



Study on the review of the VAT Special Scheme for travel agents and options for reform

Final Report

TAXUD/2016/AO-05

Written by KPMG
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Executive Summary



1 Executive Summary

This report is prepared by KPMG to provide the European Commission's Directorate General for Taxation and Customs Union with an overview of the functioning of the Special Scheme for travel agents ("Special Scheme") contained in Articles 306 to 310 of the VAT Directive.¹ It also addresses options for reform in respect of the Special Scheme.

It reviews the history of the Special Scheme and the influence of relevant judgments by the Court of Justice of the European Union ("CJEU") as well as the views expressed by the Court on the proper functioning of the scheme.

The Special Scheme has now been in place for over 40 years and must function in a world that has changed significantly since its inception. These years have seen enormous growth in international travel, changes in technology, widespread deregulation (particularly in the airline industry) and disruptive business models that have led to ways of conducting business that would not have been in the mind of the original drafters of the law. The combination of these factors, coupled with evolving CJEU case law, have led us to conclude that modernisation is needed.

Competitive neutrality means that tax-driven price differences should be eliminated irrespective of how a transaction occurs. The report identifies two principal distortions of competition that should be addressed in order to ensure this happens. The first involves varying definitions of what constitute "travel facilities" applied in Member States and secondly, the treatment of B2B transactions. This latter distortion is of particular concern to those sectors of the industry whose activities, by their very nature, are focused on corporate clients.

The report also identifies material issues where a level playing field is not assured. Differences in VAT treatment in practice occur between EU-established and non-established suppliers. In addition, the requirement for the margin to be calculated on a transaction-by-transaction basis is outdated and unsuited to the complexities of actual business. Non-deductibility of input tax by a travel agent is also a significant drawback of the scheme when providing services to a business client.

As with any tax system, any critical review will always revert to its role in the raising of revenue. Our indicative estimate of the amount of VAT actually collected under the Special Scheme amounts to circa €1.9bn whilst associated irrecoverable VAT is indicatively estimated at circa €5.6bn². In aggregate, these are significant figures but should be read in the context of an EU VAT system that raises almost €1tn annually³.

We have concluded that the underlying concepts and the general manner in which the scheme functions are

still fit for purpose, meeting the objectives of providing simplicity and raising revenue, particularly where B2C transactions are concerned. The scheme however was conceived to deliver these objectives in a significantly different environment. It now needs to be modernised to ensure that it continues to deliver for another 40 years.

1.1 Background to this report

The VAT Directive makes special arrangements for travel agents or tour operators (hereinafter we use the collective term 'travel agents') who deal with customers in their own name and use the supplies and services of other businesses (taxable persons) in the provision of travel facilities.

The resultant Special Scheme was intended to simplify the application of the VAT rules for these businesses who otherwise would have faced practical difficulties and complexities. At the same time it sought to ensure that tax accrues to the country where the travel services were actually provided. Although it seemed to be a very practical and simple taxation scheme for those concerned, differences in interpretations and in application in various Member States have arisen. Over time the practical implementation of these measures has generally been seen as one of the more complex areas of VAT demanding specialist knowledge and experience.

Moreover, a changed business environment has involved taxpayers and tax administrations dealing with outdated legislation that, even if applied consistently, provides a number of functional challenges to contemporary businesses. The actions of legislators and regulators have in many instances facilitated the process of change and ensured a reasonable level of certainty. In the travel sector, the Commission's recent updating of the Package Travel Directive⁴ is an example of this. Modernisation of the VAT rules has however proven more difficult. A previous attempt at reform did not come to fruition due to a lack of consensus in the European Council.

The travel industry is multi-layered, complex and, like any dynamic business sector, does not remain static. It is hardly surprising that a tax system unchanged in 40 years is often difficult to apply in practice and has led to greater controversy and subsequent litigation as the business models have developed.

Continued growth is forecast for the sector in the EU. Europe has a larger share of the global market than any other part of the world and European destinations dominate any listing of popular choices. Its contribution to GDP and to employment is widely acknowledged and a range of public policy priorities are targeted at ensuring that these benefits endure and grow.

¹ Council Directive 2006/112/EC

² These figures should be considered to be only indicative estimates of potential VAT impacts. All the underlying data is necessarily either approximation or sample-based. Some of the approximations would

imply that the estimates are more likely to be over-estimates than under-estimates but, overall, we cannot confirm this

³ Figure mentioned in the recent Action Plan on VAT COM (2016) 148 final.

⁴ Directives 2015/2302/EU

1.2 Outline of the approach taken

An aim of the study is to evaluate the functioning of the current VAT rules provided for in the Special Scheme and identify potential distortions of competition. Services originating in another country should be taxed in the same way for VAT purposes as domestic services. In this respect, it is unnecessary to demonstrate conclusive distortion of competition by means of statistics alone. It is sufficient that distortion of competition should be the likely effect of differences in taxation.⁵

To this end, KPMG queried how the Special Scheme functioned at national level across the Member States as well as how businesses perceived its impact. This was not limited to KPMG clients alone but took an extensive focus, gathering the views of a wide cross-section of the industry as well as national and international trade and professional bodies.

Based on the data received from business as well as national and EU bodies (notably EUROSTAT and, where available, national tax statistics), we undertook a quantitative analysis of the relative significance of distortions of competition we identified and an estimation of the quantitative impact of the identified options for reform on national budget revenues for Member States.

In line with the Tender Specifications identified by the Commission Services in respect of the project, this study reflects the UK as a member of the European Union.

1.3 Structure of the report

Section 2 sets out the principal parameters of the study and its objective which, starting from the original aims of the legislators in 1977, is to consider whether the way the Special Scheme functions today meets those aims or whether remedial action is needed. It describes the approach to information gathering and sets out an economic profile of the industry and its significance as well as looking at the hallmarks identifying how tax can distort the conditions of competition.

Section 3 describes in detail the history and functioning of the Special Scheme. It recounts the experiences of previous attempts at reform and includes a detailed case-by-case analysis of relevant case law of the CJEU addressing both infringement proceedings and referrals. In considering what the Court has said, particular attention is given to the impact on the functioning of the Special Scheme as well as the constraints created by the obligation to avoid competitive distortion. The Court's understanding of the purpose of the Special Scheme as set out in these judgments has underpinned our evaluation of the Special Scheme and the consideration of reform options in sections 6.

⁵ Article 113 of the Treaty on the Functioning of the European Union (2012/C-326/01) provides for the harmonisation of VAT legislation to the extent necessary "to avoid distortion of competition"

⁶ Study on the impact of EU policies and the measures undertaken in their framework on tourism, (prepared by Risk & Policy Analysts for DG

1.4 Economic analysis

Section 4 considers the five business models identified by Commission studies⁶ as operating in the tourism industry, and how VAT impacts on the respective supply chains. The section provides, on this basis, an economic analysis of the industry. These models or business categories must be seen as usefully indicative rather than reflecting a definitive or exclusive description, with many travel businesses spanning two or more of them. They are however a good basis on which to describe and analyse the manner in which VAT functions in the travel market. Due to inconsistencies in how the rules are applied by different Member States, it is not always easy to make a "like-for-like" comparison. Nevertheless, this analysis establishes a firm basis for the more detailed technical analysis in section 5 and gives context to the evaluation of alternative reform options at section 6.

The total annual turnover of the EU travel and tourism sector is calculated at around €187bn per annum⁷. In broad terms, the Special Scheme taxes only travel, supplied by EU established businesses, to EU destinations. We have indicatively estimated the value of irrecoverable input tax generated by the scheme at circa €5.6bn annually and output tax (collected on supplies) at circa €1.9bn. The majority of the tax collected via the Special Scheme therefore takes the form of irrecoverable input tax, which generally is collected in the Member State of destination. The estimated value of Special Scheme output tax is smaller in total, and is collected in the Member States in which the respective travel businesses are established.

Although the fundamental feature of blocked input tax recovery is applied relatively consistently across the EU and affects all business models in a similar manner, there are significant differences in implementation across Member States. This is explored in section 5. They can impact the different supply chains associated with the five key business models in different ways. This section therefore provides important context for the subsequent section of the report.

1.5 Evaluating the functioning of the current rules

Section 5 looks in detail at how the provisions of the Special Scheme are applied by the Member States. The two key aims of the Special Scheme are simplification and efficient revenue allocation between Member States. Regarding the first of these aims it can be said that this has been achieved and that travel agents appreciate the benefit of that simplification, despite the numerous inconsistencies in application as discussed below.

In the majority of cases it appears that these discrepancies arise simply from differing local interpretations of the VAT Directive and/or the case law

Enterprise and Industry, September 2012) and the Study on the Competitiveness of the EU tourism industry (prepared by Ecorys, October 2009)

⁷ Based on data identified for 2015 and as described in Section 4.3.7

of the CJEU. It may be considered that this scope for differing interpretations results from the absence of precise, prescriptive provisions in the VAT Directive or implementing regulations. A common feature across the majority of Member States is that local legislation and local published tax authority guidance are often lacking the precision or detail necessary to provide clarity on the VAT treatment of particular scenarios. As a result, accepted local practice can be inconsistent even within a given Member State (and Annex 1, which summarises differences between Member States, should be read in this context).

Whilst the inconsistencies create uncertainty and difficulties for taxpayers operating in multiple Member States, we have concluded from a quantitative perspective that many create neither a material issue, nor a distortion of competition, in aggregate for the EU as a whole. Even so, on a qualitative basis, given the difficulties they create it would be advisable to seek greater harmonisation and to address these points in the course of reform.

However, a limited number of issues are more significant and warrant further examination. First, we have concluded that the different treatment of wholesale supplies and, secondly, the differing approaches to the meaning of travel facilities create a distortion of competition. In addition we have concluded that the need to calculate the margin VAT on a transaction by transaction basis and the inequality between third country suppliers and those established in the Member States are all material issues for the industry that merit a resolution. Further, we have concluded that the inability of a travel agent to deduct input tax on travel supplies in respect of B2B services, is a significant drawback of the Special Scheme.

Precise quantification of every potential distortion of competition was not possible as part of this study, although the quantitative analysis at section 4 has informed our conclusions. In the absence of comprehensive, publicly available economic data, this study seeks to extrapolate and approximately quantify the identified distortions of competition by reference to the likely quantum of “tax collected” in real-world examples illustrating each of the five business models identified. Even if the estimates of total Special Scheme revenue and therefore irrecoverable input tax can be seen as modest, an issue manifests in the fact that many travel agencies in the B2B sector operate as intermediaries and therefore outside the Special Scheme, thereby reducing VAT revenues under the

Special Scheme. In the DMC sector the issue is more the inconsistency in the application of the Special Scheme to wholesale supplies and it is also probable that VAT revenue would be greater if the rules were harmonised.

1.6 Options for reform

In section 6 we explain how we have arrived at the conclusion that reform of the Special Scheme is desirable.

We have concluded from industry feedback that there is a lack of desire to abolish the Special Scheme entirely. Nevertheless there is scope for change in addressing the issues detailed in section 5.

The question of how travel agents established outside of the EU who sell to EU consumers might be brought within the scope of EU VAT needs to be addressed. This section looks at how this might be done in practice.

By their nature, many of the options under consideration here would involve operators being required to pay VAT in multiple Member States. If the Commission considers going in that direction, in future, we believe that an enhanced form of the current Mini One Stop Shop (“MOSS”) arrangement might be available to assist travel agents in their compliance with regard to B2C supplies.

We would like to formally acknowledge and thank the numerous businesses, travel associations, tax authorities and experts who contributed to this study.

This study focuses in particular on potential reform options identified by the Commission Services. We have considered the possible effects of each option but have not set out to reach final conclusions on how reform of VAT as it affects travel agents should develop in detail. Such conclusions or recommendation on the details and implementation of any preferred option go beyond the scope of this study. We have therefore outlined our view of the likely high-level effects of the options, informed by our earlier analysis. It has to be acknowledged that there can be different perspectives and issues in respect of the reform options, but we believe our assessment may serve as a framework for future debate and further analysis which the Commission will need to undertake.

Introduction



2 Introduction

2.1 Objectives of the study

This study on the Special Scheme has been commissioned by the Taxation and Customs Union Directorate General of the Commission (DG TAXUD). The overall objective is to consider how the original objectives of the scheme can best be delivered, whether these remain valid or are in need of updating and if there is still a need for the Special Scheme.

This study considers issues by jurisdiction, size and type of business and then extrapolates to make findings at an EU level.

2.2 Scope

The following parameters define the scope of the study:

- Geographic scope; and
- Business models covered.

With regard to the **geographic scope of the study**, countries addressed in the report comprise the 28 EU Member States as well as certain key non-EU jurisdictions i.e. Turkey, Switzerland, Norway, the US and Canada.

The **business models** covered in the report comprise:

- Tour operators - ranging from large international tour operators to small independent niche operators (mainly B2C). Tour operators can also operate “online” for this market
- Travel Management Companies (TMC) - which mainly focus on business travel as intermediaries and serve primarily corporate customers (B2B)
- Travel agents - covering mainly the leisure market as intermediaries. Travel agents can operate as “brick & mortar” enterprises or as “online” agents or both (mainly B2C)
- Destination Management Companies (DMC) - which are mainly operating in the inbound segment (mainly B2B)
- MICE (Meetings, Incentives, Conferences and Events) organisers – which are mainly operating in the corporate segment (B2B)

With respect to the availability of underlying economic data, this study takes into account pre-existing data sources such as EUROSTAT data, for example, that help to provide a wider economic backdrop to the travel industry in the EU as a whole. As these data sources do not distinguish between the VAT treatments applicable to respective sales and purchases, specific surveys (questionnaires) have also been used to gather additional detailed VAT data from a representative sample of businesses. The extent of such data is limited by the willingness of businesses to respond with what may be perceived as commercially sensitive financial information, and is further constrained by the practicalities of conducting a survey within the limited timeframe. Extrapolation methodologies have been used to combine survey

responses with macro-economic EUROSTAT data to provide indicative figures at an EU level which we believe to be more than reasonably informative for the purposes of the study.

2.3 Surveys

This section of the report outlines the approach to usage of surveys (questionnaires) and the responses thereto.

Surveys have been used in this study for two purposes:

- To collate information on the application of the Special Scheme local VAT rules from KPMG specialists across the EU; and
- To collate financial information from relevant businesses, both within and outside the EU, with a view to quantifying the impact of the Special Scheme VAT rules.

With regard to surveys issued to KPMG VAT specialists, a series of questions (the “KPMG questionnaire”) was designed to obtain responses that can be meaningfully viewed from a “high-level”, whilst also capturing specific local detail wherever possible. This was achieved by a multi-stage questioning format; seeking first to gather a high-level initial “yes” or “no” answer which can be quickly compared between EU Member States, and subsequently to gather qualifications, caveats and explanations in longer-form text answers to reveal more detail. Questionnaires were issued through an online platform in order to ensure consistency of responses and to provide a clear audit trail.

With regard to surveys issued to travel businesses, to maximise the response rate a single questionnaire (“business questionnaire”) was prepared, minimising the burden on respondent businesses. The business questionnaire was issued in a Microsoft Excel document format to ensure universal accessibility – whilst drop-down lists and table structures were employed for consistency of responses. To allow for consolidation of the survey responses into EU-wide economic models, this business questionnaire was formatted in a consistent manner regardless of the country of response.

We sent this business questionnaire to KPMG clients and known travel businesses within each of the business models identified in section 4. We also sent this business questionnaire to ETOA (European Tourism Association); ECTAA (European Travel Agents' and Tour Operators' Associations); European Federation of the Associations of Professional Congress Organisers (EFAPCO) as well as similar national bodies in key Member States, for electronic distribution to member businesses.

While responsiveness and quality of replies could not be guaranteed as this depends on the goodwill of respondents, we sought to obtain responses to the business questionnaire from at least 10 businesses per business model across each of Germany and the UK,

plus a further 10 businesses per business model from the other 26 Member States, together with Turkey and Switzerland.

The final responses utilised in the calculations covered 98 businesses in 18 Member States, spanning all five business models. The total turnover of these businesses represents approximately 10% of the estimated EU market (circa €19bn). No responses were received from non-EU businesses. Meanwhile by turnover, 94% of the utilised respondent businesses were based in only five Member States.

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2.4 Quantitative analysis

The approach to quantitative analysis is as set out below.

Quantitative analysis is required in this study in respect of:

- The throughput of input and output tax in each of the 5 key business models (addressed in section 4 of this study);
- Quantifying the relative significance of potential distortions of competition and with regard to B2B supplies, quantifying the non-deductibility of input tax in each of the 5 key business models (addressed in section 5 of this study); and
- Estimating the quantitative impacts of each option on national budget revenues for each Member State (addressed in section 6 of this study).

This study takes into account pre-existing data sources such as EUROSTAT data, which does not distinguish between the VAT treatments applicable to respective sales and purchases, in addition to data gathered by the surveys described at section 2.3.

Our figures are based on the information gathered in the business questionnaire, scaled to and based on industry turnover figures for the EU as a whole.

Whilst at the outset it was hoped that figures could be scaled by each Member State and by each business model, the relatively small sample size in the majority of Member States meant that specific quantification of any given issue in a particular Member State is not possible. However, as an indication of relative value, the relative sizes by country and by business model of the figures in the tables at Figs. 4a and 4b in section 4 (turnover by Member State and turnover by business model) should be borne in mind.

In section 6 our consideration of the quantitative impacts of identified reform options on national budget revenues is based on the quantitative outputs from

section 5 (i.e. the percentage impact, relative to turnover, on our sampled businesses) which we scaled based on tax figures where these could be obtained from the respective tax authorities. Where data was not forthcoming from all tax authorities, an approximation has been made based on the limited information available from the business questionnaire (e.g. to extrapolate from the % impact on our sampled businesses the estimated impact on total turnover of the relevant market in each Member State, where such figures are available).

2.5 Introduction to the travel industry

The travel sector is one of the most important parts of the global economy. In 2016, according to the World Travel and Tourism Council,⁸ 10% of all employment worldwide (109 million jobs) was contributed directly by travel and tourism and the sector contributed US\$2.3tn directly to global GDP.

The sector has grown significantly in recent years and is forecast to continue to grow at a fast rate driven by low airfares and various business models that disintermediate traditional sales channels.

Travel is an important part of the EU economy in particular. Europe is the largest global travel and tourism market and attracted 620m of the 1.2bn international visitors in 2016, almost twice as large as the second largest market.⁹ Several Member States are amongst the most visited places in the world and travel and tourism spending in the EU is highly significant. However, growth in EU tourism is forecast to be slower than that to be achieved in many other parts of the world at circa 2% growth in 2016.¹⁰

In this study, we use the definition of travel and tourism adopted by the World Travel & Tourism Council, namely “the activity of travellers on trips outside their usual environment with a duration of less than one year”. It includes travel for both leisure and business purposes.

It can be seen that there are broadly three forms of tourism:

- Domestic tourism, i.e. residents of a country travelling only within that country
- Inbound tourism, i.e. non-residents travelling to a country;
- Outbound tourism i.e. residents of one country travelling within a different country.

The travel sector is complex, comprising intermediaries of varying descriptions (tour operators, travel agents etc.) and numerous principal suppliers of services both directly to travellers and to intermediaries (for example hotels, airlines, attractions and car rental companies). Distribution of travel products has become complex, often involving numerous parties in the distribution chain. This complexity contributes to difficulties in compliance with VAT requirements.

⁸ Travel & Tourism: Global Economic Impact & Issues 2017
⁹ World Economic Forum – Travel & Tourism Competitiveness Report 2017

¹⁰ European Travel Commission Report – Trends and Prospects 2017

The sector has changed enormously in recent years, largely due to technological advances but also because of deregulation. These developments in technology have led to significant changes in the ways in which travel is sold and distributed. For example, 76% of UK consumers purchased a holiday online in 2016,¹¹ compared to 49% three years earlier.¹² This is unlikely to be an isolated development and the same trend can be expected in other EU countries. These technology changes are a significant contributory factor to a perception that the VAT rules have become outdated and require modernisation to reflect how business is now conducted.

2.5.1 Technological change

Technological change has been highly significant for many in the travel sector with new sales channels that did not exist prior to 1995. For example, it has meant disruption for many travel agents who have had to adapt to distribution revolutionised by technology. The growth of online travel agents and distribution direct by principal suppliers has been marked and has meant that many traditional travel agents have had to adapt or disappear. It has also caused a blurring of the distinction between traditional travel agents and tour operators, often creating uncertainty over the status of the supplier for VAT purposes.

These technological changes have facilitated a growth of Fully Independent Travellers (“FIT”) who make their own bookings, e.g. holidays and other forms of travel organised by the FIT via separate bookings of services from a range of suppliers. Whilst it may be argued that such a process has been to the benefit of consumers who enjoy greater choice, such DIY bookings fell outside the ambit of the Package Travel Directive¹³ leaving consumers unprotected in the event of the failure of any of the suppliers with which they contract. The response of legislators has been to update the package travel legislation to broaden the circumstances in which consumer protection is provided. This has culminated in the agreement of a new Package Travel Directive¹⁴ that takes effect throughout the EU on 1 July 2018.

The development of XML feeds has facilitated the growth of specialist niche distributors of product, for example “Bed Banks” and other aggregators. Tour operators and travel agents now do not need to source product direct from principal suppliers but rather often purchase from an online intermediary such as a Bed Bank. It is not uncommon for a single hotel room to pass through several intermediaries before being sold to the final consumer.

These distribution chains have become genuinely international. Given that each sale of a hotel room is, in principle, subject to VAT in the Member State in which the hotel itself is located,¹⁵ such distribution chains pose a real challenge for the VAT system which can

only work in the way intended if each supplier is registered in each Member State so as to recover input tax at the previous stage in the distribution chain and charge output tax on his own supply. There are also a number of issues that arise from a VAT and cash management perspective, especially around the application of tax points and how payment flows typically work within the industry.

2.5.2 Sharing economy

We have also seen the rise of the “sharing economy”. Technology is driving new business behaviours, leading to new entrants in the market that have disrupted traditional travel.¹⁶ Whilst this trend took off with leisure travel, it is expected these supply chain models will increasingly be relevant to business travel arrangements,¹⁷ and this is already noticeable in North American corporate travel policies. This trend gives rise to a number of issues. For traditional travel operators there is a concern that business is lost to the sharing economy and that the greater availability of unregulated accommodation and other services exerts downward pressure on price, with 32% of travel businesses saying the sharing economy has had a negative effect on their business.¹⁸ For governments, there is a concern that many services provided are not regulated to the same extent of those provided by the established operators in the travel sector and that tax revenue is not collected as easily as from the established businesses. However, another view is that the advent of the sharing economy has not so much detracted from the traditional travel sector as contributed to a significant growth overall in the frequency of travel and as a consequence, 47% of travel businesses say that the sharing economy has a positive effect on their businesses.¹⁹

The digital economy has also created greater opportunities for smaller travel and tourism businesses that have benefitted from improved marketing and publicity from their own online presence and from social media and online review sites.

In this study, we are concerned with the application of the VAT rules to the travel intermediaries²⁰ and not to the primary suppliers (the hotels, airlines etc). The VAT rules in the context of “primary” suppliers are generally unambiguous and do not therefore require discussion here. It is important to note that as a result of this, the vast majority of taxation revenues that are generated through the travel economy are therefore at the primary supplier level that are locally collected and remitted. The detailed analysis that follows looks at five categories of travel intermediary: tour operators, travel agents, TMCs, DMCs and MICE organisers.

The nature of the distribution of travel and the application of VAT in various circumstances are considered in section 4.

¹¹ ABTA’s Holiday Habits Report 2016

¹² ABTA Consumer Trends Survey 2013

¹³ Council Directive on package travel, package holidays and package tours, 90/314/EEC
http://ec.europa.eu/consumers/consumer_rights/travel/package/index_en.htm

¹⁴ Directive 2015/2302/EU of the European Parliament and of the Council on package travel and linked travel arrangements

¹⁵ Article 47 of the VAT Directive

¹⁶ PhoCusWright White Paper: Managed Travel 2020

¹⁷ ACTE Global research white paper - The Sharing Economy and Managed Travel

¹⁸ World Travel Market Industry Report 2016

¹⁹ World Travel Market Industry Report 2016

²⁰ In this context, “intermediary” is used in the general sense, not the specific definition of the VAT Directive

2.5.3 Importance of tourism in the EU

The importance of tourism in the EU is demonstrated by the fact²¹ that six of the ten most visited countries (by international travellers) in the world in 2016 were EU Member States:

Fig 2a

1 st	3 rd	5 th	6 th	7 th	10 th
France	Spain	Italy	Germany	UK	Greece

In a similar vein, when it comes to international tourism earnings,²² five of the top ten countries in 2015 were Member States: Spain (3rd), France (4th), the UK (5th), Italy (7th) and Germany (8th).

