



Tax News - VAT

Tax authorities issue guidance on TOMS

The Cyprus Tax Department issued guidance (Interpretative Circular No. 223) on 24 January 2018 that addresses the application of the special EU Tour Operators Margin Scheme (TOMS) following the decision of the European Court of Justice (CJEU) issued on 23 September 2013. Although the authorities intend to apply the circular with retrospective effect from 23 September 2013, the date of the CJEU decision, this may not be possible due to previously issued guidance.

The TOMS, found in the principal EU VAT directive, applies to transactions carried out by travel agents who deal with customers in their own name and who use supplies of goods/services provided by other persons. According to the directive, travel packages provided by tour operators are considered a single travel service subject to the TOMS, with a place of supply being in the member state of the tour operator (rather than the member state in which the supply is made, as would be the case under the normal VAT rules). The taxable base for such services is the operator's profit margin, which is the difference between the total price (VAT exclusive) of the package to be paid by the traveller and the actual cost to the travel agent in the member state in which the travel agent is established.

In 2008, the European Commission initiated infringement proceedings against several EU member states on the grounds

that their TOMS legislation violated the EU VAT directive, primarily because the relevant domestic rules did not allow travel packages sold to customers that resold the packages to the public to benefit from the TOMS. In its landmark decision issued in 2013, the CJEU held that both supplies to private travellers and supplies made on a business-to-business basis (i.e. both retail and wholesale supplies) fall within the scope of the TOMS regime.

Until now, in Cyprus, TOMS applied to supplies made to final consumers or to businesses for their own consumption, but travel services supplied to another business for onward sale were subject to the normal VAT rules.

The new circular released by the Tax Department revises the VAT treatment in relation to margin scheme supplies to taxable persons that acquire travel package services for their own use or for resale. The supply of a package of travel services that includes a margin scheme supply will fall within the scope of the TOMS when the services are provided to:

- Individuals;
- Other tour operators for resale to the public (i.e. wholesale supplies); and
- To VAT-taxable persons established outside Cyprus for their own use.

Based on the above, VAT should be accounted for on the profit margin on all transactions, both retail and wholesale supplies, of tourist packages.

How can Deloitte assist you

The Indirect Taxation Team of Deloitte is at your disposal to discuss any potential impact on your activities in relation to the above and advise you on any other VAT issues.

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