

Therefore, the margin scheme should apply to B2B supplies in all circumstances where the supplier is not VAT-registered in the Member State in which the travel services would normally be deemed to be supplied (adopting normal place of supply rules of the individual travel services). However, where the supplier does have a "local" VAT registration, or chooses to obtain one, or is subject to the reverse charge mechanism[1], the supplier would have a choice for B2B supplies: either use the normal VAT rules for the individual travel services or apply the special scheme for the supply as a whole.

A travel agent should have the option to apply the special scheme even where it already has a VAT registration in the Member State in which the services would otherwise be deemed to be supplied. Some travel agents have VAT registrations in a number of Member States as they need to account for local VAT on in-house supplies, shore excursions etc. Such travel agents must have the ability to continue to account for margin VAT on their supplies that would otherwise be eligible for the scheme and not be obliged to account for VAT under the normal rules merely because they have a VAT registration for another part of their business.

As a supplier always has a VAT registration in the Member State in which it has established its business, a travel agent is de facto always in a position to opt for the normal place of supply and valuation rules for travel services supplied on a B2B basis within his "home" Member State. For many suppliers of B2B services the ability to exclude transactions in their "home" Member State from the margin scheme may be sufficient. This would enable B2B suppliers of business travel, including meetings, incentives, conferences and exhibitions (short MICE), to exclude services provided in their "home" Member State from the margin scheme and thereby protect input tax recovery for their clients.

Another good example of when simplification is not required, apart from when the supplier has already a local VAT registration, is when the supplier is making MICE supplies. The latter

[1] There are a range of circumstances where the reverse charge mechanism applies and the supplier is denied the possibility to register and account for VAT where the services are deemed to be supplied under the normal VAT rules, since the local authorities would consider that the taxable customer is liable to pay VAT. In those circumstances the operator should still be allowed to opt-out of TOMS, even if he has no 'local' VAT registration.

covers events of many descriptions, such as conferences, business meetings, incentives, product launches, conventions, training courses and team bonding exercises, amongst others. They will include travel services but also a large range of other services such as programme development, sourcing of speakers and trainers, printing and web support, funding and sponsorship, audio-visual support, management of registrations, etc. As already established by EU case law, the special scheme being an exception to the normal VAT rules, the special scheme for travel agents must be applied only to the extent necessary to achieve its objective. Clearly where a supply such as event management would fall within the general place of supply rules, there is no reason to extend the simplification provided through the special scheme to the supply, merely on the grounds that it is a supply containing travel services.

ECTAA and GEBTA realise that as there is a compliance cost associated with maintaining multiple VAT registrations, in practice it is unlikely that many suppliers would seek VAT registrations outside of their "home" Member State. However, it is essential for travel agents to have the ability to register and remain outside of the margin scheme for supplies of travel services deemed to be made outside of their "home" Member State. The travel agent should have the possibility to choose the opt-out for every B2B transaction.

To partly overcome some of the complexity of multiple VAT registrations and accounting in other Member States, ECTAA and GEBTA suggest extending the scope of the current Mini One Stop Shop (MOSS), which is applicable for broadcasting, telecommunications and electronically-supplied services, to travel services. This would allow travel agents to make all their declarations of output VAT on travel services deemed to be supplied in the various Member States to the tax authority of their own Member State of registration.

The extension of the MOSS arrangements to travel services has the additional benefit that Member States have a reliable way of knowing and controlling whether a travel agent has applied the margin scheme for its B2B supplies in his home country or whether it has opted to register and account for VAT in the Member States where the travel services are deemed to be supplied. The MOSS provides a convenient way for tax authorities to ensure that VAT is paid on all travel services, either under the special VAT scheme or the normal VAT arrangements.

However, an essential part of a MOSS for travel services is to include a mechanism for the input VAT recovery. Travel agents incur nearly as much input VAT as they do output VAT. The special scheme achieves a credit for such input VAT via the calculation of the margin. Under a MOSS type arrangement, the travel agent should be entitled to recovery of all such VAT and payment of output VAT. A recovery of the input VAT at a later date using the electronic cross-border refund system would be unacceptable. It must be a feature of any MOSS arrangement for travel agents that input VAT recovery is achieved via the MOSS return.

To summarise, ECTAA and GEBTA would recommend the following approach to the scope of the special scheme:

Scope: Application of the special scheme to B2C and B2B supplies but with an opt-out for B2B supplies

TOMS applies to all supplies, including B2C and B2B, unless the travel agent is registered for VAT purposes in the Member States where the services are deemed to be supplied and elects to opt B2B supplies out of TOMS and accounts for VAT under the normal VAT arrangements. This option should also be available to travel agents making supplies subject to the reverse charge mechanism, where VAT liability is shifted from the supplier to the taxable customer.