When it comes to individual cities, the EU is less well represented. Even so, in 2016 London was the second most visited city in the world and Paris the third.²³ The relative under-representation of EU cities in the respective top 10s suggests that travel to the EU is less focused on large cities and is shared more equally amongst places of interest.

It is not surprising therefore that travel and tourism are mainstays of the EU economy. According to the World Travel & Tourism Council,²⁴ the direct contributions (i.e. those generated by those sectors which deal directly with tourists) of travel and tourism to EU GDP was €547.9bn (3.7% of the total) and to employment was 11,409,000 jobs (5% of the total employment). The total contribution (i.e. including capital investment by all industries involved with travel and tourism,

government spending in support of tourism activity and the contribution to GDP and employment of those employed directly or indirectly by travel and tourism) to GDP was €1,508.4bn (10.2% of EU GDP) and 26,585,000 jobs (11.6% of the total).

Fig 2b

EU	2016	2016 % of total	2017 % growth
Direct contribution to GDP	€547.9bn	3.7	2.9
Total contribution to GDP	€1,508.4bn	10.2	2.6
Direct contribution to employment ('000 jobs)	11,409	5.0	2.8
Total contribution to employment	€26,585bn	11.6	2.2

²¹ According to The World Tourism Organisation

²² Also according to The World Tourism Organisation. In this context, "intermediary" is used in the general sense, not the specific definition of the EU VAT Directive

²³ According to the MasterCard Global Destination Cities Index (which based its data on air traffic)

²⁴ Travel & Tourism: Economic Impact 2017 European Union LCU

Fig. 2c

Travel & Tourism's direct contribution to GDP	2016 % share
Caribbean	4.7
South East Asia	4.7
North Africa	4.4
European Union	3.7
Oceania	3.5
Middle East	3.3
Latin America	3.2
South Asia	3.2
North America	2.9
Sub Saharan Africa	2.6
Other Europe	2.6
North East Asia	2.5
Central Asia	1.6

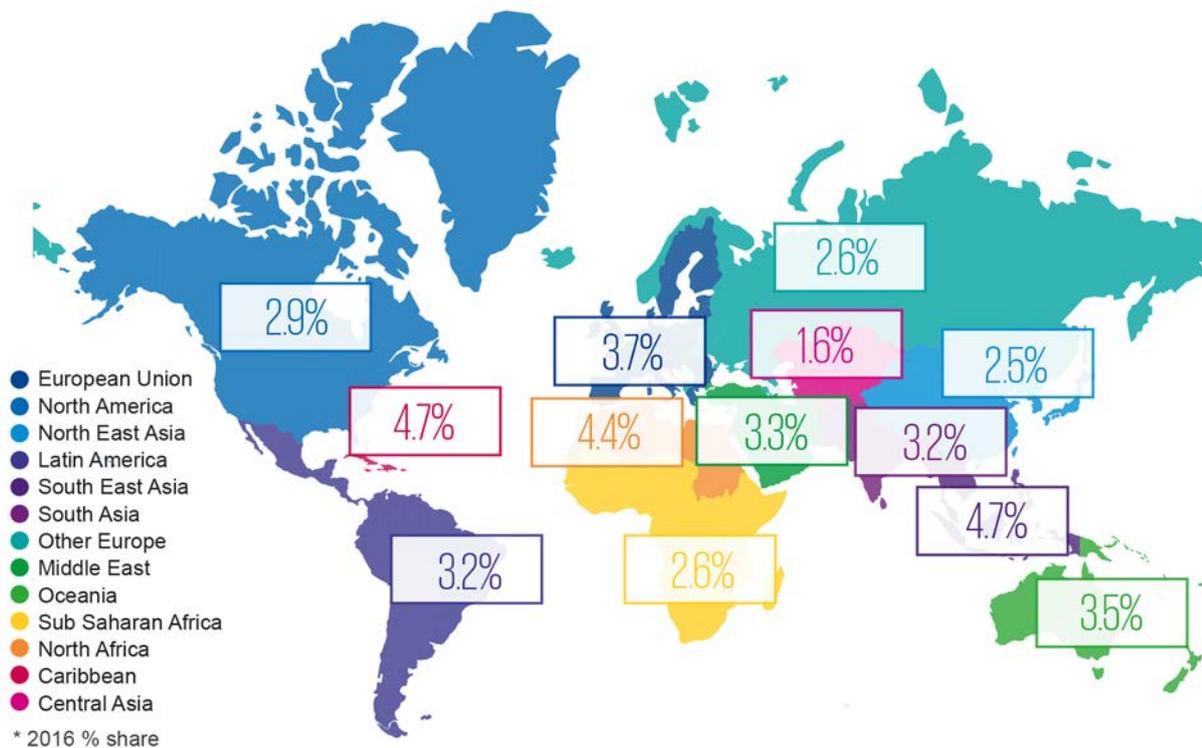


Fig. 2d

Travel & Tourism's direct contribution to employment	2016 '000 jobs
South Asia	28,657.5
North East Asia	26,017.8
European Union	11,409.2
South East Asia	11,155.8
North America	10,088.5
Sub Saharan Africa	6,171.1
Latin America	5,925.1
Other Europe	2,552.8
Middle East	2,356.9
North Africa	2,188.2
Oceania	918.9
Caribbean	725.5
Central Asia	573.6

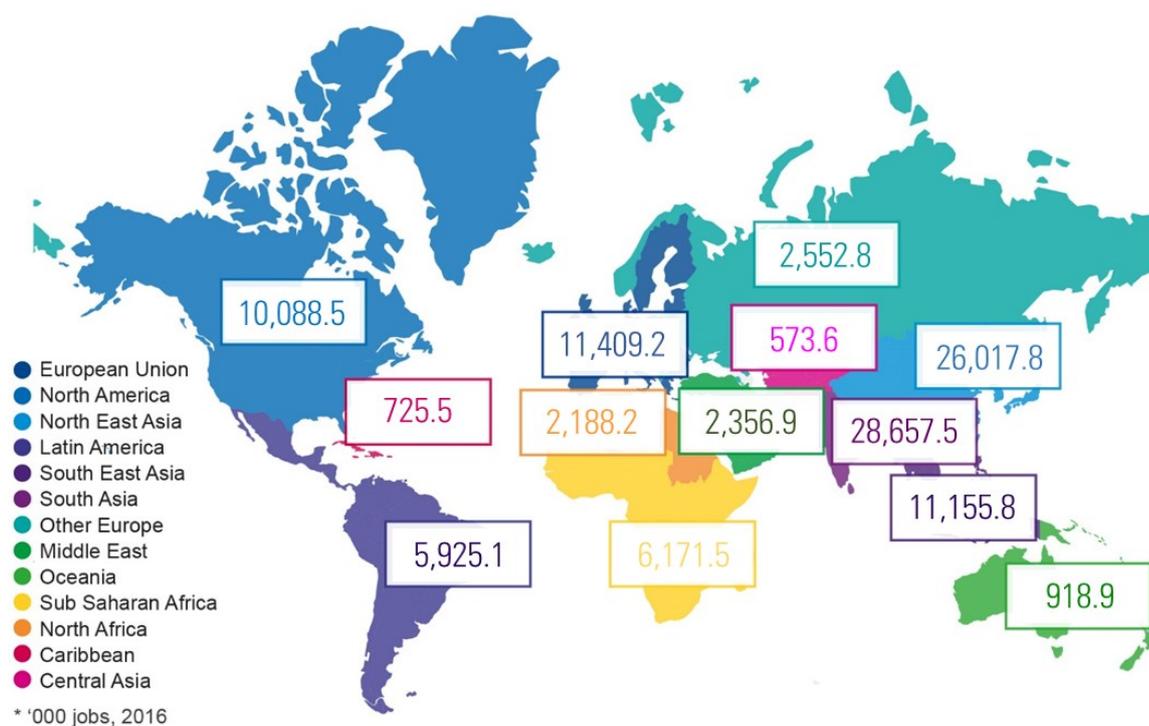
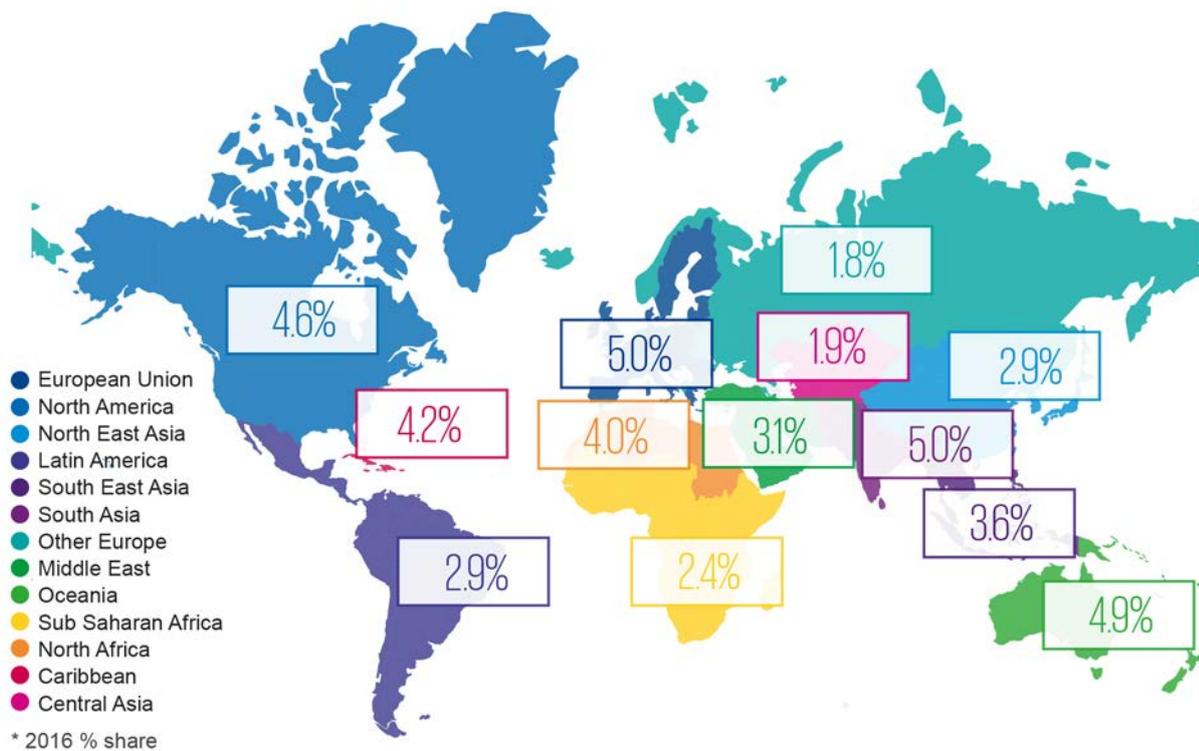


Fig. 2e

Travel & Tourism's contribution to employment	2016 % share
European Union	5.0
South Asia	5.0
Oceania	4.9
North America	4.6
Caribbean	4.2
North Africa	4.0
South East Asia	3.6
Middle East	3.1
North East Asia	2.9
Latin America	2.9
Sub Saharan Africa	2.4
Central Asia	1.9
Other Europe	1.8



Travel and tourism's direct contribution to GDP was higher (in absolute terms) in the EU than in any other of the 13 regions of the world used by the World Travel & Tourism Council.²⁵ In terms of employment, the direct contribution made in the EU was the third highest of the same 13 regions. In relative terms, travel and tourism's 3.7% contribution to EU GDP was the fourth highest of the 13 regions (exceeded only by the Caribbean, South East Asia and North Africa) and the contribution to employment was equal first (with South Asia).

Spending within the EU in 2016 by international tourists was €377.2bn, comfortably the highest figure achieved in the 13 regions.

Travel and tourism's direct contribution to EU GDP is forecast to grow in 2017 by 2.9%. On the face of it, this appears impressive but places EU travel and tourism at only 8th place out of the 13 regions when growth is measured. Over the 10 years to 2027, the contribution to EU GDP is expected to grow by an average of 2.3% per annum, the lowest projected rate of growth of the 13 regions. Over the same period, the direct contribution to employment is expected to increase by 1.5% in the EU, the equal lowest rate of growth of the 13 regions (with Oceania).

Spending in the EU by international tourists in the period to 2027 is forecast to grow by 3.4% per annum, a healthy rate of growth on the face of it but only the 12th best of the 13 regions (exceeding only North East Asia).

We can conclude therefore that travel and tourism is currently a significant part of the economy across the EU. It is also clear that travel and tourism in the EU are expected to grow during the next 10 years. However, the sector's rate of economic growth in the EU may be lower than in most other parts of the world. In our opinion, this would indicate the mature nature of the EU travel and tourism sector when compared to relatively newer destinations elsewhere. Given this, together with the recent and ongoing changes and disruptions within the sector's supply chains, it is prudent to ensure that steps are taken to promote economic efficiency in the EU's travel and tourism sector. The VAT system can be a key consideration in this.

2.6 Definitions

The following definitions are originally derived from a 2009 Commission Study on the Competitiveness of the EU tourism industry.

1. Tour operators

These businesses range from large international tour operators to small independent niche operators (mainly B2C). Tour operators organise and provide package holidays, contracting with hoteliers, airlines, ground transport companies and intermediate suppliers such as Destination Management Companies (DMCs – see category 4 below), and advertising the holidays that they have assembled online or in printed brochures.

Tour operators often operate on an international scale but tour operators focusing on a very specific niche market typically operate on a much smaller scale. Most tour operators focus on leisure tourism. Historically, tour operators relied upon traditional "brick & mortar" sales channels; this is gradually changing as businesses adopt an online presence so that the online business is now a sales channel in its own right. The continued improvements in internet connectivity and increasing access to digital devices has resulted in more customers seeking to book travel online. It is expected that more than 50% of customers in the EU will book their travel online in 2017 and the online travel market will grow faster than the overall market, enjoying 8% growth throughout 2017. This trend towards using online operators and agents has allowed customers to access providers operating outside their own territory. US based companies continue to dominate the online market with combined revenues of more than US\$115bn (at 2015).

2. Travel Management Companies (TMC)

These businesses serve primarily corporate customers (B2B). TMCs are able to compare different itineraries and costs in real-time, allowing users to access fares for air tickets, hotel rooms and rental cars simultaneously and to prepare bespoke travel plans for clients.

²⁵ The 13 regions are: the EU, other Europe, the Caribbean, South East Asia, North Africa, Oceania, Middle East, Latin America, South

Asia, North America, Sub Saharan Africa, North East Asia and Central Asia

3. Travel agents

These businesses operate mainly in the leisure (i.e. B2C) market as intermediaries. Travel agents can operate as “brick & mortar” enterprises or as “online” agents or both (mainly B2C), whereas the TMCs as referred to above focus on business travel.

Travel agents may provide customers with travel advice, then sell and administer bookings acting for a number of tour operators and other suppliers such as airlines, hoteliers, car rental companies.

Large travel agencies are often part of an international integrated group that also organises packaged tours and owns accommodation, etc. We are aware that a number of independent travel agents have joined forces in consortia or networks. These networks combine the capacity of their members on the purchase side as well as in providing services to the members of the consortium (HR management, taxation consultancy, etc).

4. Destination Management Companies (DMC) / Wholesale tour operators

These businesses operate mainly in the inbound segment. DMCs and wholesale tour operators differ from the tour operators in category 1 above in that DMCs/ wholesale tour operators usually do not deal directly with end-clients, but sell to agents (mostly tour operators).

DMCs focus on inbound tourism. They cater services for both tour operators focusing on leisure tourism and for MICE organisers, and sometimes for TMCs. These services can include transportation, hotel accommodation, activities, excursions, conference venues, themed events, etc. DMCs/wholesale tour operators organise and sell packages but also sell individual components e.g. “room only”. The package business is often referred to as the “groups business” whilst the sale of single components is often called “FIT” (Fully Independent Traveller).

5. MICE organisers, i.e. Meetings, Incentives, Conferences and Events organisers - mainly in the corporate segment (B2B)

Another segment of the industry focusses on MICE (Meeting, Incentives, Conferences and Events). MICE organisers are often specialised in that specific segment, although TMCs can have their own in-house MICE department as well. These operators combine features of travel agents, DMCs and TMCs, generally focused around a specific event or collection of events catering to a particular purpose or special interest group.

2.7 Distortion of competition

As outlined at section 2.1 above, one of the aims of this study is to evaluate the functioning of the current VAT rules provided for under the Special Scheme, considering potential distortions of competition and material issues.

In this study, a “distortion of competition” is taken to arise where we consider that an unequal treatment of travel agents under the Special Scheme rules in force in Member States, leads in practice to significant changes in behaviour of the travel agent, for example in respect of how the business may be structured commercially. It may also manifest itself in businesses declining involvement in a particular field. This latter consequence is difficult to measure but nonetheless real.

This study addresses potential distortions of competition and material issues in respect of the Special Scheme, relating to the following:

- Differences in the application of the Special Scheme rules by Member States; and
- Competition between EU and non-EU operators.

For the purposes of quantifying an identified distortion, in this study the “value” of a distortion is taken to be the difference between the value of tax that is collected under current (“distorted”) Special Scheme rules, and the value of tax that would be collected under “undistorted”, notional “reference” rules.

The choice of “reference” rules therefore defines the value and significance of the distortion. We sought to adopt the following approach in this study:

- To quantify distortions in respect of the application of the Special Scheme rules between Member States, we considered as a reference a strict reading of CJEU case law in relation to the Special Scheme, assuming a reference illustrative VAT rate (albeit the available data to identify this reference was limited). An analysis of relevant CJEU case law in respect of the Special Scheme is set out in section 3.

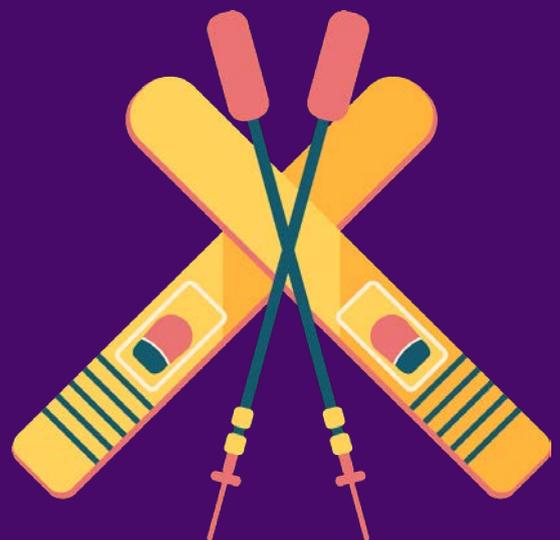
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- To consider distortions between EU and non-EU operators, we have considered the VAT rules in the EU Member State with the most favourable rules or practice (from the travel agent's perspective) in 2017. An analysis of the differences in VAT rules between the Member States is set out in sections 4 and 5.

In the absence of comprehensive, publicly available economic data, this study seeks to extrapolate and approximately quantify the identified distortions of

competition by reference to the likely quantum of "tax collected" in real-world examples illustrating each of the five business models identified.

We have also consulted extensively with businesses and various representative organisations in relation to perceived areas where distortions of competition may exist. The feedback from these sources is primarily anecdotal although it has a base in actuality given how businesses tend to operate as a whole.

Introduction to the Special Scheme



3 Introduction to the Special Scheme

3.1 Relevant VAT Directive Provisions

The relevant legislative provisions, Articles 306 to 310 of the VAT Directive are reproduced in Annex 4.

3.2 History of the Special Scheme

When the 6th VAT Directive²⁶ was adopted in 1977, a specific scheme was introduced for travel agencies and tour operators who deal with customers in their own name and use the supplies and services of other taxable persons in the provision of travel facilities. For the purpose of the scheme, tour operators and travel agents are treated similarly. This scheme, now set out in Articles 306 to 310 of the VAT Directive, was introduced due to the unique nature of the travel industry. The services offered by travel agents usually consist of a package of services, in particular transport and accommodation obtained from third parties. This did not appear in the Commission's original legislative proposal and there is no guidance in the records of the Council about the thinking behind it. Nevertheless it is clear that the scheme was intended to resolve the practical difficulties and complexities which would result under the general rules of the VAT Directive²⁷ from the use and provision by the travel agent of services in different Member States. At the same time it ensures that tax accrues to the Member State where the travel services take place and to this extent, the Special Scheme has been effective.

All transactions performed by the travel agent in respect of a journey are regarded as a single supply to the traveller at the place where the agent is established. The taxable amount is the profit margin realised by the agent on the supply i.e. the difference between the price paid by the traveller (exclusive of VAT) and the actual cost to the agent of supplies and services provided by other taxable persons where these transactions are for the direct benefit of the traveller. The agent is not entitled to deduct VAT on these inputs. The effect of these arrangements is that the travel agent acts as a collection point for the (mainly foreign) tax charged by the various suppliers to whom the travel agent entrusts elements of the travel package. The travel agent bears definitively the tax chargeable on their services in the various Member States concerned and incorporates it as a hidden tax in the total price of the travel package. At the same time the travel agent charges to the customer the tax on the travel agent's own margin payable in the Member State in which the travel agent is established. The place of taxation for this supply is where the travel agent has established its business activities or has a fixed base from which it provides the service or, failing this, the

place where it has its permanent address or usually resides.

The Special Scheme has two key aims:

- To simplify application of European Union VAT rules for these supplies, particularly so that a travel agent avoids multiple registrations for VAT purposes in each of the Member States where the transactions charged to the agent take place; and
- To ensure that the VAT revenue is collected by the Member State in which final consumption of each individual component of the single supply takes place.

VAT revenue on services enjoyed in the course of the "journey", such as hotels, restaurants or transport, will go to the Member State in which the traveller receives the service, whereas VAT on travel agents' margins accrues to the Member State where the agent is established.

In practice the Special Scheme has not been applied uniformly by Member States, leading to potential for double taxation, distortions of competition and possibly unfair distribution of VAT receipts among Member States. There are multiple reasons for this, not least of which the administrative complexity and industry practices mean that the consistent application of the rules has been hard to achieve.

3.3 Reform of the Special Scheme

On 8 February 2002 the Commission published a proposal for a Council Directive amending the 6th VAT Directive as regards the Special Scheme in order to:

- Allow travel agents to apply VAT to their profit margin for services sold to other travel agents as well as to private individuals;
- Include travel agents not established in the EU within the scope of the VAT system, when selling package tours to customers established in the EU;
- Entitle travel agents to opt for application of the "normal" VAT system; and
- Authorise travel agents to calculate a single profit margin for package tours provided over a certain period.

To ensure neutrality, on 21 February 2003 the Commission adopted an amended proposal to include non-EU travel agents in the Special Scheme by extending the simplified mechanism already adopted for e-services. This was in response to amendments proposed by the European Parliament. The aim was to ensure a level playing field between the EU and non-EU travel agents supplying to EU clients.

²⁶ Council Directive 77/388/EEC

²⁷ Articles 43 – 59(a) of the VAT Directive. These address the place of supply rules in the absence of the Special Scheme e.g. for services by intermediaries, services connected with immovable property, transport services, cultural, artistic, sporting, scientific, educational and similar

services, restaurant and catering services and the hiring of means of transport

In its amended proposal, the Commission did include exemption for supplies to third-country (non-EU) established customers, as this would be contrary to one of the basic principles of the EU VAT system whereby supplies of goods and services are taxed where consumption takes place. Therefore, the profit margin generated in the EU should be taxable in the EU, where the supply of the travel agent is realised, and it should not be exempted when the customer is established outside the EU.

