



ECJ clarifies doubts on tour operator margin scheme

1 Supply of travel services - special scheme and open questions

The tour operator margin scheme (TOMS), established in accordance with Art 306 to 310 of the EU VAT Directive, is intended to simplify matters for tour operators, which generally provide a package of various supplies, oftentimes purchased from other companies. When individually assessed, all of these various supplies would have to be taxed differently. In order to reduce this complexity, at least to some extent, Art 306 to 310 of the EU VAT Directive provides that tour operators be regarded as rendering a single service, to which the margin scheme applies and that with respect to which input VAT deduction is not possible. However, to date there have been many open questions concerning the operation of the TOMS, which the ECJ has now dealt with, step by step.

2 Margin Scheme also in the case of single service supplies

Art 306 to 310 of the EU VAT Directive provides that several supplies rendered to an individual recipient are regarded as being a single service. Against this background, it is left open to question whether the TOMS also applies if a supplier renders only one typical travel service. Specifically, the ECJ was asked to decide this issue in the legal case *Alpenchalets Resorts* (C-552/17), where holiday residences were rented by the plaintiff and subsequently let in its own name to customers.

In its judgment of 19.12.2018, the ECJ very clearly decided that the mere supply of holiday accommodation, whether with or without the supply of ancillary services, is deemed to be a single service covered by the TOMS, in accordance with Art 306 to 310 of the EU VAT Directive. The ECJ derives this from its previous case law and refers only to its reasoning in



Ronny Langer
Certified Tax Consultant,
Dipl.-FW (FH)

+49 (0) 89 217 50 12-50
ronny.langer@kmlz.de

its judgments in *Van Ginkel* (C-163/91 of 12.11.1992), *My Travel* (C-291/03 of 06.10.2005), *ISt* (C-200/04 of 13.10.2005), *Minerva Kulturreisen* (C-31/10 of 09.12.2010) and *Star Coaches* (C-220/11 of 01.03.2012). In particular, the ECJ points out that the exclusion of individual travel service supplies from the TOMS would result in a level of complexity for the tour operators, which would effectively contradict the objectives of the EU VAT Directive.

3 No reduced tax rate

In the legal case *Alpenchalets Resorts*, the ECJ also had to decide whether the reduced tax rate could be applied to the short-term accommodation of guests, where such a single supply was rendered. The ECJ also contradicted this assertion, very clearly and briefly. If a supply is covered by the TOMS, it can no longer be subject to the rules applicable for the provision of holiday accommodation and hence, cannot be subject to the reduced VAT rate.

4 Taxation on receipt also for payments on account for travel services

In the legal case *Skarpa Travel* (C-422/17) the question was referred to the ECJ as to whether travel services could also be subject to taxation on receipt in accordance with Article 65 of the VAT Directive. The TOMS requires a profit margin to be determined. However, this would not be possible if the actual costs of the advanced supply of travel services had not yet been determined. In its ruling of 19.12.2018, the EJC came to the conclusion that payments on account for the supply of travel services must definitely be taxed on receipt. Finally, Articles 306 to 310 of the EU VAT Directive contain special provisions concerning the place of taxation, the calculation of the VAT base and the deduction of input VAT. Apart from this, the general rules must be applied, including the taxation of payment on account in accordance with Art. 65 of the VAT Directive.

5 Margin scheme also for payments on account

In the *Skarpa Travel* case, the ECJ also had to decide how to determine the profit margin for payments on account in connection with the question of whether there is, in principle, a taxation of payments on account for travel services. Here, the ECJ suggests that the aim of the TOMS is to avoid practical difficulties which would hamper the activities of tour operators. Against this background, the supplier can estimate the expected cost of the individual journey and compare it with the total price of the journey, and thereby calculate a percentage of the expected profit margin. This is then used as the basis for the taxation of payments made on account. However, the supplier is not spared from making a correction (including the VAT return) at a later date, when the final amount of the actual individual costs have been determined.

6 No restriction to B2C - current status

In early 2018 the ECJ ruled, in an infringement procedure against Germany, that the special schemes for travel service supplies cannot be restricted to B2C supplies (KMLZ Newsletter 05/2018). The Federal Fiscal Court subsequently confirmed this (KMLZ Newsletter 19/2018). Since then, the industry has been waiting for the legislator to react and amend sec 25 of the German VAT Act accordingly. The Federal Fiscal Court decision has not yet been published in the Federal Tax Gazette. The tax offices are therefore not currently in a position to apply the new legal situation. It is reported that a draft law will be prepared in the course of 2019, which will implement the legal situation prescribed by the ECJ and extend the scope of the application of sec 25 of the German VAT Act to B2B transactions. Until then, companies are free to choose whether they wish to apply Art 306 to 310 of the EU VAT Directive or refer directly to the ECJ case law.