This would effectively allow an opt-out for all domestic B2B supplies as a travel agent is always registered for VAT purposes in his own country. The travel agent should have the possibility to choose the opt-out for every B2B transaction.

If the travel agent wishes to opt-out B2B supplies, the normal VAT rules for the individual travel services are applicable. That means that the travel agent will have to register and account for VAT in the Member States where the travel services are deemed to be supplied, unless the reverse charge mechanism applies (see above). The travel agent should account for VAT by means of the Mini-One-Stop-Shop (MOSS) currently applicable for broadcasting, telecommunications and electronically-supplied services to be rolled out for travel services.

The MOSS should be expanded to include an input VAT recovery, to avoid input VAT recovery at a later date using the electronic cross-border refund system.

This allows sufficient flexibility and choice for travel agents while guaranteeing VAT avoidance and control for tax authorities / Member States.

Calculation of the margin

One of the results of the recent ECoJ ruling in the joint cases brought by the Commission against 8 Member States (case C-189/11) is that travel agents cannot determine the taxable amount on an overall basis but must do so on a transaction by transaction basis. Yet, calculating the profit margin for each single supply of a travel agent is wholly impracticable, because there is often a gap between the period when the travel agent sells the package and the date on which he gets the invoices from his taxable suppliers. The margin may still change after the point of sale, due to refunds to or (part) cancelations of customers, additional services required on site, fuel costs increase, etc. This represents a huge administrative burden for both businesses but also for tax administrations.

ECTAA and GEBTA would thus recommend that the travel agent's profit margin be calculated on a global basis for a period, which could be a financial year or tourist season or otherwise determined. As an option, travel agents should be given the possibility to calculate the margin transaction by transaction. Moreover, any negative margin during a period should be allowed to be carried forward into the next period.

To note that the VAT Directive contains already provisions for a global margin calculation; articles 311-325 of the VAT Directive provide that suppliers of second-hand goods, works of art, collectors' items or antiques, who are also subject to a margin taxation scheme, have the possibility to calculate a global margin. Accordingly, the global margin scheme should be integrated into the VAT Directive as one of the standard applicable rules. In the proposal adopted by the Commission in 2002 to revise the special scheme, the Commission already included the possibility of a global margin calculation for travel agents.

ECTAA and GEBTA would recommend that Member States be given the option to allow travel agents to use a simplified system of accounting for VAT on the margin. This would allow the travel agent to account for VAT on an estimated basis in each taxable period during the year, and do a review at the end of each accounting year with an appropriate annual adjustment if necessary.

To prevent distortions of competition between national markets, ECTAA and GEBTA stress the importance that all travel agents should be granted the possibility of calculating on the basis of a global margin. This should not be an option for Member States.

ECTAA and GEBTA thus recommend:

Global margin calculation

The travel agent's profit margin should be calculated globally for all supplies made during a period, which could be a financial year or tourist season or otherwise determined. As an option, travel agents should be given the possibility to calculate the profit margin on a transaction basis. Moreover, any negative margin generated during a period should be allowed to be carried forward into the next period.

Member States should have the option to allow travel agents to use a simplified system of accounting for VAT on the margin, whereby they account for VAT in the intervening tax returns based in a provisional margin and make an adjustment at the end of a determined period based on the actual margin generated.

Derogations

To ensure a level playing field between all players providing services in accordance with article 306 of the VAT Directive, all derogations granted from articles 306-310 should be abolished. The majority of derogations have already been abandoned by Member States or are redundant.

Thus, the following articles should be deleted:

- Article 153 of the VAT Directive second paragraph
- Article 374 of the VAT Directive
- Annex X, Part A, point (4) of the VAT Directive
- Annex X, Part B, point (13) of the VAT Directive

Abolishment of derogations

All derogations from articles 306-310 should be abolished.

Apportionment of the margin

The application of the special scheme eliminates the ability of a travel agent to benefit from the reduced rates of VAT that commonly apply to travel services in many destinations in the EU. In terms of accommodation, this means that the margin made by the travel agent is taxed at a standard VAT rate, whereas the underlying accommodation, particularly in warmer countries, is often subject to a reduced rate significantly lower than the standard rates. However, the largest discrepancy is VAT on international flights which are universally relieved from VAT when acquired directly from an airline but which are not relieved when sold by a travel agent in the vast majority of Member States. This leads to enormous distortions of competition between travel agents offering these services in circumstances in which the special scheme applies versus travel service providers selling them directly to the customer.