For a variety of reasons,²⁸ no agreement could be reached in the Council on this proposal and it was finally withdrawn in 2014 after the ruling of the Court of Justice of the European Union (hereinafter referred to as “CJEU”) in the *Commission v Spain*²⁹ case. The opinion given by Advocate General Sharpston underlined this, saying that the Court found itself in an invidious position and is “called upon to decide a matter of VAT policy (and of legislative drafting) which has proved beyond the capabilities or the willingness of the Member States and the legislature”. Relevant case law of the CJEU in respect of the Special Scheme is listed at section 3.4 below.

3.4 Analysis of CJEU case law affecting the Special Scheme

In this section we consider the following CJEU case law:³⁰

C-74/91	Commission v Germany
C-163/91	Van Ginkel Waddinxveen BV, Reis- en Passagebureau Van Ginkel BV and others v Inspecteur der Omzetbelasting Utrecht
C-260/95	Commissioners of Customs and Excise v DFDS A/S
C-308/96 & C-94/97	Commissioners of Customs and Excise v TP Madgett and RM Baldwin
C-149/01	Commissioners of Customs and Excise v First Choice Holidays Plc
C-291/03	MyTravel Plc v Commissioners of Customs & Excise
C-200/04	Finanzamt Heidelberg v Ist internationale Sprach- und Studienreisen GmbH
C-31/10	Minerva Kulturreisen GmbH v Finanzamt Freital
C-189/11	Commission v Spain
C-193/11	Commission v Poland
C-236/11	Commission v Italy
C-269/11	Commission v Czech Republic
C-293/11	Commission v Greece
C-296/11	Commission v France
C-309/11	Commission v Finland
C-450/11	Commission v Portugal
C-220/11	Star Coaches sro v Finanční ředitelství pro hlavní město Prahu
C-557/11	Maria Kozak v Dyrektor Izby Skarbowej w Lublinie

3.4.1 Commission v Germany

In *Commission v Germany*,³¹ the Commission took infringement proceedings against Germany for

improper implementation of the Special Scheme. Germany operated the scheme in such a way that the margin made on air and sea travel within the EU but outside Germany, was exempted. The Commission argued that this was contrary to the requirements of Article 26 of the 6th VAT Directive³² which stated that the transactions performed by a travel agent in respect of a journey were to be treated as a single service supplied to the traveller. Only where the services take place outside the Community could the travel agent’s service be exempted

The CJEU agreed that Germany, in operating a wider exemption than allowed by the Directive, had failed to fulfil its obligations.

Germany supported its position in a number of ways, notably that applying VAT to all travel within the EU would create a distortion of competition between travel agents and those falling outside the Special Scheme who could exempt many travel services and secondly that application of the scheme would be extremely difficult if travel agents had to calculate VAT on itineraries both within and outside the EU. On the first point, the CJEU seemed to recognise that such distortions might exist but concluded that any such distortions “cannot justify incorrect application of the Special Scheme provided for in the directive”.³³ On the second point, the CJEU did not agree that travel agents cannot carry out the calculation required.³⁴

3.4.2 Van Ginkel

In the *Van Ginkel* case,³⁵ the issue was the treatment of accommodation sold as a single service. Van Ginkel sold accommodation without any transport service: the customer was expected to arrange his own travel. The Dutch authorities argued that the Special Scheme is not applicable where there is a single service.

The CJEU examined the purposes of the scheme and concluded that the scheme exists to adapt the normal rules on place of supply, taxable value and input tax deduction to overcome the practical difficulties which would exist for many travel agents given the multiplicity of services typically supplied and places in which they are provided.³⁶ The CJEU concluded that there is no provision in the Special Scheme requiring the travel agent to arrange any transport of the traveller³⁷ and that any such requirement of the scheme would be counter to the aims of the scheme as summarised above.³⁸

A single service should therefore fall within the scheme, subject to the other conditions of the scheme. The CJEU also pointed out,³⁹ however, that a travel agent often provides additional services such as information and advice and the actual reservation of the service but does not appear to make the application of the Special Scheme conditional upon the existence of such additional services.

²⁸ The reasons for this outcome were many but the need to change the rules for non-EU travel agents was not among them

²⁹ Case C-189/11

³⁰ This study does not take account of the upcoming German infraction proceedings with respect to German VAT legislation for travel agents

³¹ Case C-74/91

³² Now Article 307 of the VAT Directive

³³ Paragraph 26

³⁴ Paragraph 12

³⁵ Case C-163/91

³⁶ Paragraphs 13 and 14

³⁷ Paragraph 22

³⁸ Paragraph 23

³⁹ Paragraph 24

A final point arising from the *Van Ginkel* case concerns the requirement of the scheme that the travel agent deals with customers in its own name. Van Ginkel was said to be earning a commission of 20% from the property owners.⁴⁰ In itself this might be taken to suggest that Van Ginkel was acting solely as an intermediary⁴¹ with the effect that it may not have been eligible in any case to use the Special Scheme. The point was not considered but the CJEU noted⁴² that it is the responsibility of the national court to inquire into the circumstances of the travel agent, particularly in relation to its contractual obligations towards customers, to determine if the travel agent is dealing with customers in its own name.

3.4.3 DFDS

In *DFDS*,⁴³ the issue was the place of supply of services falling within the Special Scheme. DFDS was a Danish travel agent which sold holidays to UK customers via its own UK subsidiary acting as its agent. DFDS argued that supplies made via the agency of its UK agent should be seen as supplied where DFDS itself had established its business, namely Denmark (which at the time exempted travel services from VAT).

The CJEU did not agree with this position, however it felt that, whilst having a single place of taxation for all services supplied within the Special Scheme would be advantageous in terms of simplicity, it would not lead to a rational result as it would take no account of the place where the services were marketed.⁴⁴ Such an approach could also lead to distortions of competition as travel agents might be encouraged to establish their business in many Member States with a favourable regime for travel services.⁴⁵ Accordingly, supplies within the Special Scheme must be seen to be supplied in the Member State in which a fixed establishment is located when the supplies have been provided from that fixed establishment.⁴⁶

The CJEU then considered the circumstances in which a travel agent should be seen to have a fixed establishment. First, the degree of independence of the agent should be considered. The UK company was a wholly owned subsidiary of DFDS and had various contractual obligations imposed on it by DFDS. This led the CJEU to describe the UK company as “an auxiliary organ of its parent”.⁴⁷ Accordingly, it was not independent of its parent. The CJEU also concluded that the UK company displayed the features of a fixed establishment.⁴⁸

3.4.4 Madgett and Baldwin

Messrs *Madgett and Baldwin*⁴⁹ ran a hotel in England called The Howden Court Hotel (by which this case is often known). They provided packages comprising accommodation in the hotel plus coach transport

between customers’ homes and the hotel and an excursion by coach. The coach transport was supplied to Madgett and Baldwin by third parties.

There were two issues in the case: should the packages supplied by Madgett and Baldwin fall within the Special Scheme and, if yes, how should the values of the in-house supplies (i.e. the accommodation) and the bought-in transport be ascertained?

On the first point, Madgett and Baldwin argued that their business should not fall within the Special Scheme as they did not act as a travel agent or tour operator in the sense that their activity did not consist of the organisation of travel services acquired from other taxable persons. Instead, their business was focused on the hotel operation and the coach travel was organised merely for their customers’ convenience and should be regarded as ancillary to the hotel operations.⁵⁰

The CJEU referred to the *Van Ginkel* case in terms of the objectives of the Special Scheme and said that these objectives are equally valid whether the taxable person is a travel agent or some other type of business which effects identical transactions which would cause the difficulties recognised in *Van Ginkel*.⁵¹

Furthermore, application of the scheme only to taxable persons who are classified as travel agents or tour operators would lead to the differing treatments of identical services⁵² and would prejudice the aims of the Special Scheme, create distortions of competition and jeopardise the uniform application of the Directive.⁵³

Accordingly, the Special Scheme applies to taxable person who organises travel in his own name and entrusts other taxable persons with the supply of the services generally associated with travel agency activity even if the taxable person is not, formally speaking, a travel agent or a tour operator.⁵⁴

However, where a person such as an hotelier provides (bought-in) services habitually associated with travel and the services in question take up only a small proportion of the package price, the bought-in services do not constitute an aim in themselves of the customer but are a means of better enjoying the principal service supplied by the taxable person. It follows that the taxpayer should not be included within the Special Scheme where the bought-in services are purely ancillary to the in-house services.⁵⁵

However, if a hotelier habitually offers services in addition to the accommodation and the services go beyond those normally entrusted to hoteliers and where the additional services must have a “substantial effect” on the price charged then they cannot be treated as ancillary services. In this particular case, the transport provided could not be seen as ancillary to the accommodation.⁵⁶

⁴⁰ Paragraph 5

⁴¹ Article 306 of the VAT Directive

⁴² Paragraph 21

⁴³ Case C-260/95

⁴⁴ Paragraph 22

⁴⁵ Paragraph 23

⁴⁶ Paragraph 24

⁴⁷ Paragraph 26

⁴⁸ Paragraph 28

⁴⁹ Joined Cases C-308/96 and C-94/97

⁵⁰ Paragraph 16

⁵¹ Paragraph 20

⁵² Paragraph 21

⁵³ Paragraph 22

⁵⁴ Paragraph 23

⁵⁵ Paragraphs 24 and 25

⁵⁶ Paragraphs 26 and 27

The second issue concerned the way to calculate the margin where a single price covers both in-house supplies and supplies within the Special Scheme. The CJEU concluded, firstly, that the Special Scheme applies only to the bought-in services included in a package with in-house supplies.⁵⁷ It is necessary therefore to find a way to value the margin and the in-house supplies. Two approaches were considered: an actual costs basis (as advocated by the UK) and an approach based on the market value of the in-house supplies. The CJEU recognised that there could be difficulties with both approaches⁵⁸ but concluded that a travel agent could not be required to use the actual cost method where the market value of services similar to the in-house supplies can be identified.⁵⁹

The *Madgett and Baldwin* case is the first case, we believe, to state that the Special Scheme is an exception to the normal rules and must be applied only to the extent necessary to achieve its objective.⁶⁰

3.4.5 First Choice

The *First Choice* case⁶¹ concerned the value of the margin where the holiday price payable was discounted by a disclosed agent acting on behalf of First Choice.

First Choice accounted for VAT within the Special Scheme and argued that it had overstated VAT payable. The margin is calculated in part by reference to the "total amount to be paid by the traveller"⁶² and therefore, in not taking into account any discounts given by agents, First Choice argued that it had exaggerated the price paid by travellers and hence the margin achieved.

However, the CJEU did not agree. The UK courts had determined that the agent's discount should be classified as a payment made by the agent to First Choice equal to the discount given to the customer. That classification was an important factor in the CJEU's decision. The CJEU concluded that the additional amount paid by the agent to First Choice (i.e. the discount given and funded by the agent) was part of the consideration received by First Choice; in other words, the additional amount should be construed as being a part of the "total amount ... to be paid by the traveller".⁶³

In reaching this conclusion, the CJEU again relied upon the principle that the Special Scheme is an exception to the normal VAT regime and should therefore only be applied to the extent required to achieve its objective. It follows that the valuation provisions in the Special Scheme must have the same legal definition as the normal valuation rules in the Directive.⁶⁴ The objectives of the Special Scheme do not require a different approach to the valuation of supplies made.⁶⁵

3.4.6 MyTravel

Next we should consider the *MyTravel* case.⁶⁶ The *Madgett & Baldwin* case above looked at the valuation of in-house supplies included in a package with bought-in services and the *MyTravel* case elaborated on the circumstances in which the market valuation approach should be taken and on the way in which the market value might be identified.

MyTravel sold package holidays comprising various bought-in services and flights on one of its own aircraft. It sought to reduce previous payments made under the Special Scheme by retrospectively applying a market value to certain flights. This was resisted by the UK authorities.

The CJEU concluded firstly that MyTravel had a right in principle to seek a repayment of overpaid amounts.⁶⁷ Secondly, use of market values does not need to be simpler than the use of an actual cost approach nor must it produce a VAT payment of similar value to the actual cost approach.⁶⁸ Indeed, the CJEU thought that use of market values should not be at the discretion of the taxpayer⁶⁹ - it follows that a travel agent must, in principle, use market value to identify the value of in-house supplies where a market value can be established.⁷⁰ A travel agent can however use the actual cost approach if he can prove that that approach accurately reflects the actual structure of the package.⁷¹

The CJEU was also asked to consider how to deal with a situation in which the travel agent can identify the market value of certain in-house supplies but not others. The CJEU concluded that market value must be used for those supplies for which the value can be established and that other supplies, for which the market value cannot be established, may in the same accounting be valued on some other basis (e.g. the actual costs basis).⁷²

Finally, the CJEU concluded that it is for the national court to establish the market value based on the facts of the case but that it would be legitimate to base the market value on the average price of flights sold by MyTravel (as flight only sales) to the same destination (or a comparable destination).⁷³

3.4.7 ISt

In the *ISt* case,⁷⁴ the CJEU had to consider whether packages of services comprising typically travel to and from the US, accommodation plus food and drink in the US, education at a US high school or similar, insurance, preparatory materials and support from a local representative should fall within the Special Scheme.

⁵⁷ Paragraph 35

⁵⁸ Paragraphs 43 and 44

⁵⁹ Paragraph 47

⁶⁰ Paragraph 34

⁶¹ Case C-149/01

⁶² Now Article 308 of the VAT Directive

⁶³ Paragraph 33

⁶⁴ Now Article 73 of the VAT Directive

⁶⁵ Paragraph 26

⁶⁶ Case C-291/03

⁶⁷ Paragraph 18

⁶⁸ Paragraphs 23 and 28

⁶⁹ Paragraph 31

⁷⁰ Paragraph 41

⁷¹ Paragraph 34

⁷² Paragraph 40

⁷³ Paragraph 44

⁷⁴ Case C-200/04

The German authorities argued that the services were educational and should be exempt from VAT.⁷⁵ The CJEU did not agree. It concluded that ISt did meet the conditions for the application of the Special Scheme. First, the services provided were identical or at least comparable to those provided by a travel agent and ISt used the services of other taxable persons in the provision of those services.⁷⁶ As per the *Madgett and Baldwin* case, travel services may be treated as ancillary where they represent a small part of the package price but, in this case, ISt habitually offered travel services in addition to its education services which must have a substantial effect on the package price. Therefore, the travel services could not be treated as ancillary.⁷⁷

Germany argued that the services provided by ISt were not considered to be “travel” for the purpose of the Package Travel Directive.⁷⁸ Cyprus added that a course such as that provided by ISt could not be considered to be the type of service provided by a travel agent. The CJEU stated that points made in cases argued under another directive (i.e. in this case the Package Travel Directive) have no bearing on arguments about the Special Scheme.⁷⁹ Furthermore, if the German and Cypriot arguments were accepted, the objective of the travel and its duration would affect the application of the scheme and there is no reason to think that it was intended that these factors should restrict the use of the scheme.⁸⁰

Germany also suggested that the Special Scheme should not apply to services which fall within the education exemption.⁸¹ The CJEU disagreed: there is nothing to suggest that the application of the Special Scheme is dependent on such a point. The only situation in which a service meeting the conditions of the scheme can be exempted is where the service takes place outside the EU.⁸²

3.4.8 Minerva

The *Minerva*⁸³ case concerned the scope of the Special Scheme. Minerva was a travel agent which argued that the sale of opera tickets should fall within the scheme. The German authorities disagreed, arguing that the sale of such a ticket on its own was not a service “in respect of a journey”⁸⁴ and accordingly could not fall within the scheme.

The CJEU agreed. A service is not automatically within the scheme just because it is supplied by a travel agent – the wording of the VAT Directive makes it clear that a service is only within the scheme if it relates to a journey.⁸⁵ It cannot be inferred from the *Van Ginkel* decision that any single service supplied by a travel agent is within the scheme.⁸⁶ The CJEU in *Van Ginkel* did not hold that any service unrelated to a journey falls within the scheme but where a service is not coupled

with travel services, in particular transport and accommodation, it does not fall within the scheme.⁸⁷

Furthermore, as per the *Madgett and Baldwin* decision, the Special Scheme is an exception to the normal rules and must therefore be applied only to the extent necessary to achieve its objectives.⁸⁸

3.4.9 Commission v Spain et al

The Commission took infringement proceedings against eight Member States⁸⁹ for alleged incorrect application of the Special Scheme.

The eight cases all concerned the application of the scheme to supplies made to business customers, specifically whether it is appropriate, when considering the scope of the Special Scheme, to take the “customer approach” or the “traveller approach”. The former sees the scheme applied (subject to the scheme’s other conditions) regardless of the status of the recipient of the supply whilst the latter sees the scheme limited to circumstances in which the supply is made to the “traveller” (i.e. the person who will use the service). The dispute originated in the inconsistent use of the words “customer” and “traveller” in different language versions of the Directive.

The case against Spain also considered a few other aspects of the implementation of the scheme in Spain.

On the first point, the Commission argued in favour of the traveller approach; the eight Member States had all adopted the customer approach. The Commission said that the aims of the Special Scheme would be better served by the customer approach but argued that the Directive did not permit Member States to take this approach. The Commission also argued that supplies to a taxable person for the use of that person (i.e. not for re-sale) satisfy the traveller test and should therefore be within the scheme.

The CJEU found that the customer approach had to be adopted. In other words, rather than applying solely to sales of travel services to travellers, the Special Scheme should apply to all sales of travel services to any type of customer.

3.4.9.1 Advocate General’s observations

The Advocate General had a number of interesting observations about the Special Scheme. First, she summarised the purposes of the scheme to be simplification for the travel agent and to ensure that each service is taxed where it is provided. It is clear from her comments that the Advocate General considered that the place of the supply of the travel agent’s services, if the Special Scheme did not apply, would be his own Member State.⁹⁰ The complexity which the scheme exists to avoid is not, thought the

⁷⁵ Paragraph 15

⁷⁶ Paragraph 24

⁷⁷ Paragraphs 26 to 29

⁷⁸ Directive 90/314

⁷⁹ Paragraph 33

⁸⁰ Paragraph 36

⁸¹ Now Article 132(i) of the VAT Directive

⁸² Paragraph 44

⁸³ Case C-31/10

⁸⁴ Article 307 of the VAT Directive

⁸⁵ Paragraph 15

⁸⁶ Paragraph 19

⁸⁷ Paragraphs 21 and 22

⁸⁸ Paragraph 16

⁸⁹ Commission v Spain (Case C-189/11), v Poland (Case C-193/11), v Italy (Case C-236/11), v Czech Republic (Case C-269/11), v Greece (Case C-293/11), v France (Case C-296/11), v Finland (Case C-309/11) and v Portugal (Case C-450/11)

⁹⁰ Paragraph 6 of the Opinion

Advocate General, the payment of VAT in each of the Member States in which the services takes place but rather is the need to deduct input tax incurred in those states. It is not stated specifically but presumably the Advocate General considered the services of a travel agent (in the absence of the Special Scheme) to fall within the general place of supply rules⁹¹ when supplied to a non-taxable person. The Advocate General therefore saw non-application of the scheme as giving rise to administrative difficulty for the travel agent in offsetting input tax against the VAT due in his own Member State and a diversion of revenue from the Member States of consumption to the Member State of purchase. We suggest that this interpretation is not what was meant by the CJEU in earlier cases when considering the complexity inherent in the rules, which the Special Scheme was designed to avoid, and which it seems clear the CJEU thought meant the payment of VAT in the Member States of consumption not merely the deduction of input tax there.⁹² (We note, however, that the Commission itself has stated that the place of supply approach described above is the correct one.⁹³)

The Advocate General felt that the terms of the Special Scheme are not unequivocal and that they leave room for interpretation. In order to make a proper interpretation, it is necessary to have regard to the purpose and general framework of the scheme.⁹⁴ The exclusion of services supplied to another travel agent would run counter to the two aims of the scheme, as described above.⁹⁵ Furthermore, not only would non-application of the Special Scheme to wholesale supplies frustrate the purposes of the scheme itself, but it would also run counter to a fundamental principle of the VAT system that VAT should crystallise at the time and place of consumption.⁹⁶

The Advocate General also felt that the wide application of the scheme necessary to achieve its aims helps to ensure that the principle of fiscal neutrality is observed.

Finally, the Advocate General touched upon input tax deduction on business travel costs and described the loss of such a right where services are purchased from a travel agent in the scheme as the scheme's "most salient drawback".⁹⁷ This point is not sufficient to mean that supplies of business travel should be excluded from the scheme (as the aims of the scheme are simplification and the correct allocation of VAT revenue). There is nothing in the scheme to suggest that input tax deduction on business travel costs was an intention of the scheme, "even if that would have been a desirable aim".⁹⁸

3.4.9.2 CJEU

The CJEU followed the same line of reasoning as the Advocate General. Due to the ambiguity in the text of the Directive (i.e. the confusion between the use of the terms "traveller" and "customer"), the text must be interpreted by reference to the purpose of the rules in

question. As is well established, the purposes are simplicity and a fair allocation of revenue to the Member States. VAT revenue relating to each individual service should accrue to the Member State in which final consumption of the service took place and that on the agent's margin to the Member State in which the agent is established. The customer approach is most conducive to the achievement of these objectives.

The CJEU also pointed out that "traveller" was given a wide meaning in the *First Choice* case, should not be interpreted literally and is not the same as the final consumer.

This decision demonstrates that the Special Scheme should apply regardless of whether sales are made in a "retail" environment to consumers, in a "wholesale" supply-chain to businesses for onwards supply, or in a business-to-business scenario for the purposes of business travel.

There were two other main issues addressed in the *Commission v Spain* case, namely the basis of the travel agent's margin calculation and the ability to state an amount of VAT on an invoice issued for a supply within the scheme.

On the first point, Spain allowed travel agents to calculate the margin made in aggregate on all supplies made in a period and the Commission challenged this. The CJEU concluded that the Special Scheme contains no provision for the overall determination of the margin and that the margin must be calculated by reference to each single service provided by the travel agent.

On the invoicing point, Spain allowed an amount equal to 6% of the invoice value to be shown as VAT, but only where the travel services were actually performed in Spain. The CJEU judged that the practice of showing the 6% as VAT was not permitted under either of the invoicing and input tax deduction rules and was also inconsistent with the method of margin calculation required.

3.4.10 Star Coaches

In *Star Coaches*,⁹⁹ the CJEU was asked whether the supply of transport by coach in isolation should fall within the Special Scheme. The facts presented to the CJEU were that Star Coaches supplied transport totally on its own, i.e. with no information, advice or reservation service. The CJEU decided that passenger transport supplied in isolation in this way does not fall within the Special Scheme: a single service supplied in isolation does not fall within the Special Scheme.

⁹¹ Article 45 of the VAT Directive

⁹² See for example paragraph 14 of the Van Ginkel judgment

⁹³ In the Commission's press release IP/02/264 of 18 February 2002 in which the Commission announced its proposals to reform the Special Scheme

⁹⁴ Paragraph 38

⁹⁵ Paragraph 48

⁹⁶ Paragraph 50

⁹⁷ Paragraph 62

⁹⁸ Paragraph 65

⁹⁹ Case C220/11

3.4.11 Maria Kozak

*Maria Kozak*¹⁰⁰ argued that the Polish authorities were wrong to seek VAT within the scheme on her in-house supply of transport services.

Ms Kozak ran a travel agency selling packages comprising various bought-in services and the provision of transport in her own coaches. The Polish authorities sought VAT at the standard rate on the transport, rather than the reduced rate ordinarily applied to passenger transport in Poland, on the grounds that the transport was an essential part of the overall service supplied by Ms Kozak.¹⁰¹

The CJEU agreed with Ms Kozak. The Special Scheme cannot be applied to services supplied by the taxpayer himself.¹⁰²

The CJEU justified this approach in part by following the line of reasoning first set out in the *Madgett and Baldwin* case that the Special Scheme must be applied only to the extent necessary to achieve its objectives.¹⁰³

Finally, the CJEU ruled¹⁰⁴ on the proper interpretation of wholesale supplies and the nature of the calculation of VAT payable.

