



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 881

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN: Croatia
REFERENCES: Articles 306 to 310
SUBJECT: Scope of the special scheme for travel agents

1. INTRODUCTION

Croatia submitted to the VAT Committee a question with regard to the special scheme for travel agents regulated by Articles 306 to 310 of the VAT Directive¹.

Croatia seeks clarification if the special scheme for travel agents applies in case travel agents

- a) supply services to taxable persons,
- b) supply services within one Member State only or
- c) supply a single service.

The question and analysis submitted by Croatia are attached in annex.

2. SUBJECT MATTER

The Commission services took note that by submitting the question Croatia requests measures at the European Union level in order to ensure that the same rules apply to all travel agents regardless in which Member State they are established.

Croatia also indicates that travel agents located in Croatia point out that in some Member States the special scheme only applied to travel packages and not to single services and that the special scheme for travel agents did not apply to transactions provided within some Member States. The travel agents also communicated that some Member States do not apply the judgment of the Court of Justice of the European Union (CJEU) in the case *Commission vs Spain*², in which it is stated that the special scheme for travel agents applies regardless who the customer is.

3. THE COMMISSION SERVICES' OPINION

The Commission services agree to the brief analysis by Croatia and acknowledge that the application of the VAT Directive and the recent EU case-law concerning the special scheme for travel agents merit further scrutiny.

The opinion expressed is based on the EU case-law made up of judgments from the CJEU that determine the scope of the special scheme for travel agents.

- a) Services supplied to taxable persons

With regard to services supplied to taxable persons, it should just be noted that the CJEU held both in its judgments in the case *Commission vs Spain* and in the cases involving

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

² CJEU, judgment of 26 September 2013 in case C-189/11, *Commission v Kingdom of Spain*.

other Member States³ that Articles 306 to 310 of the VAT Directive must be interpreted by following the customer-based approach.

b) Services supplied within one Member State only

It is the opinion of the Commission services that services supplied by travel agents cannot be excluded from the application of Articles 306 to 310 of the VAT Directive, merely because the supplies are made in one Member State only.

In its judgment in the joined cases *Madgett and Baldwin*⁴ the CJEU clarified that although the principal reason for the special margin scheme under Article 26 of the Sixth VAT Directive⁵ is the existence of problems in connection with travel services which include elements in more than one Member State, the wording of that provision is such that it applies also to supplies of services within a single Member State.

c) The supply of a single service

It is the opinion of the Commission services that services supplied by travel agents cannot be excluded from the application of Articles 306 to 310 of the VAT Directive, merely because the supply consists of a single service.

In its judgment in the case *Van Ginkel*⁶ the CJEU noted that Article 26(1) of the Sixth Directive does not contain any provisions expressly requiring that, for the application of the special system of VAT envisaged for travel agents, the transport of the traveller to and from his accommodation shall be arranged by the travel agent himself. The exclusion from the field of application of Article 26 of the Sixth Directive of services provided by a travel agent on the ground that they cover only the accommodation and not the transport of the traveller would lead to a complicated tax system in which the VAT rules applicable would depend upon the constituents of the services offered to each traveller. Such a tax system would fail to comply with the aims of the directive.

Subsequently, in its judgment in *Minerva Kulturreisen*⁷ the CJEU pointed out that it cannot be inferred from the judgment in *Van Ginkel* that any individual service provided by a travel agent or tour operator falls under the special scheme provided for in Article 26 of the Sixth Directive. Consequently, the wording of that provision makes clear that in order for a travel agent's service to come under the special scheme defined therein, it must relate to a journey.

³ CJEU, judgments of 26 September 2013 in cases C-189/11, *Commission v Kingdom of Spain*, C-193/11, *Commission v Republic of Poland*, C-236/11, *Commission v Italian Republic*, C-269/11, *Commission v Czech Republic*, C-293/11, *Commission v Hellenic Republic*, C-296/11, *Commission v French Republic*, C-309/11, *Commission v Republic of Finland* and C-450/11, *Commission v Portuguese Republic*.

⁴ CJEU, judgment of 22 October 1998 in joined cases C-308/96 and C-94/97, *Madgett and Baldwin*.

⁵ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1). Article 26 of the Sixth Directive is now to be found in Articles 306 to 310 of the VAT Directive.