The problem is caused by the taxing of the gross margin at the standard rate without any recognition of the VAT liability of the individual services supplied by the travel agent. ECTAA/GEBTA consider that this distortion can be largely overcome by the recognition that the travel agent is supplying the services in the same way as the service provider, i.e. as a principal re-selling the travel services themselves in his own name rather than somehow presumed to be changing the nature of what the customer receives.

Therefore, ECTAA/GEBTA consider that the margin made by travel agents should be subject to VAT at the standard rate except to the extent that the component parts of the supply enjoy a reduced rate, a zero rate or an exemption – in such circumstances the margin should be apportioned on the basis of cost and the appropriate VAT rate applied to the value (i.e. the margin). The requirement to preserve relative simplicity strongly suggests that the applicable rate of VAT should be that of the Member State in which the travel agency is established. This preserves the existing concept of a travel agency only needing to register and account for VAT in a single jurisdiction, is consistent with the existing place of supply rule for travel agents and avoids the enormous complexities of potentially using the many differing VAT rates and exemptions applicable across the current twenty eight Member States. In conjunction with this, the Member States concerned will continue to retain the local resort VAT included in the purchase price of resort input services to the travel agency.

The system of apportioning the margin has also the advantage of eliminating certain further distortions of competition between travel agents buying services from third parties versus travel agents using self-supplies. The latter apply the normal VAT arrangements for the self-

supplied services, which can thus benefit from a reduced rate, a zero rate or an exemption, where applicable.

Thus ECTAA/GEBTA would recommend the following:

Apportionment of the margin and application of VAT rate in relation to the underlying services

The current provision which deems the services provided by a travel agent to be a single supply should be removed. Instead, the margin made by travel agents should be subject to VAT at the standard rate except to the extent that the component parts of the supply enjoy a reduced rate, a zero rate or an exemption – in such circumstances the margin should be apportioned on the basis of cost and the appropriate VAT rate applied to the value (i.e. the margin).

Taxation of non-EU established travel agents

Travel agents established in third countries are outside the scope of the special scheme. However, it is very easy for them to supply travel services to EU clients over the internet. This creates distortions of competition between EU and non-EU established travel agents.

To ensure a level-playing field between EU and non-EU established travel agents, ECTAA and GEBTA support the initial proposal of the Commission to subject non-EU established travel agents supplying EU clients travel services enjoyed within the Community to the special scheme.

The same rules should apply to non-EU established travel agents: they apply the special VAT scheme and register in one Member State to account for VAT on the margin generated on EU trips. For B2B supplies they have the possibility to opt-out of the special scheme and apply the normal VAT rules of the individual travel services that constitute a trip. In such case, they could also make use of the Mini-One-Stop-Shop (MOSS) currently applicable for broadcasting, telecommunications and electronically-supplied services to be rolled out for travel services (see page 5). The MOSS should also allow the input VAT recovery.

Taxation of non-EU established travel agents supplying EU travel services to EU clients

Non-EU established travel agents should be subject to the special VAT scheme, in so far as they supply to EU clients travel services enjoyed within the EU. They should also have the possibility to opt such supplies made to taxable persons out of the special scheme and account for VAT under the normal VAT rules applying to the individual travel services. In such case, they should be able to register and account for VAT by means of the Mini One Stop Shop (MOSS) for broadcasting, telecommunications and electronically-supplied services, which should be rolled out for travel services. This should also allow for input VAT recovery.

Exemption of EU established travel agents supplying EU travel services to non-EU clients

As mentioned above, travel agents established in third countries are outside the scope of the special scheme; they escape EU VAT for all their supplies of travel services which are effectively used and enjoyed within the EU. This creates distortions of competition between EU and non-EU travel agents, not only for travel services supplied to EU clients (as laid out above) but also for travel services supplied to non-EU clients.

For this reason, ECTAA and GEBTA advocate the VAT exemption of EU travel services supplied to non-EU clients, to create a level-playing field. This should apply irrespective of whether the travel agent makes a B2C or B2B supply.

Exemption of EU established travel agents supplying EU travel services to non-EU clients

EU established travel agents supplying to non-EU clients travel services, which are effectively used and enjoyed within the EU, should be exempted from VAT in the EU. This should apply irrespective of whether the travel agent makes a B2C or B2B supply.