3.4.12 Findings in respect of CJEU case law

Our understanding of the interpretation of the Special Scheme in the relevant case law is as follows:

- a) The Special Scheme is broad in application and should apply, subject to satisfying all conditions for use of the scheme, regardless of the status of the customer (the *Commission v Spain* case et al). As a result, there is no reason to exclude services provided to a taxable person simply because of the status of that client.
- b) The scheme is wide in application also in the sense that it applies to both the supply of a package and a single item such as accommodation sold on its own (the *Van Ginkel* case). We note, however, an apparent contradiction between the *Van Ginkel* and *Star Coaches* decisions. The *Van Ginkel* case suggests that the supply of a single service should be within the Special Scheme as otherwise complications would arise to defeat the purposes of the scheme. Advice, information etc. may be provided as part of the provision of the accommodation so that the service offered is not strictly a single service but, on our reading, the CJEU did not make the use of the Special Scheme dependent on the existence of these additional services. *Star Coaches* does, however, seem to make the use of the scheme dependent on these additional services, seemingly in contradiction of *Van Ginkel*.
- c) Having said that, the Special Scheme is an exception to the normal rules and should only be applied to the extent required to achieve its objectives (several of the above cases)
- d) Use of the scheme must not be limited to traders formally recognised as travel agents or tour operators. Any person organising travel in his own name in the circumstances envisaged by the scheme must apply the scheme (the *Madgett and Baldwin* and *ISt* cases). Although logical, this has the unintended impact of spreading the ambit of the Special Scheme very wide in circumstances where compliance with the scheme is very difficult.
- e) However, a service provided by a travel agent is not automatically within the scheme simply because the supplier is a travel agent. A service can only be within the scheme if it relates to a journey (the *Minerva* case). It can be inferred from this case, however, that a service which does not in itself relate to a journey (e.g. an opera ticket) does fall within the scheme when sold together with an additional service which does relate to a journey.
- f) Services supplied by the travel agent himself cannot fall within the scheme (the *Maria Kozak* case).
- g) Furthermore, where bought-in services are sold together with services to which the Special Scheme does not apply, and the bought-in services are responsible for only a small proportion of the price, the full value should be excluded from the scheme (also the *Madgett and Baldwin* case).
- h) The only situation in which the margin made on services within the scheme is exempted is where the services take place outside the EU. The treatment of similar services when supplied outside the scheme are not relevant in determining the treatment within the scheme (*Commission v Germany* and the *ISt* case).
- i) Where services satisfying the conditions for application of the Special Scheme are sold together with in-house services (i.e. services which do not satisfy those conditions), the scheme applies only to those services which do match the scheme's conditions (the *Madgett and Baldwin* case).
- j) In such circumstances, the in-house services must be valued by reference to their market value whenever this market value can be established. A travel agent may only use an actual costs basis to identify the market value where he can prove that that basis accurately reflects the structure of the package supplied or where it is simply not possible to establish the market value (the *MyTravel* case).
- k) Arguments about the status of travel agents for the purposes of other directives (e.g. the Package Travel Directive) are not relevant when considering the application of the Special Scheme (the *ISt* case). Questions on the value of the travel agent's margin must be considered in a manner consistent with the other valuation provisions in the VAT Directive (the *First Choice* case).

¹⁰⁰ Case C-557/11

¹⁰¹ Paragraph 10

¹⁰² Paragraph 26

¹⁰³ Paragraphs 19 and 20

¹⁰⁴ Case C-189/11

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- l) Supplies within the scheme are not necessarily supplied in the Member State in which the travel agent has established his business. The place of supply should be the Member State in which a fixed establishment is located whenever the circumstances demonstrate that the services are provided from that fixed establishment (the *DFDS* case).
 - m) VAT payable within the scheme must be calculated separately on each supply. Calculation of the margin cannot be performed on an aggregated basis.
 - n) Lastly, while the Advocate General's opinion in the *Commission v Spain* case is not the settled position of the Court and therefore not legally binding, it is noteworthy that the Advocate General's view was that where a travel agent supplies a service within the Special Scheme to a taxable person, he should issue an invoice indicating the VAT due on the margin so that the taxable person client can deduct the VAT in question as input tax (see section 5).

Description and economic analysis of the travel industry



4 Description and economic analysis of the travel industry

4.1 Objective

This section examines how five key business models in the tourism industry, as identified in certain Commission studies¹⁰⁵ operate, and how VAT impacts the respective supply chains. This section also provides an economic analysis of the travel industry. It should be noted that in reality many travel businesses operate via two or more of the five identified business models at the same time, and therefore these models should be considered as a useful device to understand the basic mechanics of VAT in the travel market, rather than a completely accurate representation of specific trading businesses. The inconsistent application of how the rules are applied also compounds the difficulty in consistently comparing “like-for-like” businesses across different Member States.

4.2 Section summary

This section sets the scene for the more detailed technical analysis which follows in section 5; and in turn influences the consideration of reform options at section 6.

The total annual turnover of the EU travel and tourism sector is circa €187bn. The Special Scheme broadly results in the taxation only of travel supplied by EU established businesses to EU destinations. As outlined further in this section, the annual value of Special Scheme output tax collected on these supplies has been indicatively estimated at circa €1.9bn whilst the value of irrecoverable input tax on direct Special Scheme costs has been indicatively estimated at circa

€5.6bn. The majority of the tax collected via the Special Scheme therefore takes the form of irrecoverable input tax, which generally is collected in the Member State of destination. The estimated value of Special Scheme output tax is smaller in totality, and is collected in the Member States in which the respective travel businesses are established.

The fundamental feature of blocked input tax recovery is relatively consistently applied across the EU and affects all business models in a similar manner. However, the implementation of Special Scheme rules differ in other respects between different Member States, as explored in section 5. Each of these differences has potential to impact the different supply chains used under the five key business models in different ways. This section therefore provides important context for the subsequent sections of this report. The relative significance of each business model across the EU is summarised at Fig. 4b.

4.3 Business models

The five key business models considered are:

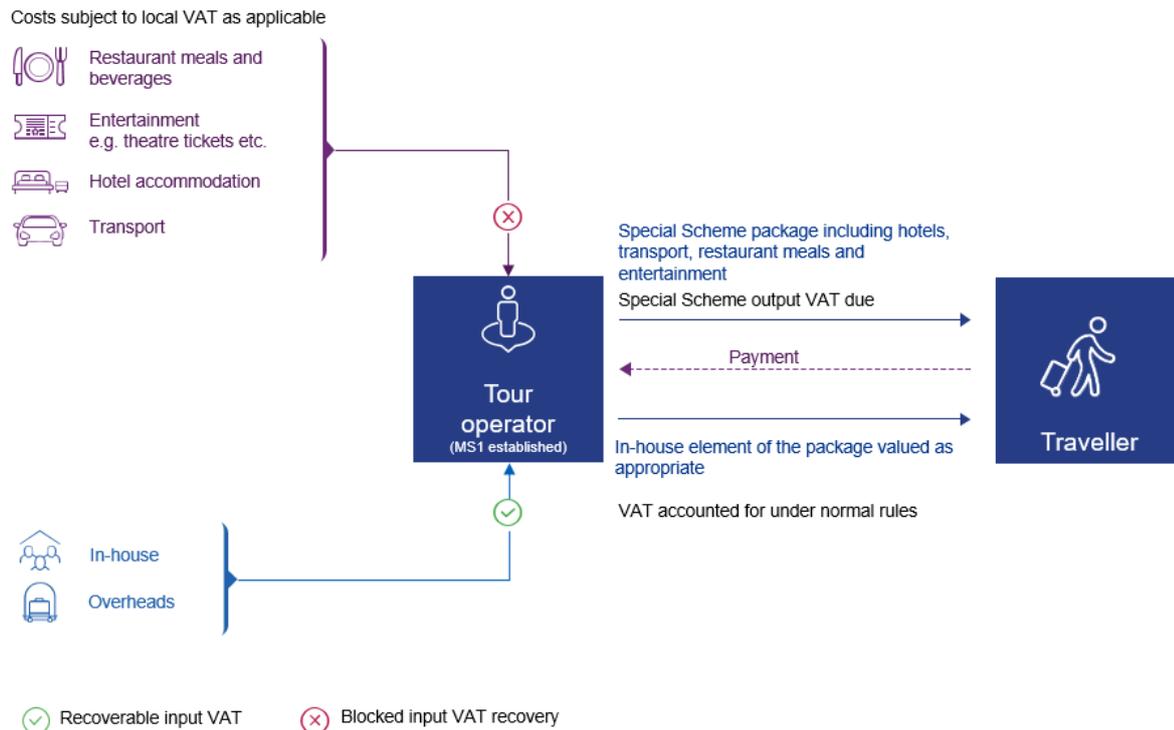
- Tour operators;
- Travel Management Companies (TMC);
- Travel agents;
- Destination Management Companies (DMC); and
- MICE (Meeting, Incentives, Conference and Events) organisers

¹⁰⁵ Study on the impact of EU policies and the measures undertaken in their framework on tourism (12/10/2012) (http://ec.europa.eu/growth/content/study-impact-eu-policies-and-measures-undertaken-their-framework-tourism-0_en) and Study on the

Competitiveness of the EU tourism industry (05/10/2009) (http://ec.europa.eu/growth/content/study-competitiveness-eu-tourism-industry-0_en)

4.3.1 Tour operators

Scenario 1a – Tour operator incurs all costs as principal



Article 306 of the VAT Directive applies the Special Scheme to transactions undertaken by travel agents as *principal* to customers in the provision of travel facilities.

Most inbound costs of the tour operator will be subject to VAT at a positive rate in the Member State of destination. Per Annex 3 of the VAT Directive, some inbound costs may benefit from a reduced rate of VAT in certain Member States.

Based on the KPMG questionnaire in respect of how the current Special Scheme rules are applied by Member States (as described at section 2.3 above), tour operators in all Member States making supplies of the travel facilities within the Special Scheme are unable to recover the VAT incurred on the costs of buying-in the travel facilities per Article 310 of the VAT Directive. There are no exceptions to this rule and it therefore demonstrates that one of the fundamental tenets of the scheme is consistently applied.

In addition, tour operators are permitted to recover local VAT, incurred in a Member State in which the business is established for VAT purposes, on costs (i.e. overheads) that are not directly incurred in respect of transactions under the Special Scheme in all Member States.

The tour operator is required to account for output tax on gross profit margin earned on the onward supply of bought-in travel facilities, per Article 308 of the VAT

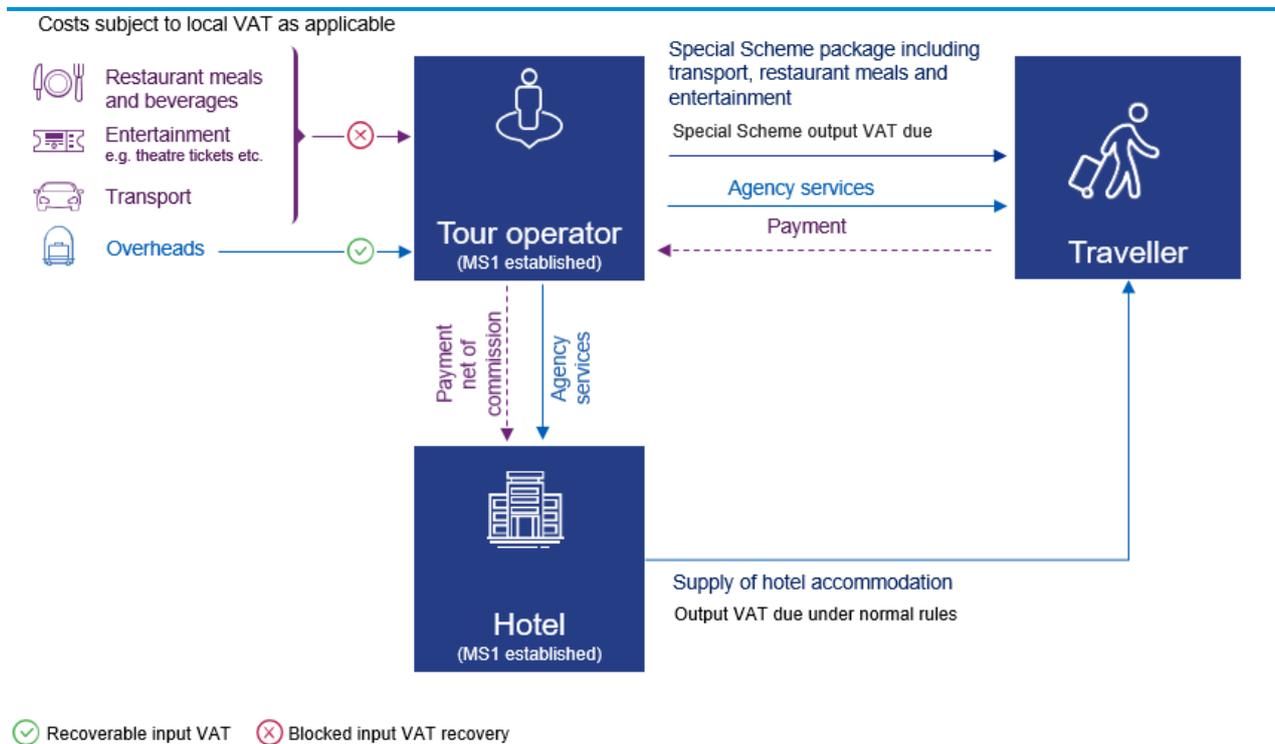
Directive. By contrast, output tax must be accounted for on the *full value* of consideration received for “in-house” supplies.

Most Member States consider that the margin made on a package including both “bought-in” and “in-house” elements will be required to be apportioned between in-house and Special Scheme supplies in order to ascertain the respective value of the in-house and Special Scheme supplies respectively. Invoicing requirements for B2B supplies vary significantly between Member States as outlined at section 5.5.5. In general, for B2C requirements, there is no obligation to issue a VAT invoice.

Where the traveller is a business customer, certain Member States allow the business customer to recover the VAT accounted for by the travel agent on its margin where a VAT invoice is held (including Finland, France, Hungary, Sweden and Belgium). In Belgium there are additional restrictions to input tax recovery per the Belgian VAT code.

The remaining Member States do not allow business travellers to recover VAT in respect of supplies subject to the Special Scheme.

Scenario 1b – Tour operator acts as both a principal and agent



The VAT recovery on inbound costs for the tour operator in respect of its bought in travel facilities in Scenario 1b is the same as referred to in Scenario 1a. The tour operator in this scenario is supplying a single package that contains a mixture of “bought-in” travel facilities and travel facilities arranged as an intermediary.

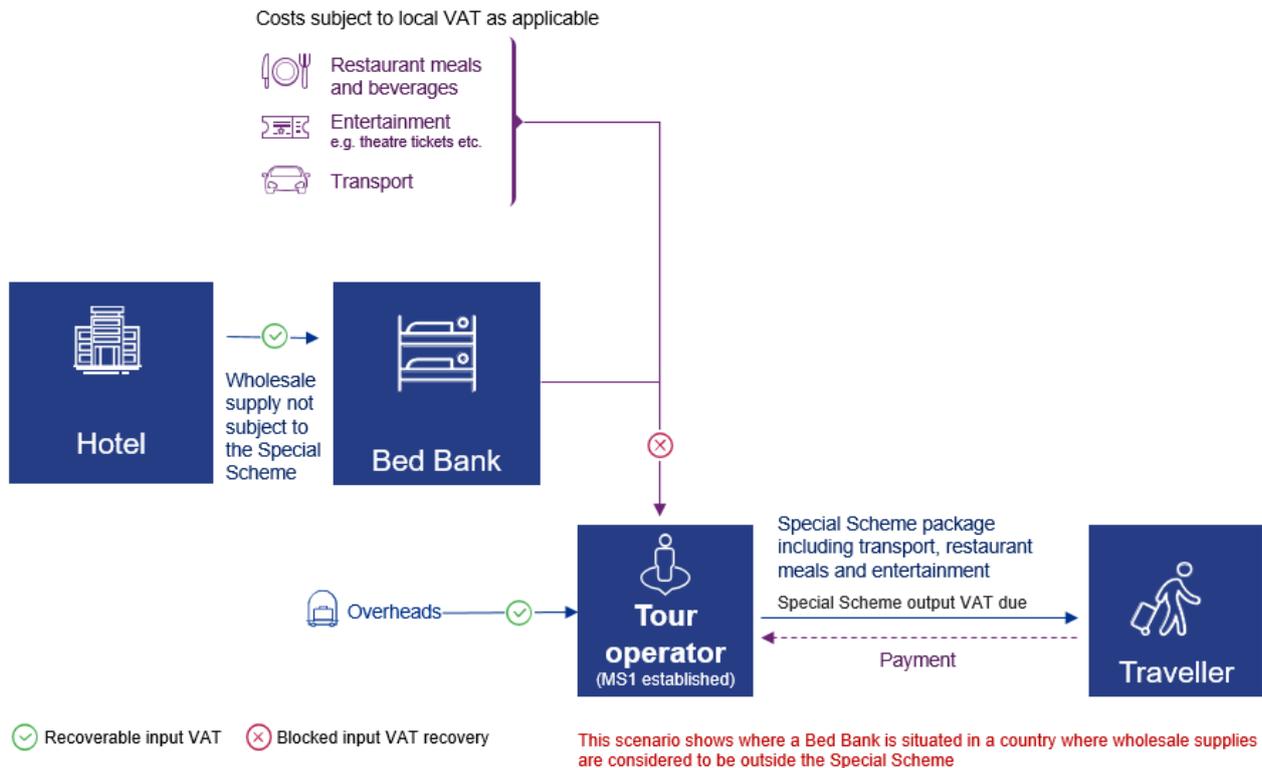
No Member States (with the exception of Lithuania) generally apply the Special Scheme to the provision of travel facilities by intermediaries, albeit Romania applies the Special Scheme where the intermediary makes a profit which is not disclosed to the customer. However, where a single package that contains a mixture of “bought-in” travel facilities and travel facilities arranged as an intermediary, Member States including Lithuania, Cyprus, Belgium, Slovenia and

Hungary, would treat the whole package as subject to the Special Scheme.

The remaining Member States would treat the travel facilities supplied as intermediary as being subject to normal VAT rules, with the bought-in travel facilities subject to the Special Scheme. This requires an apportionment of value. Invoicing requirements for B2B supplies vary significantly between Member States as outlined in section 5.5.5. In general, for B2C requirements there is no obligation to issue a VAT invoice.

Where the traveller is a business customer, in respect of the intermediary element of the package supplied by the tour operator, the business customer will be able to recover the VAT charged subject to normal VAT rules.

Scenario 1c – Tour operator buys from a Bed Bank intermediary (or DMC)



The entitlement of “Bed Banks” to VAT recovery in respect of the direct costs of the purchase of accommodation varies from Member State to Member State, and also depends on the particular VAT treatment applicable to the supply by the Bed Bank to the tour operator. Ten Member States consider the supply by the Bed Bank to be outside the scope of the Special Scheme and taxed under normal rules in which case the Bed Banks are able to recover VAT incurred on the direct costs accommodation, subject to normal rules. Meanwhile thirteen Member States consider the Bed Bank’s supplies are subject to the Special Scheme such that no VAT recovery is possible (equivalent to Scenario 1a).

The choice to treat wholesale supplies as subject to the Special Scheme in Estonia, Ireland, Sweden, the UK and the Czech Republic is optional at the discretion

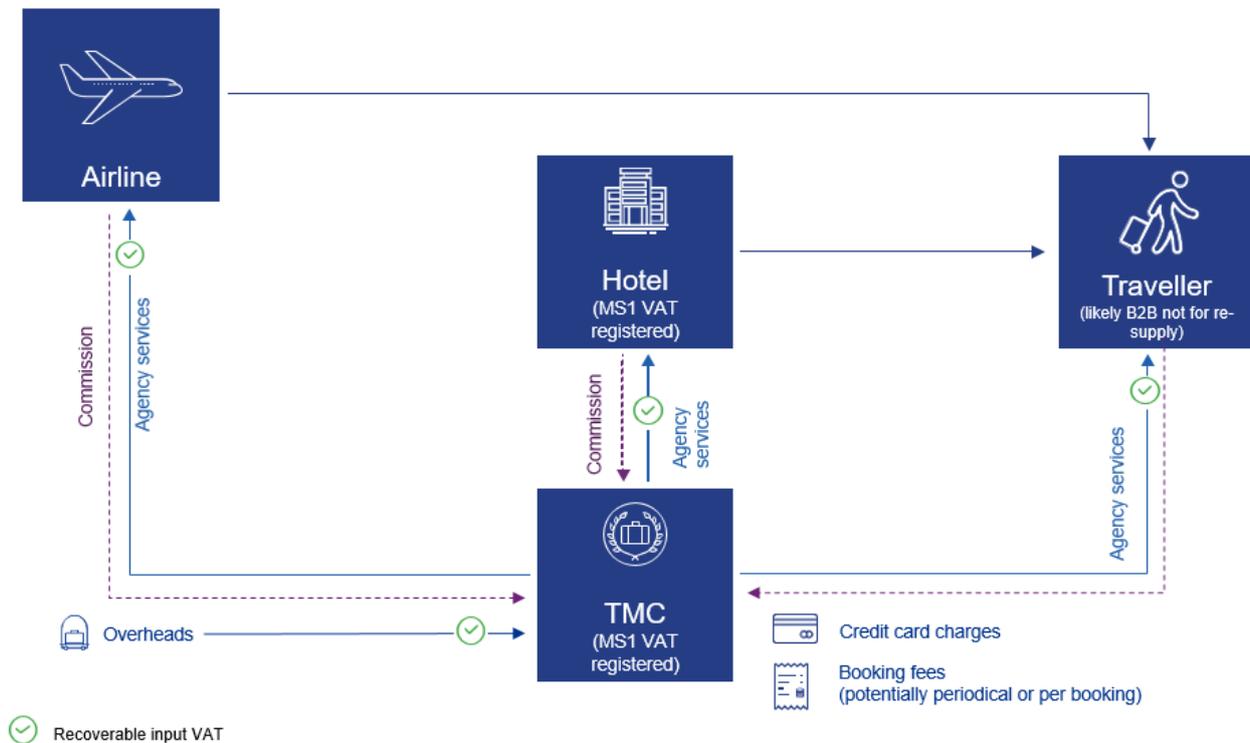
of the taxpayer, and accordingly the entitlement to VAT recovery varies dependent on which option the taxpayer chooses.

There is the potential for non-taxation and double taxation where wholesale supplies of accommodation are made and the hotel and Bed Bank supplier are located in different Member States, if there is a mismatch in the VAT treatment considered to apply to the Bed Bank’s wholesale supply to the tour operator. For further detail see section 5.5.7.

The VAT position of the tour operator in Scenario 1c is the same as Scenario 1a. Both the Bed Bank and tour operator are permitted to recover VAT on costs (i.e. overheads) that are not directly incurred in respect of transactions under the Special Scheme in all Member States.

4.3.2 Travel Management Companies (TMC)

Scenario 2 – TMC acting as an intermediary



As with Scenarios 3a and 3b, a TMC typically acts as an intermediary in the supply of the hotel accommodation and transport to the traveller.

No Member States (with the exception of Lithuania) generally apply the Special Scheme to the provision of travel facilities by intermediaries, albeit Romania applies the Special Scheme where the intermediary makes a profit which is not disclosed to the customer.

In this supply chain the TMC will be able to recover VAT incurred on overheads. The TMC typically provides intermediary services to the hotel or airline, and to the traveller. Subject to local variations in the definition of “intermediary”, all Member States other than Lithuania *exclude* bookings made as intermediary from the scope of the Special Scheme.

In respect of the intermediary services supplied to the airline, the airline is typically required to account for VAT under the reverse charge (but this depends on the rules in the relevant Member State), and would be able to recover any VAT charged subject to local rules. Intermediaries often pay suppliers “net” of commission and the supplier is often not aware of the full value on which reverse-charge VAT should be brought to

account, and in practice many suppliers will not therefore bring this VAT to account (albeit such VAT would typically be fully recoverable by the supplier).

See Scenario 3b (which is broadly the same as Scenario 2) in respect of booking fees and credit card charges made to the traveller.

Where the traveller is a business traveller, any VAT charged by the TMC should be recoverable via a local VAT return or an overseas VAT reclaim.

