

Indirect Tax Services

Newsletter



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The First-tier Tribunal (FTT) of UK released its decision in the case of Hotels4U.com Ltd (H4U) concerning whether the UK travel Company acted as a principal or disclosed agent in respect of sales of hotel accommodation services outside the UK.

This issue was not new in the FTT or the supreme court as in 2014 the Supreme Court gave judgement in a similar case Secret Hotel 2 (Medhotels). The Supreme Court noted that Medhotels acted as an intermediary for the purpose of Article 306 of the EU Directive therefore, it did not fall within the Tour Operators' Margin Scheme (TOMS).

1. Facts of the case

H4U is a Company operating in the business of making arrangements with hoteliers outside the UK. In particular it is advertising and marketing the properties all over the world and travellers can book directly this accommodation with the providers (hoteliers).

HMRC contended that H4U was acting as a principal and that, as a consequence, H4U supplies were covered by TOMS and were thus subject to UK VAT.

H4U argued that its case was indistinguishable from Medhotels and appealed to the FTT asking to recoup the money it has paid in VAT over the last decade to HMRC under the TOMS schemes on the grounds that it acted as an agent and **not** as a principal. As agent, its supplies would fall outside the scope of UK VAT.

2. Judgement of the FTT

Following the Supreme Court's judgement in the case of Medhotels, the FTT agreed with H4U position. To this end FTT concluded that with respect of the majority of the contracts, H4U was acting as an agent.

Following the FTT decision, HMRC is seeking reference to the European Court of Justice in all the related cases in relation to the interpretation of the EU Principal.

3. Significance of the case and other considerations

This judgement shows once again that written agreements and other documentation are considered extremely important in determining the status of the tax payer (agent or principal) and subsequently the applicable VAT treatment. Nonetheless, the economic reality of the transaction and the relationship amongst the involving parties are also crucial decisive factors that should not be overlooked. In the event of inconsistencies, the written documentations will not be determining the tax payers' position.

4. Way forward: How PwC can assist

The dedicated team of VAT professionals at PwC is ready to assist you:

- (a) To review the transactions and verify the applicable VAT treatment, where there is inconsistency between the clauses of the agreements and the economic reality, PwC is ready to assist in **identifying and minimising** where possible such risks.
- (b) Review the specific transactions carried out by the travel agent / operator and advice on whether they acted as agent or principal which will also impact the applicable VAT treatment. This issue is of particular relevance in case your business deals with outbound tourism.

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