⁶ CJEU, judgment of 12 November 1992 in case C-163/91, *Van Ginkel*.

⁷ CJEU, judgment of 9 December 2010 in case C-31/10, *Minerva Kulturreisen*.

Furthermore, the CJEU emphasised in its judgment in *Minerva Kulturreisen* that where a service is not coupled with travel services, in particular transport and/or accommodation, it does not come within the scope of Article 26 of the Sixth Directive.

Additional remarks

The Commission services consider it useful to add that in its judgment in *Madgett and Baldwin* the CJEU also clarified that

- the underlying reasons for the special scheme for travel agents and tour operators are equally valid where the trader is not a travel agent or tour operator within the normal meaning of those terms, but effects identical transactions in the context of another activity, such as that of hotelier;
- the special scheme for travel agents, constituting an exception to the normal rules of the VAT Directive, must be applied only to the extent necessary to achieve its objectives and must therefore be held to apply only to the services bought in from third parties.

4. DELEGATIONS' OPINION

Delegations are invited to express their views on the question raised by Croatia and on the observations made by the Commission services.

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Question from Croatia

Subject: Special scheme for travel agents

Ministry of Finance – Tax Administration is seeking the opinion of the VAT Committee at the European Commission does the special scheme for travel agents prescribed in Articles 306th to 310th of Council Directive 2006/112/EC apply

1. on the transactions that travel agents provide within the country,
2. in the case when they account only one service,
3. when the buyer is taxable person.

Croatian Value Added Tax Act (Official Gazette No. 73/13, 99/13, 148/13, 153/13 and 143/14, hereinafter: VAT Act) is fully in line with Articles 306 to 310 of Council Directive 2006/112/EC.

According to Article 91, paragraph 1 of VAT Act special scheme for travel agents is apply to transactions carried out by travel agents who deal with customers in their own name and use supplies of good or services provided by other taxable persons.

According to VAT Act special scheme for travel agents is not optional, and the taxpayer cannot choose between special scheme and regular taxation procedure. Special scheme applies regardless of whether the travel agents use supplies of goods and services tax payers from EU, third countries or domestic taxpayers, and also special scheme for travel agents is apply on the transactions that travel agents provide within the country. Also according to VAT Act special scheme for travel agents is apply to transactions carried out by travel agents who deal with customers in their own name and use supplies of good or services provided by other taxable persons, and even when they account only one service.

In connection with the above we have certain questions concerning the correct application of Articles 306th to 310th of Council Directive 2006/112 EC, because they not specifically regulated does special scheme for travel agents apply

- on the transactions that travel agents provide within the country,
- in the case when they account only one service,
- when the buyer is taxable person.

However, according to our understanding of Article 306 of Council Directive 2006/112/EC the application of a special scheme for travel agents does not depend are the services performed within a single Member State or between several Member States and the special scheme applies to all transactions carried out by travel agents who deal with customers in their own name and use supplies of good or services provided by other taxable persons, not only on travel packages. Article 306 of Council Directive 2006/112/EC prescribes that special scheme apply for transactions of travel agencies that

operate with "clients", but is not specifying who can be a client (another taxpayer, travel agency or citizen).

In connection with the definition of "client" the ECJ in case C-189/11 of 26 September stated that the special scheme for travel agents applies regardless who receives that services, from which we consider that special procedure applies regardless of who customer.

We consider that the provisions prescribed by the VAT Act are not contrary to Directive 2006/112/EC, but we ask for the opinion of the VAT Committee that would be not doubtful the application of the provisions of Articles 306th to 310th of Council Directive 2006/112/EC. We believe that is necessary to take all measures at EU level that all travel agents apply the same rules regardless in which Member State they established its business.

In this regard, we believe that it is necessary to forge a unified stance binding at EU level to all travel agencies apply the same rules regardless of which Member State they are located.

Because of these problems, travel agents increasingly mentioned that it would move they business operations to a third country which is not in the interest of Croatia, because Croatia is a tourist country and tourism is one of the main branches of the economy. Furthermore they point out that some Member States the special scheme applies only to travel packages and not on individual services and also that some Member States special scheme for travel agents not apply on transactions that are provided within these Member States. Also they note that some Member States do not apply the judgment of the ECJ C-189/11 of 26 September 2013, in which it is stated that the special scheme for travel agents applies regardless who receives these services.