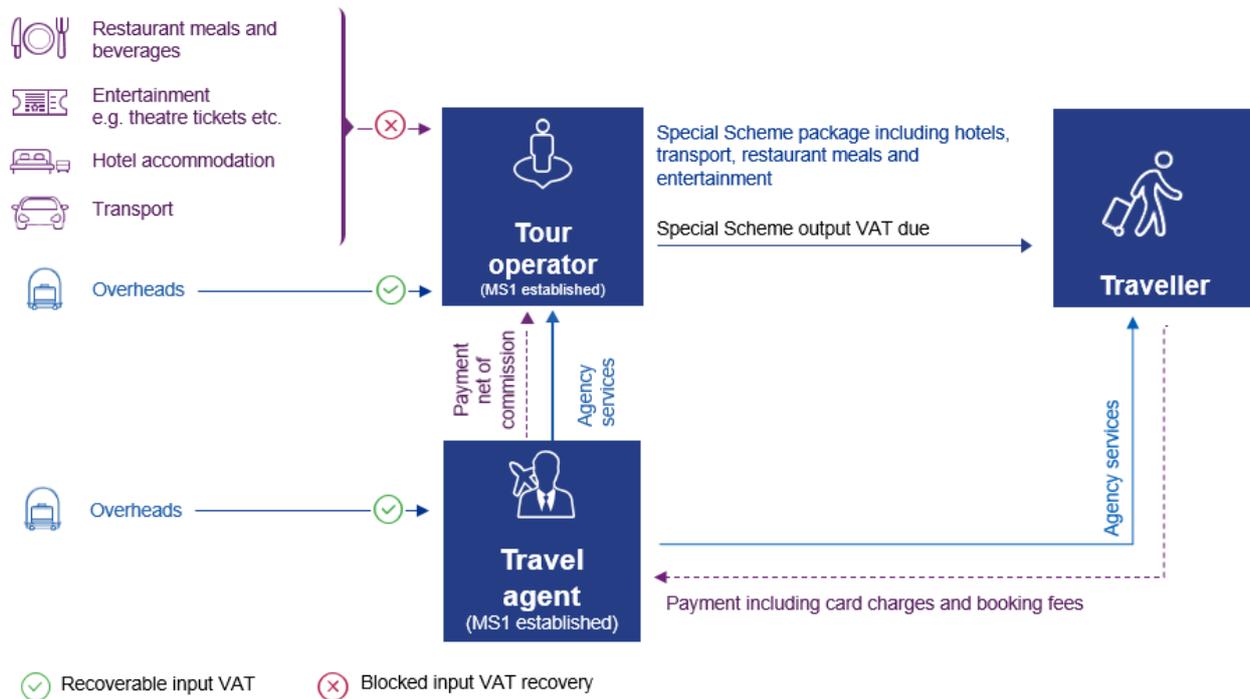
A variant on this Scenario involves an in-house TMC within a corporate group which buys in travel facilities and re-charges the cost to other members of the same corporate group (i.e. as principal for consumption). Twenty Member States responded that the Special Scheme would apply to the re-charge with the remaining eight responding that the re-charge would be subject to normal rules.

All analysis in this section pertains to supplies which are considered to be taxable supplies, rather than those which may be considered not to be taxable supplies under local VAT grouping rules.

4.3.3 Travel agents

Scenario 3a – Travel agent acting as an intermediary

Costs subject to local VAT as applicable



In this scenario, the travel agent is acting as a disclosed intermediary of the tour operator in supplying a package of travel facilities to the traveller.

The VAT treatment of the tour operator's supply (the accommodation as well as the other elements of the package) and VAT recovery will be the same as those noted within Scenario 1a; specifically regarding supplies of bought-in travel facilities.

Both the tour operator and travel agent will be able to recover the VAT on overheads subject to normal VAT rules.

Article 306 of the VAT Directive excludes from the Special Scheme transactions where travel agents act solely as "intermediaries". The definition of "intermediary" differs from Member State to Member State. Subject to local variations in the definition of "intermediary", all Member States other than Lithuania *exclude* bookings made as intermediaries from the scope of the Special Scheme.

As such, the supply of intermediary services by the travel agent to the tour operator is subject to normal

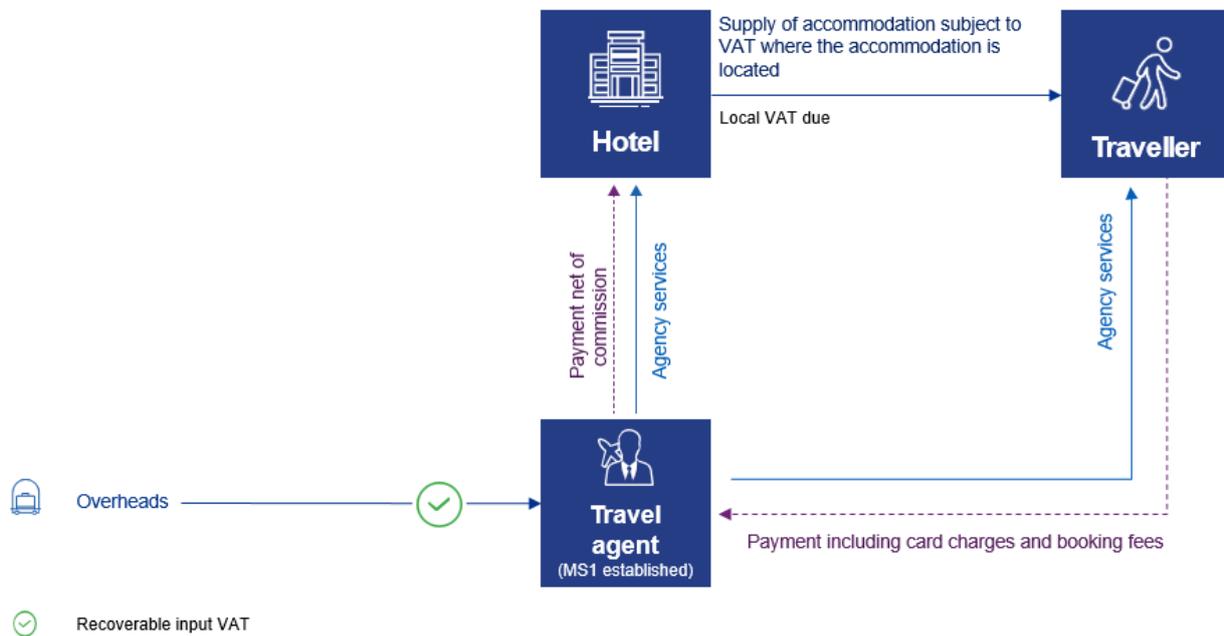
rules regarding the place of supply, taxable amount and VAT recovery entitlement on costs. The VAT liability of the travel agent's intermediary services will depend upon the nature of the underlying travel services. The travel agent may be liable to register and account for VAT in various Member States where the place of supply of its service is in another Member State i.e. for B2C services relating to accommodation albeit in practice such registration obligations are often ignored. See Scenario 2b for the potential variations in respect of "undisclosed" profits retained by the Travel agent.

Where the travel agent makes charges for credit card use and booking fees to the traveller as intermediary and the traveller is a business customer the customer may be liable to account for VAT via the reverse charge mechanism for this service which will likely be subject to VAT further to the CJEU judgment in *Bookit*.¹⁰⁶

See Scenario 1a in respect of VAT recovery in circumstances where the tour operator's supply is to a business traveller.

¹⁰⁶ *Bookit Ltd v Commissioners for Her Majesty's Revenue and Customs (Case C-607/14)*

Scenario 3b – Travel agent acting as an intermediary (undisclosed profit)



On the basis that the hotel's supply of accommodation is not bought-in, the VAT liability of the hotel's supply to the traveller will be subject to local VAT at the rate applicable in the Member State within which the hotel is located.

The travel agent provides intermediary services to either (or both) the hotel and the traveller. Subject to local variations in the definition of "intermediary", all Member States other than Lithuania *exclude* bookings made as intermediary from the scope of the Special Scheme.

Further, where the commission earned by the travel agent is undisclosed as in this Scenario, Romanian rules would consider this indicative of sales made as principal, and therefore would fall within the scope of the Special Scheme. All other Member States would still consider a travel agent making an undisclosed profit to still fall outside the scope of the Special Scheme.

The place of supply of the travel agent's intermediary services to the hotel will be the Member State where the accommodation is located and the travel agent may be liable to register and account for VAT in that Member State.

See Scenario 3a where booking fee/credit card charges are made to the traveller.

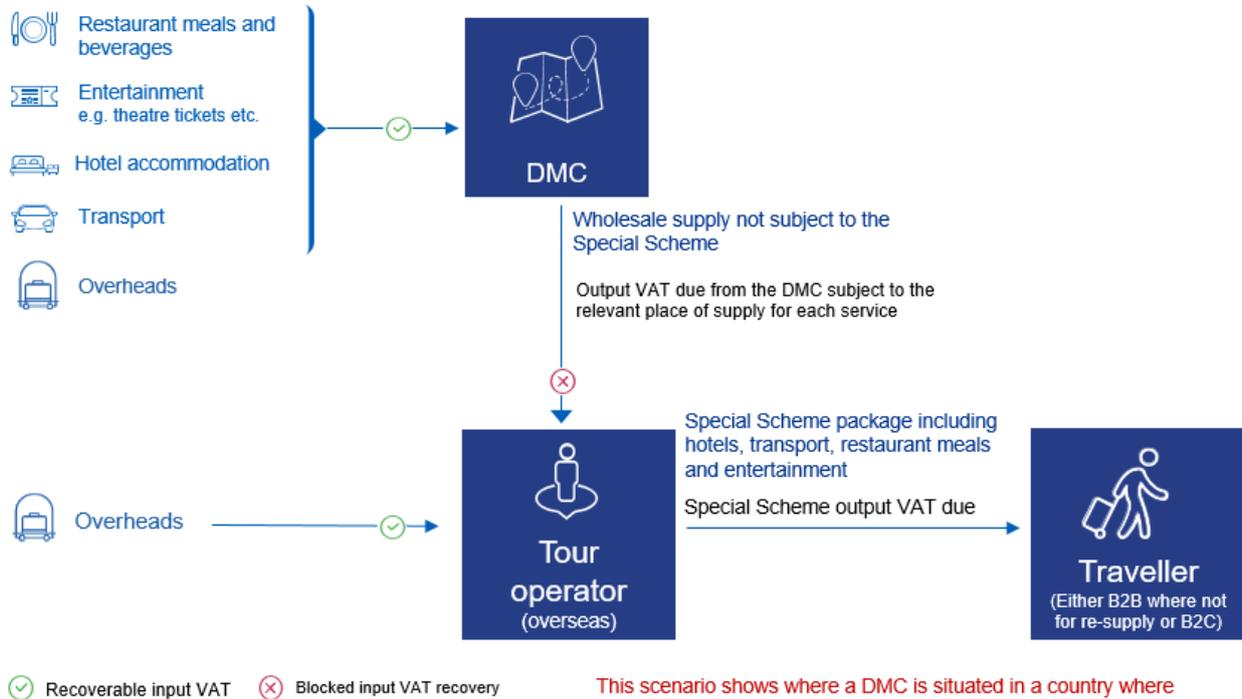
As in this scenario, where the travel agent makes a "secret profit" which it does not disclose to the hotel, the hotel will not be able to account for VAT on the full value of the cost of the Hotel accommodation to the traveller, leading to a potential tax loss.

See Scenario 1a in respect of VAT recovery in circumstances where the tour operator's supply is to a business traveller.

4.3.4 Destination Management Companies (DMC)

Scenario 4a – DMC supplies to a tour operator

Costs subject to local VAT as applicable



This scenario shows where a DMC is situated in a country where wholesale supplies are considered to be outside the Special Scheme

Where the DMC is located in one of the ten Member States in which “wholesale” supplies of travel facilities are considered outside the scope of the Special Scheme and taxed subject to normal rules, the DMC would be able to recover the VAT on its direct costs as well as on overheads subject to normal rules on its supply to the tour operator.

Where each of the underlying services are purchased by the tour operator separately from the DMC, the DMC will be required to account for output tax subject to the place of supply rules for each underlying service i.e. for accommodation, where the accommodation is located.

However, where the tour operator purchases from the DMC all the underlying elements at the same time, it is likely that there is a single supply subject to *CPP*¹⁰⁷ principles, with the accommodation likely to be considered the principal service, and the remaining

services a means of better enjoying the accommodation (refer to section 5.5 for more detail).

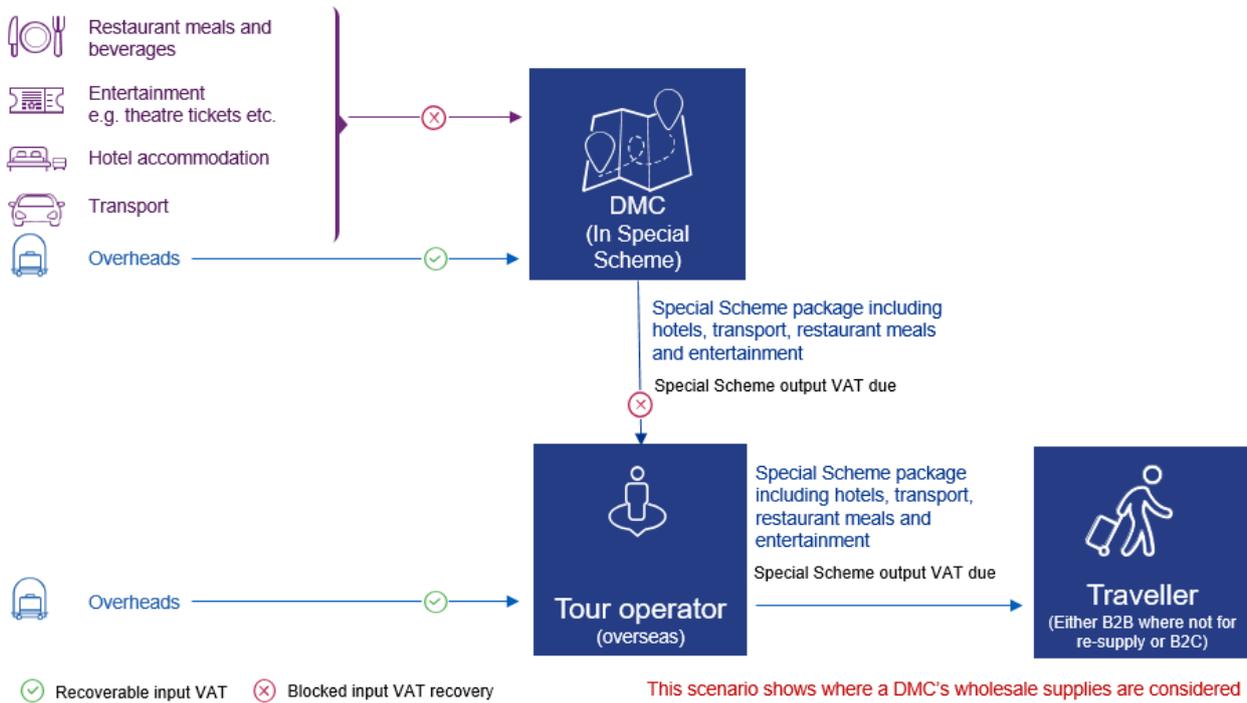
It is sometimes the case that the DMC will be located in the country of travel destination, in which case it is unlikely that issues will arise regarding non-taxation or double taxation as per Scenario 1c. In respect of cross-border DMCs, see section 5.5.7 in relation to mismatches regarding the VAT treatment of wholesale supplies in different Member States.

The tour operator incurs all costs as principal and as such its VAT recovery on those bought-in travel facilities will be blocked with VAT recovery on overheads as above for Scenario 1a. The tour operator’s onward supply of the package to the traveller will fall within the scope of the Special Scheme.

See Scenario 1a in respect of VAT recovery in circumstances where the tour operator’s supply is to a business traveller.

¹⁰⁷ Card Protection Plan (CPP) v Commissioners for Customs & Excise (Case C-349/96)

Scenario 4b – DMC in Special Scheme supplies to a tour operator



In contrast to Scenario 4a, where the DMC is established in one of the thirteen Member States in which wholesale supplies *are* considered to fall with the scope of the Special Scheme (or one of the fifteen Member States where the supply is either subject to the Special Scheme or *optionally* subject to the Special Scheme and that option has been exercised by the DMC), the VAT treatment will be different.

It is sometimes the case that the DMC will be located in the country of travel destination, in which case it is unlikely that issues will arise regarding non-taxation or double taxation as per Scenario 1c. In respect of cross-border DMCs, see section 5 in relation to mismatches

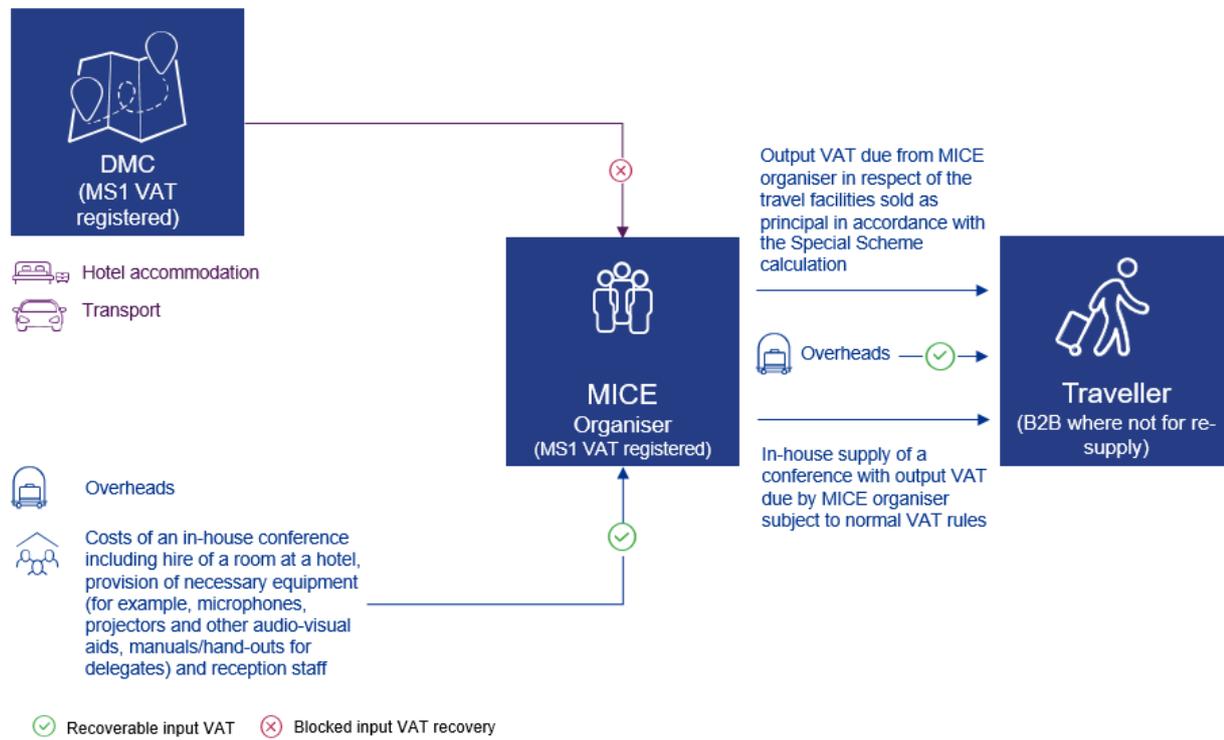
regarding the VAT treatment of wholesale supplies in different Member States.

Neither the DMC nor the tour operator will be able to recover VAT incurred on direct costs in relation to the Special Scheme package supplied by each, however, they will be able to recover the VAT on overhead costs. The DMC and the tour operator will be required to account for VAT within the Special Scheme.

Finally, see Scenario 1a in respect of VAT recovery in circumstances where the tour operator's supply is to a business traveller.

4.3.5 MICE (Meeting, Incentives, Conference and Events) organisers

Scenario 5 – MICE organiser supply to a traveller



To the extent that a MICE organiser purchases from a DMC, see Scenarios 4a and 4b in respect of the DMC's ability to recover VAT on costs, as well as the treatment of the DMC's supply subject to the specific VAT treatment of wholesale supplies in the relevant Member State, i.e. wholesale treated as within or outside of the Special Scheme. MICE organisers may also purchase travel facilities direct from travel suppliers.

MICE organisers are unable to recover VAT incurred on the costs of bought-in travel facilities, as they relate directly to the supply of travel facilities as principal to the traveller; which is subject to the Special Scheme. With regard to overheads, the MICE organiser will be able to recover overheads subject to normal rules.

The VAT treatment of MICE supplies varies significantly from one Member State to another and this is addressed at section 5.¹⁰⁸

¹⁰⁸ In the absence of the Special Scheme, the determination of the place of supply involves a number of different Articles of the VAT Directive and the analysis can be complex

4.3.6 Phase 1 – Qualitative analysis

4.3.6.1 Decisions of the Commission in areas other than taxation.

We believe it is appropriate to consider how economists and competition authorities have described both the markets in which travel industry operators compete and relevant aspects of competition in those markets.

Such descriptions are typically set out most usefully in the decisions and reports published by competition authorities. These can help to inform our consideration of potential distortions of competition by confirming the relevant economic markets within which we should be assessing such distortions. Whilst this analysis is intended to inform and deepen the context of the study, it should not be seen as conflicting with the well-established principle that the provisions of EU VAT law are to be given an independent EU definition to avoid divergences in the application of the VAT system from one Member State to another.¹⁰⁹

We have focused on the Commission's many decisions in the sector (as defined by the NACE codes N.79, N.79.1, N.79.11, N.79.12, N.79.9 and N.82.30), which decisions therefore relate to the business models considered throughout this study. The most relevant and up-to-date findings from these Commission decisions are summarised below.

a) Case M.7968 – EQT Services UK / Kuoni Travel Holding¹¹⁰

This merger case decision, dated 22 April 2016, confirmed that, in this and other cases in the travel sector, the Commission has identified a market for hotel accommodation and has considered that this market might be segmented by price/comfort levels and/or by ownership type and might be both national and local in geographic market terms. However, ultimately, the Commission has left its precise market definitions open.

With respect to “intermediated hotel reservations” (including both reservations made by online travel agents (“OTA”) and reservations made to corporate customers), the Commission noted its previous conclusions that the market for the provision of global distribution systems’ services constitutes a separate market. It has also concluded that, in geographic terms, this market is world-wide on the upstream side (i.e. the provision of booking inventory by travel service providers, such as hotels) and at least national on the downstream side (i.e. the provision of services to travel agents, tour operators, etc).

Finally as regards market definition, the Commission also concluded that the precise product and geographic definitions could also be left open as regards the markets in which Kuoni’s Global Travel Services business is active through the provision of both group travel and MICE services.

b) Case M.8231 – Kuoni Travel Holding / MTS Globe¹¹¹

This merger case decision, dated 15 November 2016, repeated findings from the above Case M.7968 with respect to hotel accommodation and hotel intermediation market definitions. In addition, the Commission also considered the merging parties’ submissions regarding relevant markets for (i) B2B supply of destination management services, and (ii) B2B supply of group tour packages. However, the Commission concluded that the precise scope of the relevant product and geographic markets could be left open.

c) Case M.8046 – TUI / Transat France¹¹²

This merger case decision, dated 20 October 2016, identifies and, from an economic perspective, considers the product and geographic market definitions of the key travel sector markets other than those in the decisions referred to above.

First, with respect to the supply of travel services by tour operators, the Commission confirms its practice of defining a distinct market for such services and typically further distinguishing between leisure travel and business travel. The Commission concluded that, within leisure travel, it could leave open the question of whether package holidays should still be regarded as constituting a distinct economic market from independent holidays (and also the questions of potential further distinctions by package holiday types and/or destinations). The Commission also concluded that the markets for leisure travel and for package holidays are national in scope (i.e. for travel/holidays from each country respectively).

Second, the Commission also defines national markets for the wholesale supply of airline seats by airlines to tour operators.

Third, with respect to destination management (DMC) services, the Commission notes that it has not considered the supply of such services in its previous decision practice. It concluded that the questions of whether the supply of such services constitutes a separate market and of its exact delineation and/or geographic scope can be left open, since the transaction in question did not raise serious issues under any plausible product or geographic market definitions.

