

Indirect Tax Services

Newsletter



Newsletter 34 / October 2013

This newsletter concerns the recent developments at EU level in relation to the VAT treatment of transactions in the tourist industry and in particular in relation to the application of the Tour Operators' Margin Scheme (hereafter referred to as "TOMS").

1. Decision of the European Court of Justice (hereafter referred to as "ECJ") on the application of TOMS

The Decision is expected to increase VAT costs as well as VAT administration of tour operators that make wholesale supplies of tourist services to other travel agents.

Facts

The European Commission (hereafter referred to as "Commission") launched legal proceedings against eight Member States (Greece, Spain, Italy, Poland, Czech Republic, France, Finland and Portugal) in relation to whether wholesale supplies of tourist services should be dealt with within TOMS. A wholesale supply is one made to another person for resale.

In particular, the Commission argued that the EU Directives should be interpreted in such a way that limits the application of TOMS to sales made to travellers and that it should not include wholesale supplies. All eight Member States argued that TOMS should be applied irrespective of the status of the recipient of the services, that is in relation to both wholesale and retail supplies.

Decision of the ECJ

The ECJ adopted the Opinion of the Advocate General that TOMS should apply equally to wholesale and to retail supplies of travel services. The ECJ disagreed with the Commission's position that the application of TOMS by the eight Member States to wholesale supplies of services was based on the incorrect substitution of the word "traveller" with the word "customer" in some of the translations of the European Directive. The ECJ decided that all versions of the Directive should be examined in the light of the objectives of the legislation in question which are:

- I. simplification of the VAT rules, and
- II. a fair and efficient allocation of tax revenue to member states

The ECJ ruled that the customer approach (e.g. that TOMS should be applied to supplies of travel services to all types of customers, that is both to wholesale and to retail supplies) is the approach that better meets the objectives described above.

PwC Comments

Cyprus, as did many other Member States, adopted the position that wholesale supplies of travel services fall outside TOMS, also removing as of 6 August 2008 (with Circular number 138) the option to tax wholesale supplies within TOMS.

As a consequence of the above mentioned cases, it is expected that Cyprus rules and practice followed by the VAT office will have to change, although the timing of such changes is not known at this stage. Change in the practice of the VAT office will have serious consequences on tour operators who deal mainly with wholesale supplies and who will likely be called to account for VAT on the basis of the standard rate of VAT on their travel services which would have otherwise been subject to VAT on the basis of the reduced rate under the normal VAT rules.

How can PwC help you

Our specialist team is at your disposal to consider the impact the above case may have on your business and to calculate any monetary impact that may arise. Correct calculation of the output VAT is necessary so that businesses are in a position to correctly calculate their selling price and profit margins.

2. Advocate General's Opinion in the ECJ case of Ibero Tours (C-300/12)

The Advocate General (hereafter referred to as "AG") has published his opinion in the Ibero Tours case (C-300/12), in favour of Ibero Tours, a travel agent, finding that the principle of Elida Gibbs (C-317/94), in the reduction of the VAT tax base where businesses have a granted a discount to a consumer also applies to intermediaries such as travel agents and that this principle equally applies where a service is subject to the margin scheme (TOMS).

The judgment of the Court is awaited.

Facts of the Case

Ibero Tours GmbH is a German travel agency which intermediates for the sale of travel services to travellers, which are organised by Tour Operators. In particular, Ibero Tours sells to travellers travel services organised by Tour Operators as a disclosed agent, earning a commission for its services.

For the purpose of promoting sales, Ibero Tours provides to travellers a 3% discount which is deducted from its commission. In essence the Tour Operators' gross income is not affected.

In the example used by the Court:

- the rate of VAT is 16%
- the gross sales price is 2 000 euro, including VAT of 275,86 euro (e.g. 2000 euro X 16/116)
- the gross commission is 232 euro, of which an amount of 32 euro concerns VAT (e.g. 232 euro X 16/116)
- Ibero Tours offers a 3 % discount on the gross selling price, that is 60 ευρώ (2000 euro X 3%)
- the traveller pays to Ibero Tours the agreed reduced price of 1 940 euro (e.g. 2000 euro - 60 euro)
- Ibero Tours pays to the tour operator the difference between the gross selling price of the travel service before the discount (e.g. 2000 euros) and the agreed gross commission (e.g. 232 euro). That is, Ibero Tours pays to the Tour Operator 1.768 euro (2000 - 232).

The question concerns whether Ibero Tours should account for VAT on the gross commission before or after the discount, (i.e. on 232 euro or 172 euro).

Opinion of the Advocate General

The Advocate General's opinion is that VAT should be accounted for on the reduced commission, after taking into consideration the discount:

- I. The Principles of Elida Gibbs equally apply in the case of an intermediary (e.g. a travel agent) who offers a discount at his own cost on the sale price of a main service offered to the traveller for which the agent intermediates
- II. The above mentioned Principles apply even if the main service is subject to TOMS

PwC Comments

If the ECJ adopts the opinion of the AG, this will have a positive impact on travel agents who currently do not deduct any discounts offered to travellers from their tax base for the purposes of accounting for output VAT.

Your contacts for Indirect Tax matters in PwC Cyprus:

Costas L Mavrocordatos, Head of Tax & Legal Services - costas.mavrocordatos@cy.pwc.com

Chrysilios Pelekanos, In charge of Indirect Tax Services - chrysilios.pelekanos@cy.pwc.com

Ioanna Stylianidou - ioanna.stylianidou@cy.pwc.com

Martha Lambrou - martha.lambrou@cy.pwc.com

Varnavas Nicolaou - varnavas.nicolaou@cy.pwc.com

PwC Cyprus

Julia House
3 Themistocles Dervis Street
CY-1066 Nicosia, Cyprus
P O Box 21612
CY-1591 Nicosia, Cyprus
tel. +357 - 22 555 000

www.pwc.com.cy

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers Ltd, Cyprus, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

©2013 PricewaterhouseCoopers Ltd. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Ltd of Cyprus, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.