New VAT rules for Belgian Tour Operator Margin Scheme from 25 May 2019

A law modifying the Tour Operator Tour Scheme (TOMS) was published in Belgian Official Journal on 15 May 2019 (Dutch | French). The main consequence is that the scheme will also apply in a B2B context, whereas in Belgium, this was traditionally only applied in a B2C context. The law will enter into force on 25 May 2019.

The law of 2 May 2019 was adopted to align Belgian VAT legislation with the CJEU’s “Commission vs. Germany” case of 8 February 2018 (C-380/16). In this case, the Court stated that the notion of “traveller” mentioned in articles 306 to 310 of the VAT Directive should be interpreted in a broader sense and should not be limited to natural persons. By interpreting the “traveller” notion in a context that excludes supplies of travel services to business customers from the TOMS, the Court found that Germany had infringed its VAT Directive obligations.

Therefore, in order to comply with CJEU case law and European legislation intentions, as well as to avoid further confusion regarding the interpretation of the “traveller” notion, the new law modifies the Belgian VAT Code’s wording by replacing “traveller” with “recipient”. By doing so, it is now clear that TOMS is applicable to travel services provided to all types of clients, namely private consumers and business customers.
The new regime’s practical impact is not fully clear yet. However, it is recommended for tour operators and travel agents, as well as vendors providing components of travel packages, to re-assess their current VAT position once additional details are available. Companies that organise meetings, incentives, conferences and events (MICE business) should also re-evaluate their VAT position.

The law will enter into force on 25 May 2019. The Belgian tax authorities are expected to issue new guidance on the Belgian TOMS in the near future.

Contacts

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