Finally, with respect to the provision of travel agency services, the Commission in this case also leaves open all product and geographic market definition questions but it notes that in its prior decision practice it has:

- Defined a separate market for the provision of travel agency services and further distinguished between the provision of business travel and leisure travel services;
- Left open whether the market for the provision of leisure travel services should be further segmented by distribution channel (i.e. as between distribution via outlets and online

¹⁰⁹ EU terminology and the interpretation of VAT law is dealt with by Terra and Kajus in “Introduction to EU VAT – 2010” (section 6.3.3)

¹¹⁰http://ec.europa.eu/competition/mergers/cases/decisions/m7968_120_3.pdf

¹¹¹http://ec.europa.eu/competition/mergers/cases/decisions/m8231_134_3.pdf

¹¹²http://ec.europa.eu/competition/mergers/cases/decisions/m8046_559_3.pdf

distribution) or by types of products (e.g. package holidays, independent holidays, hotel accommodation only, or flights); and

- Generally considered that markets for the provision of travel agency services are national in scope because of linguistic and cultural borders, without excluding the possibility to find regional or local markets within countries.

d) Case 40308 – Holiday Pricing¹¹³

Finally, we note the Commission's statement regarding its antitrust case number 40308 ("Holiday Pricing"), which reads as follows:

"On 02/02/2017, the European Commission has initiated formal antitrust proceedings against four large European tour operators (Kuoni, REWE, Thomas Cook, TUI) and one hotel chain (Meliá Hotels) for a suspected breach of EU rules (Article 101 of the Treaty on the Functioning of the European Union). The initiation of proceedings is based on Article 11(6) of the Antitrust Regulation (Council Regulation No 1/2003) and Article 2(1) of its implementing Regulation (Commission Regulation No 773/2004).

The Commission intends to investigate agreements regarding hotel accommodation concluded between tour operators and hotels. The agreements in question may contain clauses that discriminate between customers, based on their nationality or country of residence - as a result customers would not be able to see the full hotel availability or book hotel rooms at the best prices. This may breach EU competition rules by preventing consumers from booking hotel accommodation at better conditions offered by tour operators in other Member States simply because of the consumer's nationality or country of residence. This would lead to the partitioning of the Single Market.

The initiation of proceedings does not signify that the Commission has made a definitive finding of an infringement but merely signifies that the Commission will deal with the case as a matter of priority."

In addition to the Commission's case decisions in the sector, we also note the recent (6 April 2017) publication of a report by a group of European Competition Authorities on certain aspects of competition in the online hotel booking sector.¹¹⁴ This report presents the results of a coordinated monitoring exercise carried out in the online hotel booking sector by a group of 11 EU competition authorities in 2016. The purpose was to measure the effects of

recent changes to the parity clauses used by OTAs in their contracts with hotels.

By way of background, the report noted that since 2010 several national competition authorities had investigated OTA parity clauses, which were also known as most favoured nation ("MFN") clauses, and that the various authorities had adopted differing approaches both in their investigations and in their resulting actions. The 2016 monitoring exercise covered various aspects of the way hotels market and sell their rooms but it focused on parameters which had been central to the theories of harm applied by the authorities in such investigations.

As summarised in the report:

*"The theory of harm for wide parity clauses in this sector is, first, that they lead to a softening of competition between incumbent OTAs and, second, that they foreclose entry or expansion by new or smaller OTAs" and "[T]he theory of harm for narrow parity clauses in this sector is that they have the effect of preserving the restriction of competition caused by wide parity, because they reduce the incentive for hotels to offer differing room prices on different OTAs."*¹¹⁵

In light of these theories of harm, the monitoring exercise focused on room price differentiation by hotels between sales channels, room availability differentiation by hotels between sales channels, and OTA commission rates. In particular, it examined how changes to room pricing terms and other recent developments had affected the market and especially whether the Europe-wide removal, in July 2015, by two OTAs (Expedia and Booking.com) of certain parity clauses in their standard contracts with hotels had affected pricing and commission rates.

The full results of the exercise are set out in the report. One example of the competition authorities' responses to these findings was that the UK's Competition and Markets Authority ("CMA") announced on 6 April 2017 that it had decided "not to prioritise further investigation on the application of competition law to pricing practices in this sector at this stage".¹¹⁶

This example is consistent with the Commission's press release on 6 April 2017 regarding publication of the report on online hotel booking. This press release stated that:

"[T]he results of the exercise suggest that measures applied to the parity clauses, namely (a) allowing large online travel agents to use narrow parity clauses, and (b)

¹¹³http://ec.europa.eu/competition/antitrust/cases/dec_docs/40308/40308_84_7_3.pdf

¹¹⁴http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf

¹¹⁵http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf, paragraph 3, page 5. In brief, "wide" parity clauses are defined in the report as obliging the hotel to give the OTA the lowest room prices and best room availability relative to all other sales channels. "Narrow" parity clauses are defined as allowing the hotel to offer lower room

prices and better room availability on other OTAs and on offline sales channels, but allowing the OTA to stop the hotel from publishing lower room prices on the hotel's own website

¹¹⁶<https://assets.publishing.service.gov.uk/media/58e61bd5e5274a06b0000e8/update-6-april-2017.pdf>

prohibiting online travel agents from using them altogether, have generally improved conditions for competition and led to more choice for consumers. Based on the results, the European Competition Network (comprising the national competition authorities of all EU Member States and the European Commission) has agreed to keep the online hotel booking sector under review and to re-assess the competitive situation in due course. This will allow the sector more time to make full use of the measures that have already been taken.”¹¹⁷

4.3.7 Phase 2 – Quantitative analysis

Our industry expertise recognises that it is difficult to quantify economic activity accurately across sub-sectors or business models in this sector. Our approach is, therefore, to use the available official statistics as the starting point and then to complement these statistics with our industry research.

This industry research will give us the basis to be commenting on the official statistics and, then, to potentially make adjustments and extrapolations to the statistics in order to finalise the base market data. The VAT-related findings from our questionnaires will then be able to be applied to this base data.

4.3.7.1 Macroeconomic data

To provide a foundation for our quantitative analysis, macroeconomic data has been gathered to identify the turnover of the travel and tourism sector across the EU, Turkey, Norway, Switzerland and North America. This been broken down by country and across the five business models identified. The source data has been obtained from EUROSTAT for Europe and from the US Census Bureau for the USA and Statistics Canada for Canada.

For Europe, a review of NACE codes identified four categories of detailed statistics for services which captured data for the five business areas as follows: N79.1.1 Travel Agencies, N79.1.2 Tour Operators, N79.9.9 Other and N82.3.0 Organisation of conventions and trade shows.

For North America, a review of NAICS codes identified four categories of detailed statistics for services which captured data for the five business models as follows: 561510 Travel Agencies, 561520 Tour Operators,

561591 Convention and Visitors Bureaus, 561599 All Other Travel Arrangement and Reservation Services.

The Economic Indicator of “turnover or gross premiums written” was selected in turn for each of the NACE codes detailed above and the turnover data for the NAICS codes. The raw data was downloaded (in €m). There were a number of gaps in the raw data. Using sound economic principles, estimates have been derived in order to complete turnover data for 2015 for all countries. See Annex 3 for details of the extrapolations and assumptions made.

The total turnover of the EU travel and tourism sector (including MICE), is estimated at circa €187bn.¹¹⁸ The total for North America, Switzerland, Turkey and Norway is estimated at circa €41.7bn. Further breakdown by country can be seen in the tables below and is detailed in Annex 3.

Detailed explanation of the quantitative calculation can be found at Annex 3. This has provided indicative figures at an EU level as follows:

	(€bn) ¹¹⁹
Special Scheme output tax can be indicatively estimated to be in the order of	1.9
Of which, Special Scheme output tax pertaining to B2B supplies can be indicatively estimated to be in the order of	0.29
Output tax accounted for under "normal rules" can be indicatively estimated to be in the order of	3.7
Irrecoverable input tax on direct Special Scheme costs can be indicatively estimated to be in the order of	5.6
Of which, irrecoverable input tax on direct costs of B2B Special Scheme supplies can be indicatively estimated to be in the order of	1.15

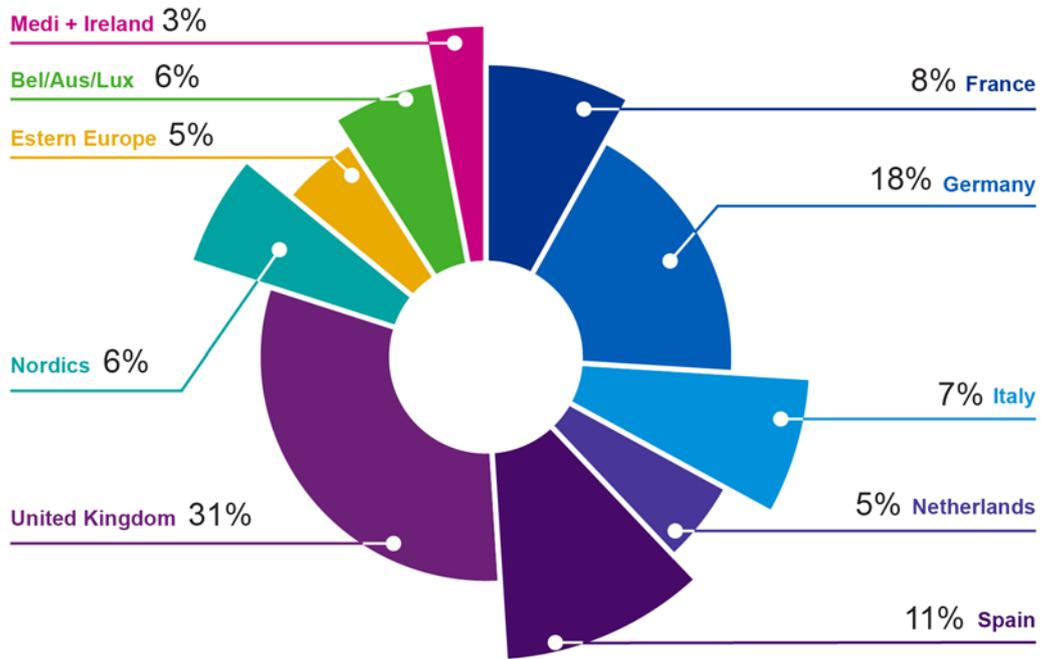
¹¹⁷ http://europa.eu/rapid/press-release_MEX-17-896_en.htm

¹¹⁸ This is a turnover figure for the group of travel agent, tour operator and related businesses representing, in EUROSTAT’s statistics, an approximation of the types of businesses likely to be included in the Special Scheme. This is, therefore, to be taken as a rough approximation for the total “top-line” income in Special Scheme calculations across the EU. This figure is not comparable to the World Travel & Tourism Council figures referred to in section 2.5, which relate to GDP figures for the industry as a whole. GDP is not the same as

turnover. Also, in particular, the GDP figures do not just include travel agents and tour operators; they will also include “direct” spend within the industry as a whole, where the traveller does not buy from a business included in the Special Scheme.

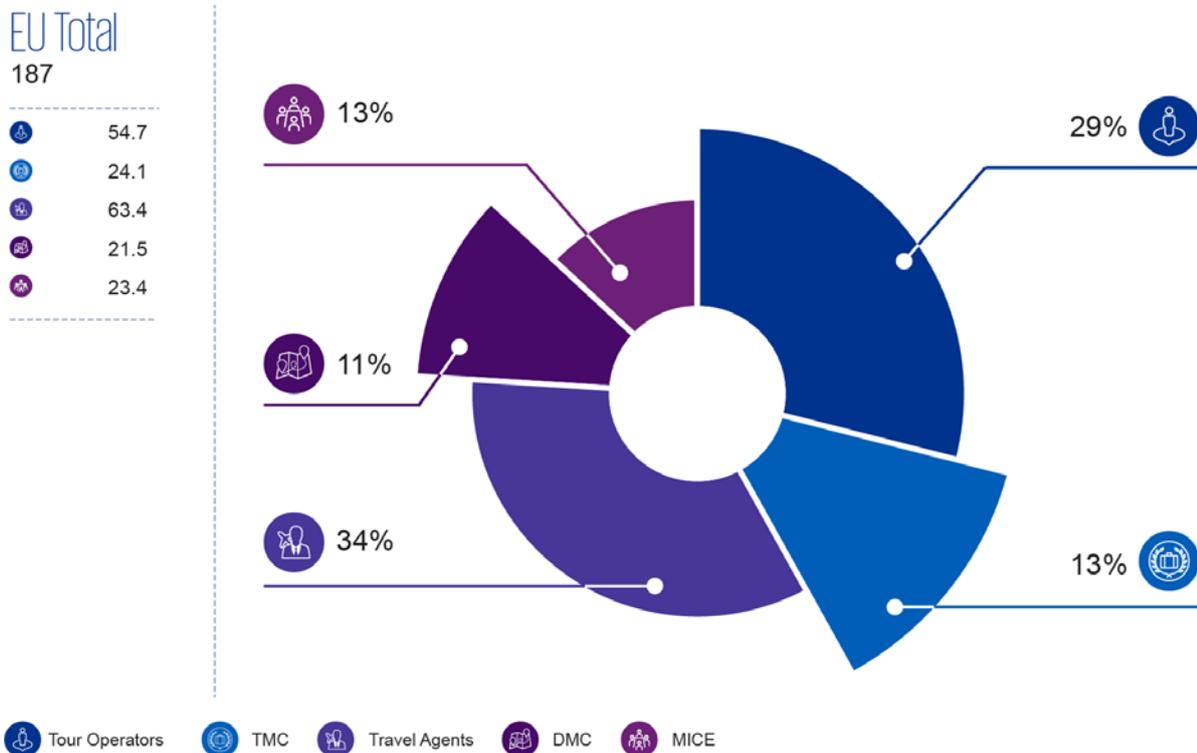
¹¹⁹ These figures should be considered to be only indicative estimates of potential VAT impacts. All the underlying data are necessarily either approximations or sample-based. Some of the approximations would imply that the estimates are more likely to be over-estimates than under-estimates but, overall, we cannot confirm this

Fig. 4a – Total EU Travel and Tourism Market by Jurisdiction



Using sound economic principles, the turnover for the EU as a whole and within each country, has been split into the five business models. The methodology can be found in Annex 3. This shows us that the largest market is travel agents, followed marginally by tour operators, occupying over 60% of the industry. TMCs, MICE and DMCs then account for the remaining 40% between them.

Fig. 4b – Total EU Market split by Business Model (€bn)¹²⁰



¹²⁰ Rounding applied

Fig. 4c – Total Non-EU Market split by Business Model (€bn)¹²¹

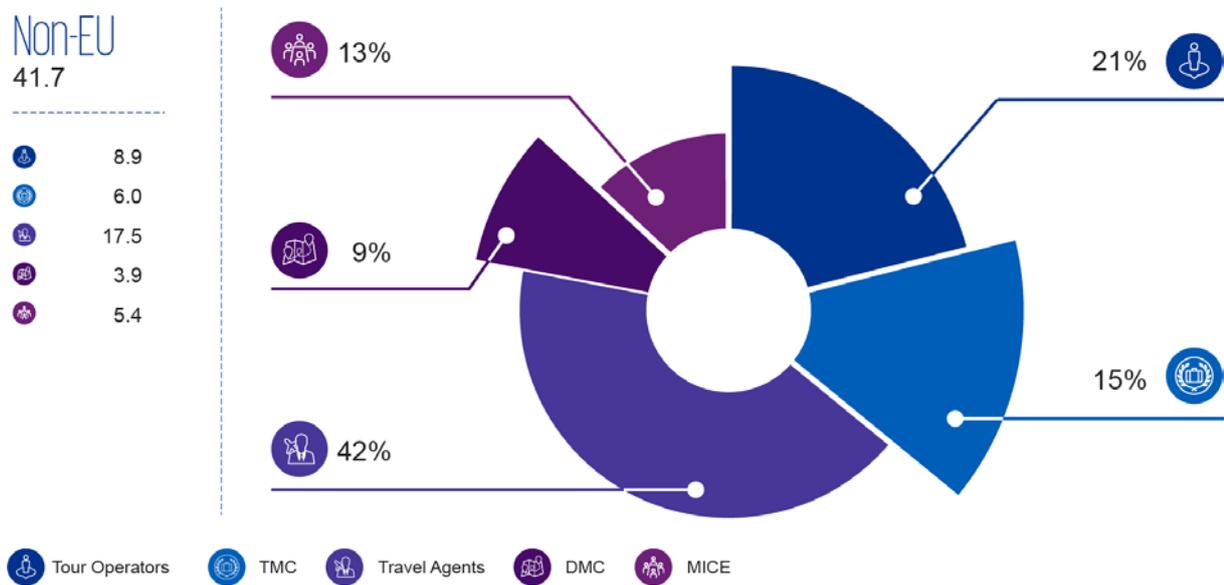
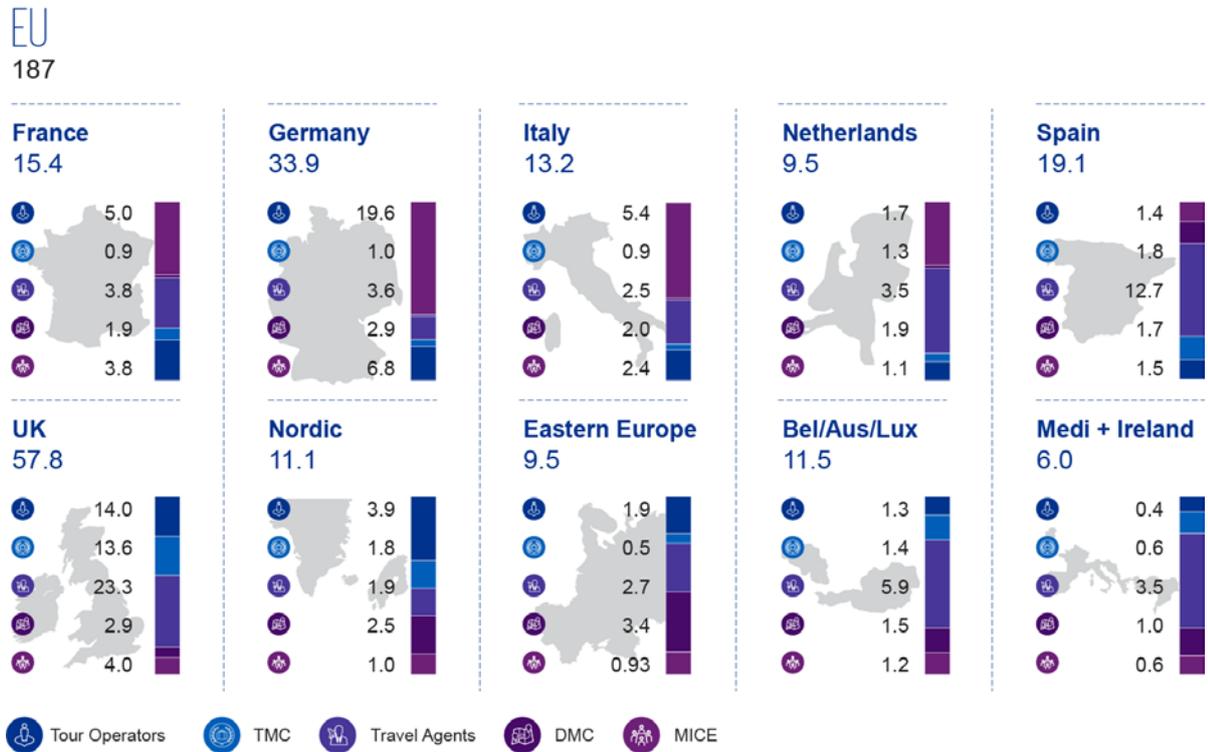


Fig. 4d – Total EU Travel and Tourism market by jurisdiction (€bn)¹²²



¹²¹ Rounding applied

¹²² Rounding applied

Fig. 4e – Total Non-EU Travel and Tourism market by jurisdiction (€bn)¹²³

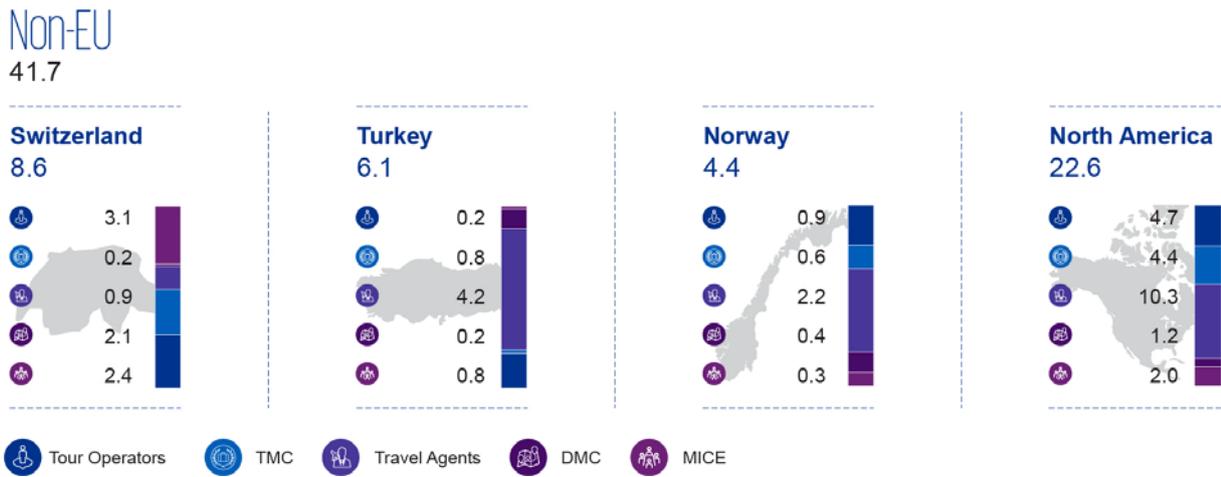
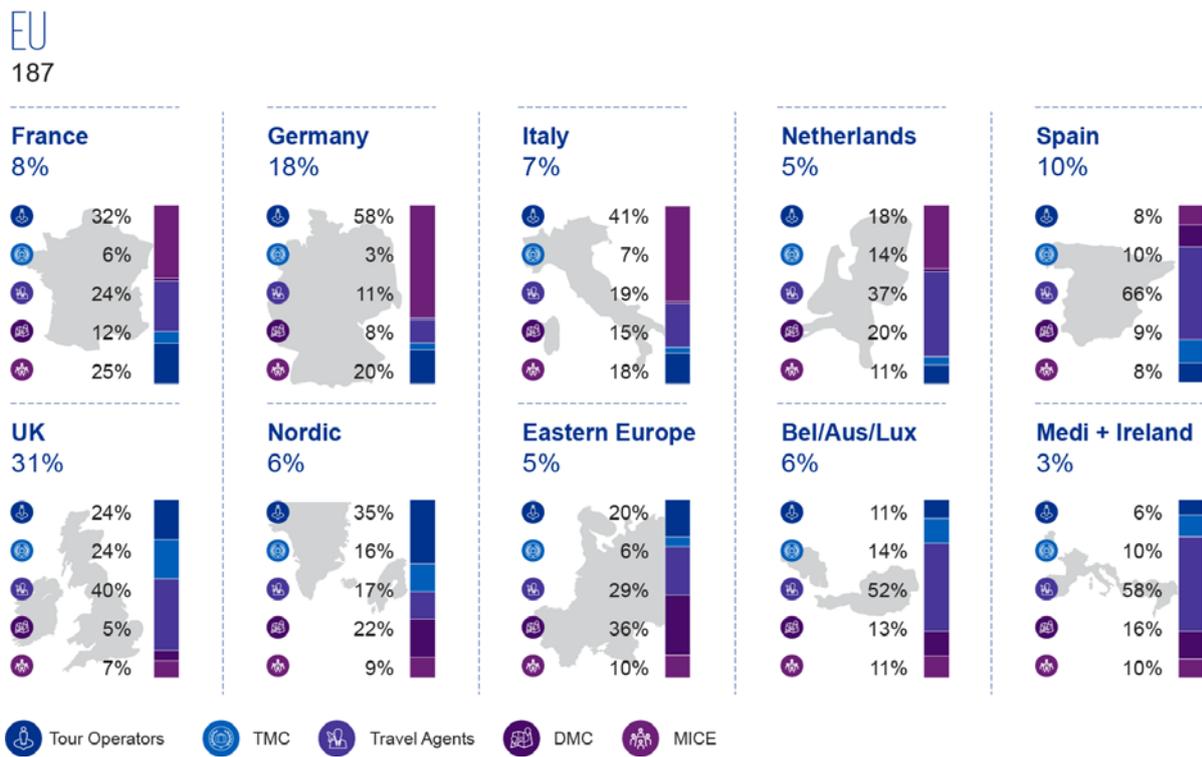


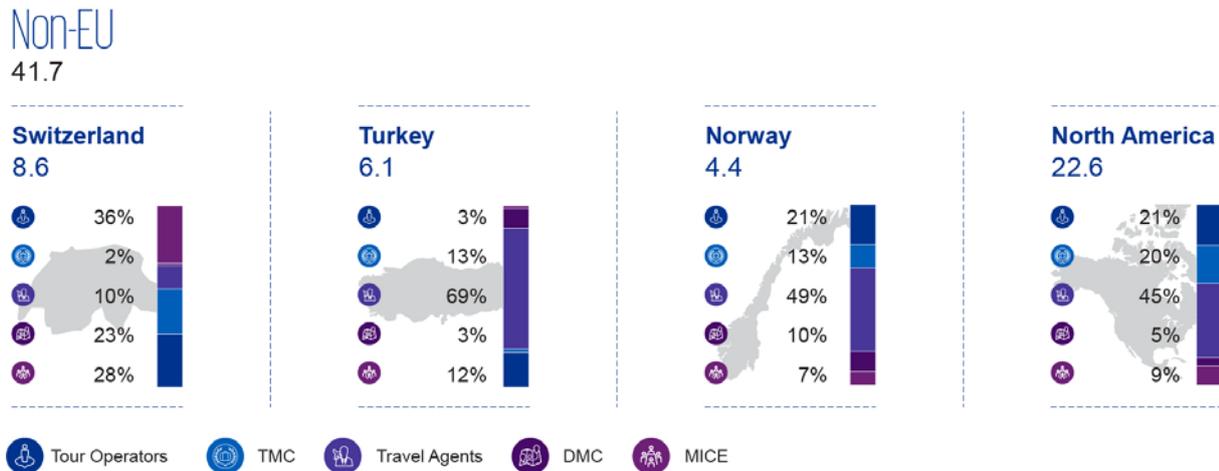
Fig. 4f – Total EU Travel and Tourism market by jurisdiction (€bn)¹²⁴



¹²³ Rounding applied

¹²⁴ Rounding applied

Fig. 4g – Total Non-EU Travel and Tourism market by jurisdiction (€bn)¹²⁵



4.3.7.2 Discussion about the data

The results of our macroeconomic analysis based on EUROSTAT data show that the largest EU market for travel and tourism businesses is the UK, accounting for 31% of the EU market. This is followed in descending order by: Germany, Spain, France, Italy and the Netherlands. The remaining 22 EU countries make up the remaining 20%.

