



ECJ turns German practice on the Tour Operator Margin Scheme on its head

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1 Background

Special VAT schemes apply to supplies of travel services in the EU (Tour Operator Margin Scheme). In Germany, these are set out in sec. 25 of the German VAT Act. According to this, supplies of travel services are deemed to be provided where the supplier is established. The margin scheme applies and input VAT deduction from supplies procured is excluded. In its decision of 25 June 2024 (C-763/23 – *Dragoram Tour*), the ECJ ruled on the question of whether the Tour Operator Margin Scheme also applies if a travel agency only resells airline tickets.

2 Facts

Dragoram Tour is a Romanian travel agency. As part of its business activities, it purchases airline tickets from airlines in its own name. This is limited to airline tickets for flights to destinations in the EU. *Dragoram Tour* sells the tickets to its customers in its own name. If required, *Dragoram Tour* also advises and informs customers. However, *Dragoram Tour* does not provide any additional services. *Dragoram Tour* charges the customer the price of the airline tickets plus a commission fee.

3 ECJ decision

The ECJ ruled on the request for a preliminary ruling in a simplified procedure by order. This is because, in the opinion of the ECJ, the requested interpretation of Union law already clearly follows from its previous jurisprudence in the cases of *Alpenchalets Resorts* (ECJ, judgment of 19 December 2018, C-552/17) and *Dyrektor Krajowej Informacji Skarbowej* (ECJ,



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judgment of 29 June 2023, C-108/22). In these two cases, the ECJ ruled that the Tour Operator Margin Scheme also applies to the mere provision of both holiday accommodation and the resale of accommodation services.

According to the ECJ, the Tour Operator Margin Scheme also applies to the present case where the travel agency only sells airline tickets. As ruled in previous cases, the exclusion of a travel agency's individual services from the Tour Operator Margin Scheme contradicts the scheme's purpose of simplification. Furthermore, it can be clearly deduced from previous jurisprudence that the Tour Operator Margin Scheme also applies in the case of the mere provision of passenger transport services. In particular, the application of the Tour Operator Margin Scheme is not dependent on the provision of passenger transport services being accompanied by additional supplies. It is also irrelevant, in the case at hand, whether the travel agency also renders information and advisory services to its customers.

4 Consequences for the practice

The current decision is one in a series of ECJ decision on the supply of travel services. The previous jurisprudence and the current decision can be categorized as follows:

- If the taxable person is a travel agency or a tour operator, the Tour Operator Margin Scheme must also apply if the taxable person only provides a single service in the particular case. It is irrelevant whether this individual service is an accommodation service (*Alpenchalets Resorts*), a transport service (*Dragoram Tour*) or another service. The reason is that excluding a travel agency's individual service from the scope of the Tour Operator Margin Scheme contradicts the scheme's simplification purpose. The current decision is consistent in this respect.
- However, the case in which another taxable person (neither travel agency nor tour operator) provides an individual service to a traveler is a different matter. In the case of *Star Coaches* (ECJ, judgment of 1 March 2012, C-220/11), the ECJ ruled that a transport company that only provides transport services is not subject to the Tour Operator Margin Scheme. According to the ECJ, it is, in principle, necessary that other services are provided in addition to the transport service. It is therefore reasonable to conclude that, based on the wording of Art. 306 EU VAT Directive, the ECJ's differentiation is dependent on the nature of the supplier.

This differentiation contradicts the current German perspective. The German tax authorities have, to date, refused to apply the margin scheme when only a supply of transport services has been rendered. In the tax authorities' opinion, a supply of travel services requires that the taxable person provides a bundle of individual services (see sec. 25.1 para. 2 sentence 1 of the German Administrative VAT Guidelines). However, such a bundle of services is not deemed to exist if a taxable person merely renders a supply of transport services to his customer (see sec. 25.1 para. 2 sentence 3 of the German Administrative VAT Guidelines). According to the German tax authorities, irrespective of the nature of the supplier, a single supply is only sufficient in the case of accommodation services (see sec. 25.1 para. 2 sentence 6 of the German Administrative VAT Guidelines). This view of the German tax authorities can hardly be upheld considering the ECJ's jurisprudence that refers to the nature of the supplier in the case of single services. In practice, the question of when a taxable person is to be regarded as a travel agency or a tour operator is therefore coming to the fore. As there is no definition of "travel agency" or "tour operator" in either the EU VAT Directive or in the jurisprudence of the ECJ, disputes are inevitable.