



On 19 of December 2018, the European Court of Justice issued its judgement on the two cases of Skarpa Travel (Case C-422/17) and Alpenchalets Resorts GmbH (Case C-552/17) in relation to TOMS (Tour Operators Margin Scheme).

In the case Skarpa Travel (Case C-422/17), the ECJ ruled that VAT is due under TOMS at the date of receipt of a payment on account and should be calculated at that time based on the projected margin.

In the case Alpenchalets Resorts GmbH (Case C-552/17) the ECJ ruled that TOMS applies to a supply of service which consists in the provision of one bought-in service of accommodation service or accommodation combining of other ancillary services. In addition, the supply of TOMS services cannot be subject to a reduced VAT rate for the provision of travel services which are taxed under TOMS.

Skarpa Travel Vs Supreme Administrative Court of Poland – Case C-422/17

Questions referred to the ECJ

In Case C-422/17 the Supreme Administrative Court of Poland referred to the ECJ concerning whether the VAT on transactions calculated under TOMS becomes payable when the traveller makes payments in advance (as per Article 65 of the Directive) and if so, how to determine the VAT when the taxable amount is unknown.

ECJ Judgement

On 19 of December 2018, the European Court of Justice ruled that:

1. When travel agents receives a payment on account for tourist services which will be provided to the traveller, VAT is chargeable by the travel agents (subject to the TOMS) on the date of receipt of that payment on account (as per Article 65) provided that the tourist services to be supplied are precisely designated.
2. When the travel agent cannot determine the actual cost of the travel service then VAT should be calculated based on the projected margin. For the purpose of the calculation of the margin the estimated total actual cost is deducted from the total price of the trip and the taxable amount for VAT is obtained by multiplying the amount of that payment on account by the percentage corresponding to the part of the total cost of the trip that the estimated profit margin represents.

Example based on the ECJ Judgement

A Travel Agent (who is subject to the special scheme) is selling a travel package for the week 01 - 07/03/2019 to a traveller for €1.000. The estimated cost of the travel package has been calculated to €600. Therefore, the projected margin will be €400 (40% of the total price). On 14/01/2019, the TA received a payment on account amounting to €500.

Based on the above ECJ case, VAT is chargeable on the amount received on account and should be calculated based on the projected margin. Therefore, the TA should pay output VAT based on TOMS calculation on 14/01/2019. The VAT output will be calculated as follows:

Margin based on estimated cost: $€500 \times 40\% = €200$

TOMS Calculation: $€200 \times 19/119 = €32$

Significance of the case

At present most of Tour Operators apply TOMS when the supply is completed and the total revenue and costs are known. The impact of the Skarpa case should be examined on a case by case basis and corrective actions should be taken where applicable.

Alpenchalets Resort GmbH Vs Federal Finance Court of Germany – Case C-552/17

Questions referred to the ECJ

In Case C-552/17 the Federal Finance Court of Germany referred to the ECJ concerning whether the single supply of holiday accommodation in association with other ancillary services (i.e. cleaning etc) falls to be taxed under TOMS or under normal rules and if it to be taxed under TOMS should the margin be taxed at standard rate or reduced rate.

ECJ Judgement

On 19 of December 2018, the European Court of Justice ruled that TOMS will be applied to a supply of service which consists in the provision of one bought-in service (accommodation or transport service) or to a supply of service combined with additional ancillary services.

In addition to that, the supply of travel agent services covered under the special scheme, cannot be subject to a reduced VAT rate or one of the reduced rates set out in Article 98(2).

Significance of the case

The current practice of the Cyprus Tax Authority follows the Court's judgement.

How can PwC help you

Our designated team of Indirect Tax Specialists is at your disposal to discuss the impact of these cases in your business and assist in the correct application of the rules.

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