Fig. 4h

Country	% EU Market Share	Turnover (€m)
UK	31%	57,818
Germany	18%	33,852
Spain	11%	19,147
France	8%	15,375
Italy	7%	13,181
Netherlands	5%	9,518
Remaining 22 EU Member States	20%	38,096

The comparative size of the UK market was somewhat surprising, especially in relation to Germany. Indeed, ECTAA's analysis of the turnover data¹²⁶ showed Germany to be closer to €51bn and the UK at €33bn.

However, our assessment of the size of the German market has been corroborated through Deutscher ReiseVerband ("DRV").¹²⁷ The DRV facts and figures

show that the total turnover of the German tourism market in 2016 is €59.7bn. That is split into €30.2bn for tour operators (this includes tour operators and travel agents selling travel packages), €8bn for product portals (defined as portals that sell only single products, e.g. hotel-, flight-, car rental portals, etc.), and €21.6bn for suppliers. Since product portals are also intermediaries / travel agents, the total turnover of travel agents and tour operators in Germany can be summed up to €38.2bn. This is close to the EUROSTAT data for 2015.

On further research, we found that the UK travel agents and tour operators employ more people than Germany.¹²⁸ Additionally, there are large differences between the use of other online commercial services such as tour operators, airline companies etc. with 28% of Germans reporting booking their holiday through this method compared to a much higher level in the UK. However, this might be slightly counteracted by the fact that Germans are more likely to book over the counter at a travel agency (27% versus 15%).

Further research has been undertaken to corroborate the UK figures. It has been confirmed that the UK turnover figure was sourced from the Office of National Statistics. As this study is in part focused on the potential scale of effect of any proposed VAT changes, the UK EUROSTAT figure has been assumed correct, rather than reducing the country's turnover figure to be more in line with Germany.

The comparative market sizes of the other EU countries are in line with industry experts' expectations and largely align with ECTAA's analysis.

4.3.7.3 Other European Countries

These results were in line with industry expectations and, in the case of Norway and Switzerland, are similar to the results found by ECTAA.¹²⁹

¹²⁵ Rounding applied

¹²⁶ <http://www.ectaa.org/files/cms/ad17-085-448.pdf>

¹²⁷

https://www.driv.de/securedcl/106/0/0/1501876888/4635fe5fd423ec5ebb90f4327a38588e250cc4fa/fileadmin/user_upload/Fachbereiche/Statistik_und_Marktforschung/Fakten_und_Zahlen/17-04-24_DRV_ZahlenFakten2017_engl.pdf

¹²⁸ Data from the European Travel Agents' and Tour Operators' Association (ECTAA) (<http://www.ectaa.org/files/cms/ad17-085-448.pdf>)

¹²⁹ <http://www.ectaa.org/files/cms/ad17-085-448.pdf>

Fig. 4i

Country	Turnover (€m)
Norway	€4,416
Switzerland	€8,612
Turkey	€6,055

4.3.7.4 North American Economic Data

Our analysis for the North American market shows the US industry turnover as a little over 1/3 of that of the UK and smaller than Germany.

Fig. 4j

Country	Turnover (€m)
US	€21,871
Canada	€1,754

According to the American Society of Travel Agents (ASTA) in 2014, US based travel agencies earned \$17bn in revenues. This is close to the figure obtained from the US Census Bureau for 2015 of \$15bn.

Further there is some evidence that would support the idea of the US travel agency market being smaller than the UK market. In 2014 there were 74,100 persons employed by travel agents in the US.¹³⁰ In the UK there were 87,900 persons employed by travel agents in 2015.¹³¹

Additionally US citizens, in general, tend to travel internationally less than UK residents. In 2015, US citizens took 31.8 million overseas trips¹³² however it is estimated that these trips are taken by just 5% of the US population.¹³³ In comparison, UK residents made 65.7 million visits abroad in 2015.¹³⁴ Of the total population, 77% of the UK population took a holiday in 2015 with the average person taking 3.2 holidays a year.¹³⁵

Finally, the use of travel agents in the US is much lower than in the UK, with 22% of the US population using travel agents to book a trip¹³⁶ compared to 47% of the UK population.¹³⁷ So overall with a combination of less trips and lower use of travel agents it does not seem implausible for the US market to be smaller.

4.3.8 Findings

As outlined at 4.3.7.1 and Annex 3, our extrapolations from travel businesses sampled as part of our quantitative analysis would suggest a likely total Special Scheme margin VAT across the EU in the order of €1.9bn.

Whilst at the outset of the project it was hoped that figures could be scaled by each Member State and by each business model, the relatively small sample size in the majority of Member States is such that specific

quantification of any given issue in a particular Member State is not possible. However, as an indication of relative value, the relative sizes by country and by business model at Figs. 4a – 4d should be borne in mind.

The level of VAT that is collected under the Special Scheme is difficult to precisely ascertain because these figures are generally not reported by the tax authorities in respect of national statistics. To sense check output from the quantitative analysis at Annex 3, we have cross-referenced with anecdotal and other feedback that we have received informally from various tax authorities, industry representatives, experienced professionals and from the larger taxpayers to provide a likely 'best guess' of the likely amount of VAT that is collected annually across the EU. It bears stating that this figure does not take account of blocked input tax, which arguably could be deemed to also constitute VAT receipts that are generated by the Special Scheme. The figure that we have arrived is therefore the VAT on the margin alone.

Our informal data sources suggest that the likely level of VAT collected by the UK Tax Authorities annually is in the region of around €300m; this is based on anecdotal feedback provided to us by various industry bodies. In Spain, published figures¹³⁸ report that the level of VAT collected under the scheme is €120m. We understand that in Sweden, the level of Special Scheme VAT that is collected is around €110m. In the Netherlands, we understand that when VAT was introduced on travel supplies (2012), the Dutch Finance ministry forecast that the likely additional VAT revenues that would be generated from the addition of VAT on the margin would be €50m. In Germany, the German Federal Statistical Office reports that in 2016, the total travel sector output tax was calculated as being €1.9bn – however, as we know that Germany has elected not to apply the Special Scheme to B2B supplies, this figure will include 'normal' VAT on such transactions which cannot be accurately quantified. We therefore estimate that with respect to Germany – the likely margin scheme output tax is likely to be in the region of between €100m – €200m.

Our study has covered in previous sections the distortions and differences that exist across the EU and indeed there are certain interpretations by a number of tax authorities that mean as a result, the optimal level of VAT on the margin, is simply never going to be collected. For example, within Spain, a large number of tour operators are located in the Canary Islands and as a consequence, simply do not pay Spanish VAT in this respect. Within the UK, allowing travel agents to opt-out of the Special Scheme has a deleterious impact on the revenues collected, as does the ability for travel agents to manage the impact of the margin by utilising in-house travel resources.

¹³⁰ Occupational Outlook Handbook

¹³¹ UK Office for National Statistics

¹³² National Travel and Tourism Office

¹³³ https://www.huffingtonpost.com/william-d-chalmers/the-great-american-passpo_b_1920287.html

¹³⁴ UK Office for National Statistics

¹³⁵ Association of British Travel Agents ("ABTA")

¹³⁶ ASTA

¹³⁷ ABTA

¹³⁸ 2015 -

[http://www.minhfp.gob.es/Documentacion/Publico/Inspgral/Memorias/Memoria%20Tributaria%202015/MAT%202015%20Tomo%20%20\(acc\).pdf](http://www.minhfp.gob.es/Documentacion/Publico/Inspgral/Memorias/Memoria%20Tributaria%202015/MAT%202015%20Tomo%20%20(acc).pdf)

Fig. 4k

Member State	Third party estimated Special Scheme VAT Revenue (€m)	Travel industry turnover (€m)
Netherlands	55	9,500
UK	300	58,000
Sweden	110	7,000
Germany	150	34,000
Spain	120	19,000
	735	127,500
Implied indication of Special Scheme VAT Revenue at EU level	1,355	186,000

Per the table above, this “sense-check” would suggest Special Scheme margin output tax revenue to be of the order of €1.4bn. This figure is considered to be consistent with the €1.9bn estimate per Annex 3, given the limitations of available information. This gives some reassurance that despite the limitations of the methodology at Annex 3, the numerical output is likely to be reasonably indicative of the actual ballpark Special Scheme output tax figure.

Evaluate the
functioning of the
current rules



5 Evaluate the functioning of the current rules

5.1 Objective

Our objective in this section is to identify how the provisions of the Special Scheme are applied by the Member States. We will consider deviations from the way in which the Special Scheme is intended to operate, as established by the CJEU (as described in section 3) and we will describe how VAT works in various scenarios. We will identify and seek to quantify any notable material issues arising from the design and operation of the Special Scheme and to assess which of these issues, if any, may be considered distortions of competition.

5.2 Section Summary

The two key aims of the Special Scheme are simplification and efficient revenue allocation between Member States. Regarding the first of these aims there is good evidence that this has been achieved and that travel agents appreciate the benefit of that simplification, despite the numerous inconsistencies in application as discussed below.

In the majority of cases it appears that these discrepancies arise simply from differing local interpretations of Articles 306 to 310 of the VAT Directive, in addition to differing local implementations of the case law of the CJEU. It may be considered that this scope for differing interpretations results from the absence of precise, prescriptive provisions in the VAT Directive or of implementing regulations. A common feature across the majority of Member States is that local legislation and local published tax authority guidance is often lacking the precision or detail necessary to provide clarity on the VAT treatment of particular scenarios. As a result, accepted local practice can be inconsistent even within a given Member State (and Annex 1, which summarises differences between Member States, should be read in this context).

Whilst the inconsistencies create uncertainty and difficulties for taxpayers operating in multiple Member States, we have concluded that many create neither a material issue, nor a distortion of competition on aggregate for the EU as a whole. Even so, on a qualitative basis, given the difficulties they create it would be advisable to seek greater harmonisation and to address these points in the course of reform.

However, a limited number of issues are more significant and warrant further examination. First, we have concluded that the different treatment of wholesale supplies and the differing approaches to the meaning of travel facilities create distortions of competition. In addition we have concluded that the need to calculate the margin VAT on a transaction by transaction basis and the inequality between third country suppliers and those established in the Member States are all material issues for the industry that merit a resolution. Further, we have concluded that the travel agent's inability to deduct input tax on costs is a significant drawback of the scheme when providing B2B services.

Precise quantification of every potential distortion of competition was not possible, although the quantitative analysis at section 4 has informed our conclusions. Although the estimates of total Special Scheme revenue and therefore irrecoverable input tax can be seen as modest, the distortion manifests in the fact that many travel agencies in the B2B sector operate as intermediaries and therefore outside the Special Scheme, thereby reducing VAT revenues under the Special Scheme. In the DMC sector the issue is more the inconsistency in the application of the Special Scheme to wholesale supplies and it is probable that VAT revenue would be greater if the rules were harmonised.

5.3 Defining distortion of competition

As noted in section 2.7 “distortion of competition” is taken to arise where we consider that an unequal treatment of travel agents under the Special Scheme rules in force in Member States leads in practice to significant changes in behaviour of the travel agent.

The legal basis of the VAT Directive and thus the rules for the Special Scheme is Article 113 of TFEU. It obliges the Council to adopt provisions for the harmonisation of VAT legislation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

The analysis in this section however goes beyond examining distortion of competition in the internal market by also taking into account the potential problem of a lack of a level playing field between operators based in the EU and operators located outside the EU, in respect of the Special Scheme.

Moreover, in the course of this analysis we take account of matters raised by the travel industry that may not be seen as distortions of competition, but constitute material issues affecting businesses taxed under the Special Scheme.

This study considers distortions of competition and material issues in respect of two categories:

- *Differences in application of the Special Scheme rules by Member States*
 - *Competition between EU and non-EU operators*
-

It should be noted that some other potential distortions and material issues result from the existence of a Special Scheme. We also make observations in respect of other distortions of competition and material issues resulting from the existence of the Special Scheme.

The differences in treatment are amplified by differing national rules, which originate from:

- Member States not having implemented or not fully implemented established case law by the CJEU

- the provisions of the Special Scheme in the VAT Directive rules having not been adapted since 1977, leaving room for Member States to determine the scope and functioning of the Special Scheme (e.g. by defining travel facilities and the treatment of single supplies).

5.4 Simplification benefits of the Special Scheme

This section only looks at VAT liabilities when quantifying material issues and potential distortions of competition. It does not weigh the respective VAT liabilities under the Special Scheme against the key benefits for travel agents in the form of administrative ease and associated compliance costs savings provided for by the Special Scheme. In particular, the Special Scheme alleviates the requirement for travel agents to be VAT registered in each Member State from which travel services are purchased or where customers reside. This avoids the need to understand and comply with those Member States' differing VAT regimes and to interact with the tax authorities in different languages and locations. It therefore reduces the resource requirement of the travel agent and salary costs and external advisory budgets needed to fulfil those requirements.

Furthermore, under the Special Scheme there is no necessity to obtain documentary evidence to support input tax refunds, which are subject to different evidential requirements in each Member State. This is of particular relevance as travel agents frequently deal with many small suppliers and where such suppliers have limited VAT expertise, this can result in issuing inconsistent invoicing documentation.

In the absence of the Special Scheme, the loss of these simplifications would create administrative burdens and associated costs for travel agents. These costs are difficult to quantify, however evidence that we have been able to gather from the KPMG Compliance Centre in Hungary (acting for over 400 clients and preparing in excess of 70,000 Indirect Tax filings per annum) would suggest that the cost of basic, local compliance per jurisdiction on an outsourced basis would amount to approximately €8,000 – €15,000 per VAT registered entity, per annum.

5.5 Assessment of material issues and potential distortions arising from the current application of the Special Scheme rules

We consider the effect of the rules of the Special Scheme, as interpreted by the CJEU, in creating inconsistencies when comparing travel agents with suppliers of similar services which fall outside of the scheme, demonstrate how the application of the scheme can put taxable persons within the Special Scheme at a different competitive position when compared with those falling outside the scheme.

Our interpretation of the proper application of the Special Scheme is summarised in section 4.

In addition, our purpose is to illustrate the effects of the varying applications of the Special Scheme and to demonstrate how the application of the Special Scheme to taxable persons established in one Member State creates a different competitive position when compared to taxpayers established in a different Member State.

VAT rates across all 28 Member States differ significantly. Whilst these rate differences can have a competitive impact, the differing VAT rates are not a feature of the Special Scheme per se and for this reason the impact of non-harmonisation of VAT rates between Member States is considered to be beyond the scope of this study. Our focus of this section of the study is on the differences which arise solely due to how the Special Scheme is applied across Member States.

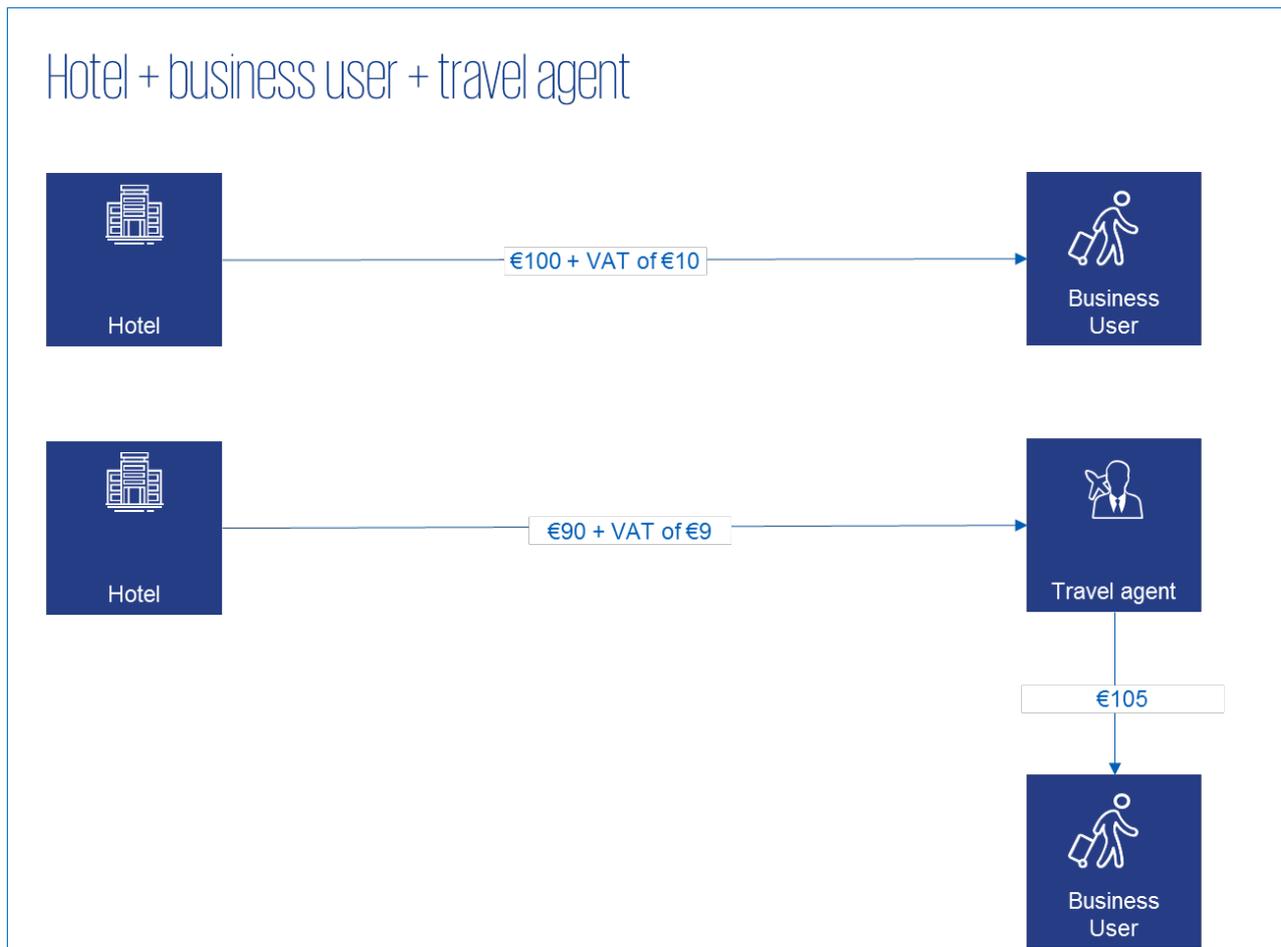
5.5.1 Non-deductibility of input tax as a result of B2B supplies being taxed under the Special Scheme

One of the main features of the Special Scheme is that it prevents the deduction of input tax on the costs of goods and services supplied within the scheme. Given that input tax cannot be deducted, it is necessary for travel businesses to pass on costs, which include irrecoverable VAT charged by suppliers, to the travel agent.

The effect of this varies considerably from sector to sector. In the DMC sector, whilst the immediate client will always be a business, the final consumer is often a non-business person and therefore the use of the Special Scheme may not be an issue as there would be no final right to input tax deduction by the end consumer. However, in the MICE and TMC sectors (where the end customer is normally a taxable person who would expect to deduct VAT incurred on business expenditure) and in the DMC sector when the final customer is a business, the application of the Special Scheme would deny that final business customer the right to input tax deduction. With the exception in some Member States of the ability to recover VAT on the margin made by the travel agent, there is no VAT to be deducted where services are supplied by a travel agent. As the VAT charged to the travel agent cannot be recovered, a VAT-inclusive cost needs to be recovered from the client.

This can place the travel agent at a disadvantage when compared to suppliers of similar services when the Special Scheme is inapplicable (e.g. if the business bought direct from the travel provider, or bought through an intermediary outside of the Special Scheme).

Fig. 5a



In the first example above, a taxable person purchases hotel accommodation direct from a hotel for a total price of €110. The (illustrative) local VAT rate for hotel accommodation is 10% and the price paid therefore equates to €100 plus VAT. The taxable person obtains a VAT invoice from the hotel and, assuming that the taxable person uses the accommodation in the course of taxable business activities, the VAT can be deducted as input tax. The net cost to the taxable person is €100.

In the second example, the taxable person purchases the accommodation from a travel agent, such as a TMC, acting in his own name so that the Special Scheme is applicable. The travel agent has an agreement with the hotel under which the agent is able to access discounted room rates, the discounted price in this case being €99 (i.e. €90 plus VAT). The agent is able to make the room available at a lower gross price than the taxable person is able to achieve when approaching the hotel direct.

However, the travel agent is unable to deduct the input tax of €9 and cannot issue a VAT invoice to the taxable person. The price paid of €105 is VAT-inclusive but the taxable person cannot deduct any input tax. The gross cost is therefore €105. The travel agent makes a margin of €6 and therefore, if the standard rate in his Member State is 20%, he must pay VAT of €1.

What appears at first to the taxable person to be a good price is in fact considerably more expensive than could be achieved if contracting with the hotel itself. In our experience, this is not an unusual outcome and can certainly create difficulties in the relationship between a travel agent and business client. A client aware of this effect would be likely to contract directly with a primary supplier. In practice, a travel agent faced with a situation such as this would be likely to introduce intermediary arrangements to overcome the competitive disadvantage which he would otherwise suffer.

The above illustrates a simple comparison of the purchase of a single service but we believe this is a good illustration of the problem faced by travel agents operating in the B2B sectors. In many circumstances, particularly in the MICE sector, numerous services may be combined to create the service but the effect of the Special Scheme can still be reduced to the problem illustrated above.

The blocked input tax on direct costs of B2B supplies resulting from the application of the Special Scheme has been indicatively estimated to be worth circa €1.15bn annually across the EU per Annex 3.

