



Travel and Tourism

Tour Operators' Margin Scheme (TOMS) changes

1 January 2010 sees the introduction of a number of changes to the VAT tour operators' margin scheme (the 'TOMS') in order to comply with EU legislation.

What is the TOMS?

The TOMS is a special scheme of VAT accounting and a simplification measure which is used by those who supply designated travel services as a principal or undisclosed agent, with VAT being accounted for where the supplier is established in the EU rather than in all member states where they provide travel services.

Standard rate VAT is only due on the margin made on services which are enjoyed in the EU with no VAT being due on the margin made on services which are enjoyed outside the EU. No VAT can be reclaimed on scheme purchases although input tax can still be reclaimed on overheads and non-scheme purchases, subject to the normal rules. VAT invoices are not issued for supplies which are accounted for under the TOMS.

'Opt in' concession

In the UK, the TOMS allows for a number of concessions which are being withdrawn because the UK's operation of the TOMS is not fully compatible with the underlying EU legislation.

The 'opt in' concession allows suppliers who generally sell travel services to the public under the TOMS but who occasionally make 'wholesale' supplies to business customers for onward resale, to include their wholesale supplies in the TOMS notwithstanding that they should actually be treated outside of it.

Wholesale supplies take their normal VAT liability whereas the TOMS should only apply to sales of travel services made direct to the traveller and not when travel services are sold to a person other than the traveller. The 'opt in' concession was intended to ease administrative difficulties when having to apply the normal VAT rules for occasional supplies of travel services to other businesses for onward sale and therefore allowed the option for all relevant supplies to be accounted for under the TOMS.

This 'opt in' concession is being withdrawn on 1 January 2010 from which date the TOMS will only apply to travel services which are supplied direct to the traveller. Wholesale supplies to business customers for onward sale will retain their usual VAT liability outside of the TOMS.

'Opt out' concession

The 'opt out' concession allows suppliers who provide travel services to business customers for their own consumption to opt out

of the TOMS and therefore allows VAT invoices to be issued and for business customers to recover VAT incurred on those supplies, subject to the normal rules.

HMRC have also treated the provision of school trips as a non-business activity for VAT purposes and allowed them to be excluded from the TOMS, which has enabled local authorities to recover VAT under special provisions which apply to LEA schools. This 'opt out' concession is also being withdrawn from 1 January 2010 which means that businesses receiving supplies of travel services for their own consumption (which includes employees) and local education authorities will no longer be able to obtain VAT invoices from suppliers as their travel services will be included within the TOMS.

Market values

Changes are also being introduced from 1 January 2010 to market values. The current TOMS calculations require that the margin is apportioned by reference to the actual costs incurred in putting together a package, whereas the European Court of Justice decision in 'MyTravel' ruled that, where it is possible to establish an appropriate market value for the part of the selling price which corresponds to in house supplies, this should be used to apportion the selling price between in house

and bought in components. The margin can then be calculated on each of these elements and VAT accounting calculated accordingly. However, the cost based method may be used where this accurately reflects the actual structure of the package, although market values may provide a more appropriate basis of calculation and HMRC accept that such matters need to be considered on a case by case basis.

Contact

Please do not hesitate to contact Andrew Burnham to discuss these forthcoming changes in greater detail.

T: 020 7429 4100

E: andrew.burnham@mhlip.co.uk

To find out more visit
macintyreHUDSON.co.uk