



Indirect Tax Advisory Newsletter

Newsletter 10/2018

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

Facts and 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 traveler 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.

Opinion of the Advocate General

On 5 September 2018, the Advocate General of the European Court of Justice delivered his Opinion that VAT is due under TOMS at the date of receipt of a payment on account (as per Article 65) and should be calculated at that time based on the projected margin rather than the actual margin, with an adjustment later to correct any over or under payment of VAT once the actual margin is known.

Significance of the case

Considering that at present most of the Tour Operators apply TOMS when the supply is completed and the total revenue and costs are known, it will be interesting to see if the ECJ will follow the Advocate General's reasoning and proposals. We will be monitoring the developments and will be updating our newsletter when the decision of the Court is delivered.

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

Facts and 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 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.

Opinion of the Advocate General

On 5 September 2018, the Advocate General of the European Court of Justice delivered his Opinion that TOMS will also be applied to a supply of service which consists in the provision of one bought-in service (accommodation or transport service) and that the supply of TOMS services cannot be subject to a reduced VAT rate for the provision of accommodation and therefore is subject to the standard VAT rate.

Significance of the case

The current practice of the TA in Cyprus follow the AG opinion but we will be monitoring the developments and we will be updating our newsletter when the decision of the Court is delivered, including the impact if any on Cypriot Tax Authority practice.

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