



TOMS CHANGES POST BREXIT

1. WHAT IS CHANGING WITH TOMS POST-BREXIT?

The key point here is that only the margin made on UK travel will be subject to the standard rate of VAT. The calculation itself will operate in exactly the same way as before, under the same methodology and principles, but now there will be a split between UK travel (standard rated margin) and the rest of the world (zero rated margin).

We are still waiting for confirmation on whether transport companies will remain in place, or whether instead HMRC will allow businesses to zero rate the margin made on transport services within the TOMS calculation (the "pre-1996 rules"). This should be confirmed within the next week or so.

TOMS will remain optional for wholesale businesses.

So, detailed TOMS calculations will still be necessary for those selling any UK travel, and for those selling services in any location which include a mix of TOMS and non-TOMS (in-house) services. However, VAT payable is likely to reduce substantially for many businesses.

2. WHAT DOES THIS MEAN FOR THOSE SELLING TOMS SERVICES TAKING PLACE OUTSIDE THE UK ONLY?

If all your travel services take place outside the UK, then for trips departing 1 January 2021 onwards, the full TOMS margin will be zero rated. A summary calculation should still be carried out for audit trail purposes but essentially will always result in zero VAT being paid in the UK.

This is the case regardless of whether the travel being sold is wholesale or retail.

If you sell packages which include TOMS services and in-house and/or non-TOMS services (for example events companies who have their own management services plus other non-TOMS service such as AV and presenters fees, or travel businesses which use their own staff as guides or luggage operators) you will still need to consider the UK VAT treatment of the in-house proportion of the services. For example, if an event is sold to a UK business for own use, although the travel aspect may now be zero rated, the event management fee will not be. This will still mean a per-event TOMS calculation is needed, to ensure that the VAT is accounted for appropriately on the non-TOMS aspect.

At present, we don't have a clear idea of how the EU 27 may react to this, and whether there may be possibilities of VAT accounting requirements in those other member states. We have set out further comments on this in section 7 below.

3. WHAT DOES THIS MEAN FOR THOSE SELLING UK BASED TRAVEL SERVICES?

Well, its not bad news for those selling UK based travel services, but unfortunately there is no "big win" here yet. VAT will still be payable on the margin made on UK travel, so it may mean that very little changes.

One point that many wholesale traders will be relieved to hear is that there is no suggestion that TOMS will apply to wholesale travel in the UK. This means that those who are currently enjoying the advantages of the VAT position for UK wholesale travel packages sold to overseas businesses will continue to have that advantage.

One concern that some may have is that it may now be cheaper for a business in the EU to sell a UK holiday. This is because for EU businesses, the margin made on UK travel under TOMS will now be zero rated as a non-EU destination. It may be that this creates opportunities for sales to EU businesses on a wholesale basis (as above, the VAT treatment for these types of sales is preferential).

4. WHAT DOES THIS MEAN FOR BUSINESSES SELLING UK AND NON-UK TRAVEL?

For those selling a mixture of UK and non-UK travel, you will need to ensure your calculation is apportioned in the same way that we currently apportion travel between EU and non-EU.

We would advise you now to ensure that your systems can pick up the costs per location correctly. One client we spoke with last week said that they currently had one set of cost codes for all UK and EU costs, and another for non-EU. This is fine until 31 December, but after that the UK element will need to be distinguished from EU.

There is no need to split out turnover between any of these categories for those within the global accounting method (i.e. the standard TOMS calculation).

It may also be a good time to consider whether the global method or the UK-only method (formerly "EU-only") is more advantageous.

5. WHAT ABOUT TRANSPORT COMPANIES?

Although we do not have confirmation of this yet, there is a possibility that transport companies will become unnecessary anymore. A proposal has been made that transport becomes zero rated within the UK version of the TOMS calculation (and of course transport outside the UK will be zero rated anyway). This point is yet to be confirmed with HMRC but we will update this once it has been confirmed either way.

6. WHAT ABOUT TRANSITIONAL ARRANGEMENTS?

It will be necessary for businesses who do not have a 31 December financial year end to ensure that their TOMS accounting reflects the changes partway through the year.

HMRC have agreed that businesses can choose one of the following methods:



- Split the year into two separate calculations - one for the year to 31 December 2020 and one for the year 1 January 2021 to financial year end; and
- Keep the single calculation, but apportion the margin such that EU costs are only attributed to the standard rated margin when they relate to pre-2021 departures.

Businesses may also like to ensure that their provisional percentage for the 20/21 tax year reflects the change in VAT rates for EU services so that VAT is not paid excessively on the provisional basis. There will be some permitted adjustments agreed with HMRC for businesses with both UK and non-UK travel. If businesses sell non-UK travel only, HMRC agree that the provisional percentage used post-1 January 2021 can be zero.

7. WHAT ARE THE POTENTIAL RISKS AND AREAS OF UNCERTAINTY?

There is a risk that UK tour operators will at some point in the future need to register and account for VAT locally in the EU. Strictly speaking, this has always been necessary because non-EU businesses are not protected by the simplicity of TOMS. However, this is another VAT "grey area" and in practice, EU countries have not yet taken the point on making non-EU businesses register and account for VAT locally. Most likely, this is because it has been too difficult to enforce.

The concern here is that it may become much more straightforward to enforce on UK businesses, whose VAT affairs are already within the EU system and are much "closer to home". This area as a whole is something the EU Commission has been considering ever since KPMG's TOMS Reform study of 2017, and it may become more topical post-Brexit. There has not yet been anything announced on this, and our guess is that if it is to happen, it will not be for some time yet. However, we would keep this in mind going forward.

For UK travel, there is potentially a risk of price undercuts from EU tour operators who will now be treating the margin made on these produced as zero rated within their own TOMS calculation. We do not yet know if the UK will impose VAT of some description on EU operators.

8. RECOMMENDATIONS

We would recommend every business which is currently using TOMS to review their position in light of the proposed changes to confirm:

- You understand how the changes will affect your VAT liability so that you do not over- or under-account for VAT going forward.
- You ensure your systems can pick up any changes prior to 1 January 2021.
- You consider possible future risks and how these may affect your business.
- You ensure that your past TOMS position is up to date and that, if VAT has been overpaid under TOMS in the past, you seek to rectify this. We can, of course, advise on this and handle the overpayment claim with HMRC.



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