This value may be considered to be an inevitable consequence of the Special Scheme in its current form. Notwithstanding this irrecoverable VAT cost, the

applicability of the Special Scheme to travel services sold to business customers ensures that VAT revenue is allocated to the Member State where the consumption actually takes place, which is the ultimate aim of the Special Scheme.

5.5.2 Advantages enjoyed by intermediaries over those falling within the Special Scheme

It is well established that under the Special Scheme the margin made by a travel agent is subject to VAT at the standard rate (except to the extent that the services provided by the travel agent are enjoyed outside the EU). This is so irrespective of the nature of the underlying services being supplied. However, in some Member States at least, where an intermediary arranges a service such as passenger transport, any fee earned for doing so may be VAT exempt. There is a contrast, therefore, between travel agents falling within the Special Scheme and intermediaries falling outside the scheme: whilst the margin of a travel agent is subject to VAT (provided the underlying service takes place within the EU), a fee charged by an intermediary, in some circumstances at least, is exempted from VAT, introducing an advantage to those acting as an intermediary.

The extent of this advantage for intermediaries outside of the Special Scheme is to some extent offset by the burden of increased VAT registration and compliance obligations as referred to in section 5.4. However in practice we understand the enforcement of intermediaries' cross-border registration obligations by Member States is inconsistent and can be problematic to guarantee.

The differing treatment of intermediaries and principals is an inherent feature of the Special Scheme and provides incentives for businesses to adopt an agency rather than a principal model. The magnitude of this potential distortion cannot easily be measured, on the basis that no data is available to indicate the extent to which businesses which are currently structured as intermediaries would in fact act as principals in the hypothetical absence of the Special Scheme (or vice versa).

5.5.3 Advantages enjoyed by travel agents incurring costs which may not be subject to VAT

As VAT is payable on the margin, the Special Scheme effectively allows for a credit for input tax on all costs of goods and services supplied within the scheme, regardless of whether VAT is actually incurred on the costs involved. Equally, the rate of VAT assumed on the purchase is the local standard rate even if VAT is actually charged at a reduced rate.

This can create an advantage for the travel agent over a supplier of a similar service who does not come within the Special Scheme (where VAT is not incurred on the costs involved).

For example, if a travel agent was to incur a cost of €48 (with no VAT being incurred on the cost) and re-

sell the service in question for €60, then (with an illustrative VAT rate of 20%) the agent would pay VAT of €2 on the margin made of €12 leaving a net margin of €10. However, a supplier of the same service (for a VAT inclusive price) selling in circumstances which did not involve the Special Scheme would pay VAT of €10 on his supply (again applying an illustrative VAT rate of 20%) but would have no input tax to deduct against that amount due, leaving a net margin of €2. In this example the Special Scheme business is "better off" by €8 on a very similar transaction.

This outcome could arise for example either where a service that is taxable in principle is purchased from a business which does not charge VAT (such as a guest house trading below the VAT registration threshold) or from a business such as a Bed Bank which does not charge VAT. It could also arise where a travel agent purchases a VAT exempt cultural service such as a museum admission but the travel agent does not qualify for the same exemption.

Per the illustrative numerical example above, it can be seen that the magnitude of this particular issue is driven by the differential between the relevant reduced rate applicable to the travel service when sold separately and the standard rate applicable when sold in a Special Scheme package. This differential will vary considerably from one Member State to another and will also depend on the relative values of reduced-rated and standard-rated elements sold in each Special Scheme package. The information obtained from the business questionnaire in this study was not sufficiently granular to allow this to be calculated. However, the value of additional VAT collected as a result will be only a fraction of the indicative circa €1.9bn Special Scheme output tax, and is not considered significant on aggregate for the EU as a whole.

5.5.4 The effect of the taxing of the Special Scheme margin at the standard rate

We know from the judgment in the *Commission v Germany* case¹³⁹ that the margin is wholly subject to VAT except to the extent it relates to services enjoyed outside the EU. The treatment of services when supplied outside of the Special Scheme is not relevant in determining the position within the scheme.

This approach can be justified by seeing the travel agent's margin as consideration for the travel agent's service in co-ordinating and managing the creation of the service and related services. Clearly, this argument is more relevant the more complex is the travel agent's supply.

However, it has often been suggested that the need to pay VAT on the full margin at the standard rate creates a distortion between travel agents and suppliers of similar services who do not fall within the scheme.

The problem is exacerbated by the application of exemptions and reduced rates to many tourism services. Such services can include international passenger transport, hotel accommodation, restaurant services and admission to cultural events and facilities. The effect is that many taxable persons pay VAT at an effective rate considerably below the standard rate on

¹³⁹ Case C-74/91

many tourism services. However, a travel agent must pay standard rate VAT, putting the travel agent in a situation in which it can be difficult to compete on price.

There are two circumstances in which this problem manifests itself:

- Where the travel agent is competing against a person falling outside of the scheme; and
- Where a travel agent is competing against another travel agent who is supplying the services from its own resources (i.e. an in-house supply) which the case law described in section 3 demonstrates is not subject to VAT within the Special Scheme but is subject to “normal” VAT rules.

These issues have led to the introduction of the means to avoid the distortions created such as the mitigation arrangements which have operated in the UK since 1996. The most used of these arrangements is commonly known as the “transport company scheme”. This allows a travel agent to establish arrangements which see passenger transport purchased by a separate legal entity (often a subsidiary of the travel agent) for re-supply to the travel agent. The value of the supply to the travel agent is set at the level required to “shift” the margin made on the passenger transport from the travel agent to the supplier of the transport. The effect is that no margin is made by the travel agent on the passenger transport and hence no VAT is due on any such transport. The supply of the transport to the travel agent is a wholesale supply which, as the UK does not compulsorily apply the CJEU decisions on the treatment of wholesale supplies, is a VAT exempt with credit (“zero rated”) supply. Accordingly, no VAT is due. The effect is the same as if the margin achieved on passenger transport was “zero rated”.

This arrangement overcomes the perceived difficulty of taxing the margin made on passenger transport when suppliers of transport which fall outside the Special Scheme would not pay any VAT (as passenger transport in the UK is “zero rated”). It also helps to avoid a distortion of competition between travel agents who purchase passenger transport from third parties and those which supply similar services on an in-house basis. It does however create a competitive advantage in favour of travel agents established in the UK when compared with those established in a Member State without such a facility.

When a travel agent supplies services to a business client the problem is exacerbated by the inability to raise a VAT invoice (except possibly for the margin element), as described below.

This issue applies to taxable persons within each of the five business models described in this study. This issue arises from the Special Scheme rules at an “EU level” (i.e. that certain services fall within the scheme as a result of Articles 306 to 310 of the VAT Directive), but is also exacerbated by the differing interpretations and scope of those rules at a “Member State level” (i.e. where Member States then implement those rules differently).

As per section 5.5.4, the magnitude of this particular issue is driven by the differential between the relevant reduced rate applicable to the travel service when sold separately and the standard rate applicable when sold in a Special Scheme package. This differential will vary considerably from one Member State to another and will also depend on the relative values of reduced-rated and standard-rated elements sold in each Special Scheme package. The information obtained from the business questionnaire in this study was not sufficiently granular to allow this to be calculated. Suffice to say, the value of additional VAT collected as a result will be only a fraction of the indicative circa €1.9bn Special Scheme output tax and is not considered to be a material issue on aggregate across all sectors. However, anecdotally we are aware that for certain taxable persons this is an important matter.

5.5.5 Invoicing

Articles 306 to 310 of the VAT Directive do not set out any formal invoicing requirements in respect of Special Scheme transactions either regarding the necessity to issue invoices, nor if the output tax declared on the margin should be shown on invoices. However, the reference at Article 226(13) of the VAT Directive, which states that where supplies fall under the Special Scheme, namely that the invoice must mention “Margin scheme – travel agents”, is indicative of the requirement to issue invoices. This lack of clear legislative guidance has led to uncertainty for those making Special Scheme supplies and indeed for Member States in the implementation of the VAT Directive and the provision of clear guidance at a national level. This is highlighted by the vast inconsistency in invoicing treatment for Special Scheme supplies across Member States, which is detailed below.

Though not binding, the Advocate General’s opinion in *Commission v Spain* did provide some obiter comment on Special Scheme invoices. The Advocate General opined:

“I therefore wonder whether the Commission went far enough at the hearing by regarding an invoice indicating the VAT on the travel agent’s margin as merely an option, unlikely to be exercised in practice. There may, it seems to me, be grounds for considering it a requirement”¹⁴⁰

And, further:

“... I have concluded above that it is at least possible, if not compulsory, within the margin scheme to apply the normal rules concerning the indication of VAT on the travel agent’s margin on invoices and its subsequent deduction by the customer”¹⁴¹

The CJEU, in dealing only with Spain’s “6% rule”, was however not required to comment on the Advocate General’s position in this respect.

¹⁴⁰ Paragraph 24 of the Advocate General’s opinion

¹⁴¹ Paragraph 31 of the Advocate General’s opinion

This absence of clear guidance¹⁴² is reflected by the inconsistent responses received in respect of Member States from the KPMG questionnaire regarding Special Scheme B2B invoicing requirements, which are discussed below in more detail.¹⁴³ For ease of reference, responses received in respect of a Member State from the KPMG questionnaire are listed below by reference to the name of the relevant Member State.

5.5.5.1 B2B Special Scheme supplies – obligation to issue an invoice

Member States are largely consistent in requiring businesses to issue invoices in respect of travel facilities supplied to B2B customers under the Special Scheme. Notably Cyprus does not permit or require a supplier to issue an invoice for a B2B supply subject to the scheme, while in Germany the Special Scheme is not applicable to B2B supplies such that normal invoicing rules apply. Similarly, in respect of Austria, at present the Special Scheme is not applicable to B2B supplies, however, the Special Scheme will apply from May 2018.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Invoice must be issued to B2B customers
- Invoice cannot be issued to B2B customers
- Special Scheme not applicable to B2B supplies (not in conformity with legislation/case law)

5.5.5.2 B2B Special Scheme supplies – requirement to display Special Scheme margin VAT on the invoice

Member States' responses were inconsistent as to whether the VAT on the margin could or should be displayed on an invoice for supplies which are subject to the Special Scheme. Seventeen Member States responded that the invoice must not display the VAT on the margin.

France, Spain, Greece, Luxembourg and Sweden indicated that it was optional to display the VAT on the margin on the invoice.

In Germany the Special Scheme is not applicable to B2B supplies such that normal invoicing rules apply. Similarly, as Austria does not currently apply the Special Scheme to B2B supplies there is no clear guidance on this point for when the Special Scheme changes in 2018.

Belgium, Finland, Hungary, Latvia and Malta indicated that the invoice must display the VAT on the margin. Whilst Maltese and Irish legislation does not expressly exclude the requirement for taxpayers making Special Scheme supplies to show the VAT on invoices, in practice many taxpayers do not in fact separately indicate the VAT element on the invoice.

Of course, VAT incurred by businesses within the Special Scheme is not recoverable as input tax. However, businesses purchasing travel services for consumption are not taxed under the Special Scheme, and may therefore be entitled to recover any VAT shown on the invoice. It should be borne in mind that this is not always the case, as explained at section 5.5.10.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Invoice must display VAT on margin
- Invoice must not display VAT on margin
- Can opt to display VAT on the margin
- Other / Guidance could not be obtained

5.5.5.3 Invoice reference to the Special Scheme

Article 226(13) of the VAT Directive states that where an invoice is issued in respect of Special Scheme supplies it must mention "Margin scheme – Travel agents".

This specific guidance is applied by the majority of Member States. Cyprus is the only Member State not requiring a reference to the Special Scheme on the invoice.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Invoice refers to the Special Scheme
- Invoice does not need to refer to the Special Scheme

5.5.6 The interaction of the Special Scheme with VAT registration thresholds

The value of a supply within the Special Scheme is the margin.¹⁴⁴ Where a Member State's rules provide that the value of supplies made by a travel agent, when considering if the agent has exceeded the registration threshold, is the margin made (e.g. in Austria), this should be contrasted with the position of other taxable persons whose obligations to register are determined by the gross turnover achieved (e.g. in Denmark). This distinction means that a travel agent can remain unregistered whilst achieving a gross turnover considerably greater than taxable persons who fall outside the scheme.

By definition, any difference in treatment between businesses below and above the VAT registration thresholds is small in magnitude and therefore not considered a significant distortion for the purposes of this study on aggregate for the EU as a whole.

¹⁴² Article 226 of the VAT Directive

¹⁴³ Article 168 of the VAT Directive

¹⁴⁴ Article 308 of the VAT Directive

There is inconsistency across Member States as to the measurement of turnover for the purposes of applying VAT registration thresholds.

Eight Member States including Austria, Bulgaria, Croatia, Cyprus, Latvia, Malta, Sweden and the UK responded that VAT registration for Special Scheme taxpayers is required when the magnitude of the Special Scheme margin exceeds the respective VAT registration threshold in each Member State.

Ten Member States including the Czech Republic, Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Romania, Poland and Slovakia responded that VAT registration is required when the magnitude of the Special Scheme income or turnover exceeds the respective VAT registration threshold in each Member State.

Meanwhile there is no VAT registration threshold in eight Member States including France, Germany, Greece, Hungary, Italy, Netherlands, Portugal and Spain.

In respect of Belgium and Slovenia no clear guidance could be obtained on this issue.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

■ Registration based on turnover

■ Registration based on margin

■ No registration threshold

■ No guidance could be obtained

5.5.7 Wholesale supplies

Practice is divided between Member States on the treatment of wholesale supplies. Two approaches exist at the moment to the taxation of wholesale supplies:

- Application of the Special Scheme; and
- Exclusion of supplies made from the Special Scheme and application of the “normal” rules.

DMCs and other wholesale suppliers of travel facilities provide either services to be used on their own or packages of services to be used in combination with each other.

5.5.7.1 Application by Member States

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

■ Conforms with legislation/case law

■ Not in conformity with legislation/case law

■ Optional to apply Special Scheme (not in conformity)

In respect of “wholesale” supplies of travel facilities, whereby a travel service is supplied to a business customer for onward supply to a traveller, eleven Member States consider such supplies are outside the scope of the Special Scheme and taxed under normal rules, whilst twelve Member States consider such wholesale supplies are subject to the Special Scheme, as per *Commission v Spain*. Meanwhile, the treatment of wholesale supplies as subject to the Special Scheme in Estonia, Ireland, Sweden and the Czech Republic is currently optional at the discretion of the taxpayer. In the UK, whilst the guidance identifies that wholesale supplies are outside of the Special Scheme, the Tax Authorities acknowledge taxpayers’ ability to rely on direct effect of EU law to the contrary.

In Spain, the option is relevant only to businesses supplying a business customer with the right to recover VAT, i.e. where that business customer is not itself subject to the Special Scheme.

In Romania, the legislation does not specifically provide for any distinction in treatment (i.e. such that the Special Scheme should apply to wholesale supplies). However, in practice, we understand that many Romanian taxpayers apply normal VAT rules to wholesale supplies, regardless of the Romanian law.

There are greater differences for wholesale supplies than there are for B2B supplies for consumption (see section 5.5.8). These differences create distortions and are a significant barrier to the efficient application of VAT to the wholesale sector.

5.5.7.2 Wholesale supplies of single items

The acronym FIT is often used to describe a situation in which a travel agent supplies a single service. Most commonly these comprise the supply of accommodation or of passenger transport. Some Member States require the inclusion of FIT and similar in the Special Scheme; others require the application of normal VAT and others allow a choice between normal VAT and the Special Scheme.

For FIT (and any other situation in which there is a supply of a single item), normal VAT means (in principle) the payment of VAT in the Member State in which the service is enjoyed (for most tourism related services). Accordingly, a supply of accommodation should be subject to VAT in the Member State in which the accommodation is situated¹⁴⁵ whilst passenger transport falls within the scope of VAT in the Member State in which the transport takes place.¹⁴⁶ The supply would then be subject to VAT at the rate stipulated by the Member State of supply. However, often this is not followed by taxpayers nor enforced by the Member State involved (although we should recognise that the *Commission v Spain* et al 2013 decisions do complicate enforcement).

5.5.7.3 Wholesale supplies of packages

For “packages”, normal VAT can mean a number of things:

- The “multiple supply” approach, i.e. identify all the component parts of the package, attribute a value

¹⁴⁵ Under Article 47 of the VAT Directive

¹⁴⁶ Under Article 48 of the VAT Directive

to each part and tax each part accordingly (i.e. following the appropriate place of supply, valuation and liability rules for each supply identified).

- The “predominant supply” approach, i.e. what is the main item within the package? The treatment then depends wholly on the rules applicable to that main item.
- The “general rule” approach, i.e. subject to certain tests, a package is a single supply taxed in accordance with Article 44 of the VAT Directive (i.e. VAT payable where the client is established – using the reverse charge).

We note that the Commission Services interpret past decisions by the CJEU¹⁴⁷ such that the predominant supply approach applies. However, our experience indicates that this is not the most common approach amongst those Member States which exclude wholesale supplies from the Special Scheme (or allow for exclusion at the choice of the travel agent).

It can be seen, however, that potential distortions exist in the wholesale package market between:

- Travel agents established in a Member State which requires the use of the Special Scheme and those established in a Member State which excludes such supplies from the scheme;
- Travel agents established in a Member State which requires the compulsory use of normal VAT rules and those established in a Member State which allows taxpayers a choice between normal VAT rules and the use of the Special Scheme (although we should recognise that such a choice is in practice available in all Member States which do not enforce the use of the Special Scheme);
- Travel agents established in Member States with differing interpretations of what is meant by normal VAT rules in the context of wholesale packages

Distortions may also exist in general between travel agents established in the EU and those in third countries and this point is considered below.

5.5.7.4 Domestic accommodation and wholesale supplies

This section considers two examples of wholesale supplies of accommodation.

5.5.7.4.1 Wholesale supplies considered subject to the Special Scheme

Where a wholesale supply of accommodation, located in one of the thirteen Member States which consider that wholesale supplies are subject to the Special Scheme (see above), is made by a supplier established in one of the other eleven (or fifteen including those States where the VAT treatment is

optional) Member States in which wholesale supplies fall outside of the Special Scheme, there is a potential mismatch in VAT treatment which may lead to non-taxation of the margin.

For example where a Bulgarian hotel room is sold as a wholesale supply by a travel business in Germany to a travel business in Bulgaria the German tax authorities would consider this is taxable under normal rules (in Bulgaria) whilst the Bulgarian tax authorities would consider this is taxable under the Special Scheme (in Germany).

In this case, six (Bulgaria, Finland, France, Lithuania, Malta and the Netherlands) of the thirteen Member States which consider wholesale supplies to be subject to the Special Scheme responded that such a supply would be considered to fall outside the scope of local VAT, as local rules would deem the Special Scheme to apply. This results in non-taxation of the margin and a possible distortion of competition. Meanwhile Croatia, Poland, Portugal, Romania and Spain will seek to tax this as a local supply, subject to normal VAT rules. Similarly the Czech Republic and Sweden indicated that such transactions would likely be taxed locally. No clear answer could be identified for this scenario in Poland, Italy, Greece and Estonia.

5.5.7.4.2 Wholesale supplies considered not subject to the Special Scheme

Where a wholesale supply of accommodation, located in one of the eleven Member States which consider that wholesale supplies are not subject to the Special Scheme, is made by a supplier established in one of the other thirteen Member States, there is a potential mismatch in VAT treatment which may lead to double-taxation.

For example where a German hotel room is sold as a wholesale supply by a travel business in Croatia to a German travel business, the German Authorities would consider this is taxable under normal rules (in Germany) whilst the Croatian Authorities would consider this is taxable under the Special Scheme (in Croatia).

The survey responses indicate that this potential double-taxation would arise for accommodation located in Austria, Germany, Cyprus plus Belgium and Hungary as the profit margin is taxed in the supplier's Member State of establishment, whilst the full value of the accommodation is taxed in the Member State of destination. This results in double-taxation. (No clear answer could be identified for this scenario in Denmark, Slovakia, and Slovenia). For accommodation in Latvia and Luxembourg, despite the rules outlined at section 5.5.7.1 we understand that no double-taxation is likely to arise in practice.

Issues arising from the application of VAT to wholesale supplies are considered in more detail below.

¹⁴⁷ See section 3.1.4.2(b) of Working Paper No 814

5.5.7.5 Wholesale accommodation illustration

The following table and diagram provides illustrative examples indicating how the total VAT collected, and the specific Member States in which that VAT is in fact collected, can vary in wholesale supply chains of

accommodation according to differing local treatments of wholesale supplies. This example assumes that reduced rated accommodation is sold in MS1 at a 10% VAT rate whilst margin scheme VAT is collected at 20% in MS2, MS3 and MS4 accordingly.

Fig. 5b

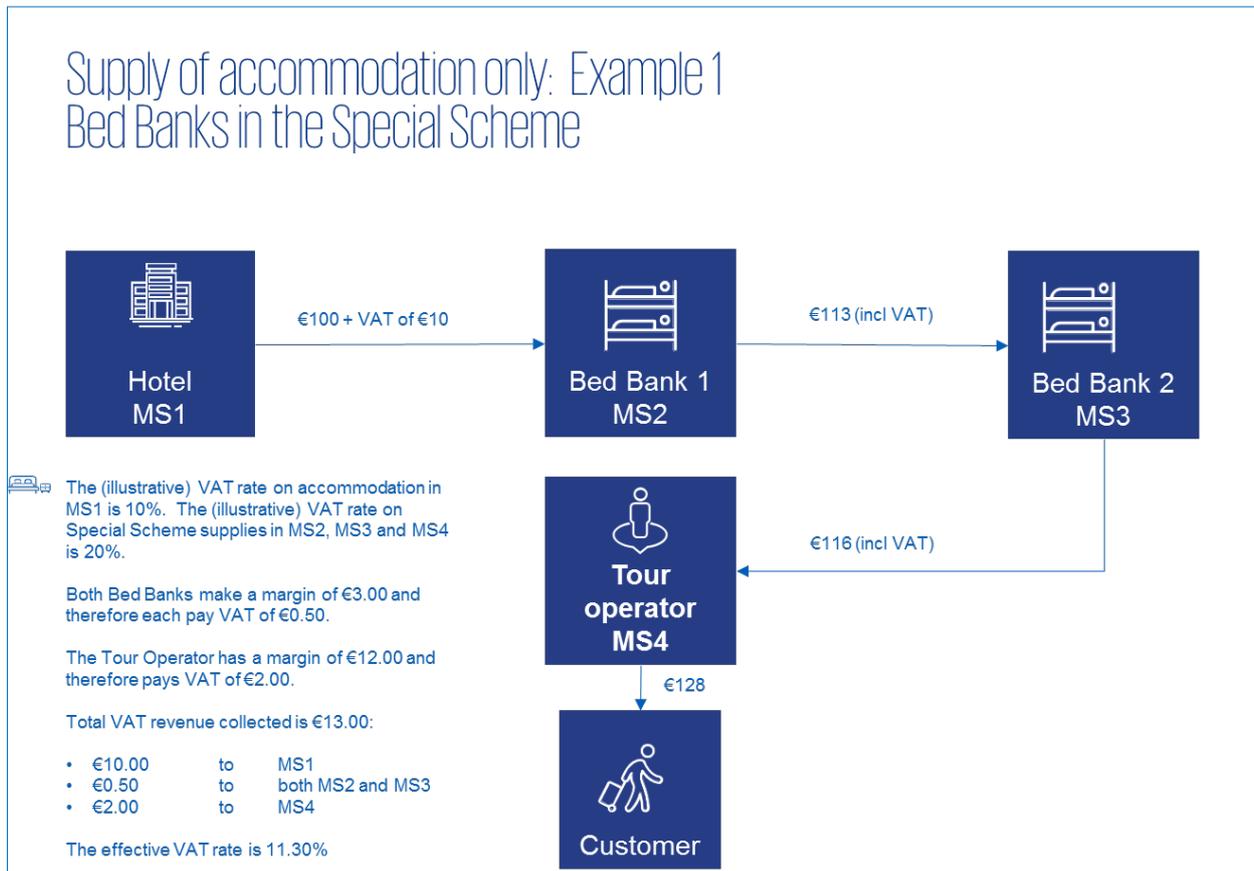


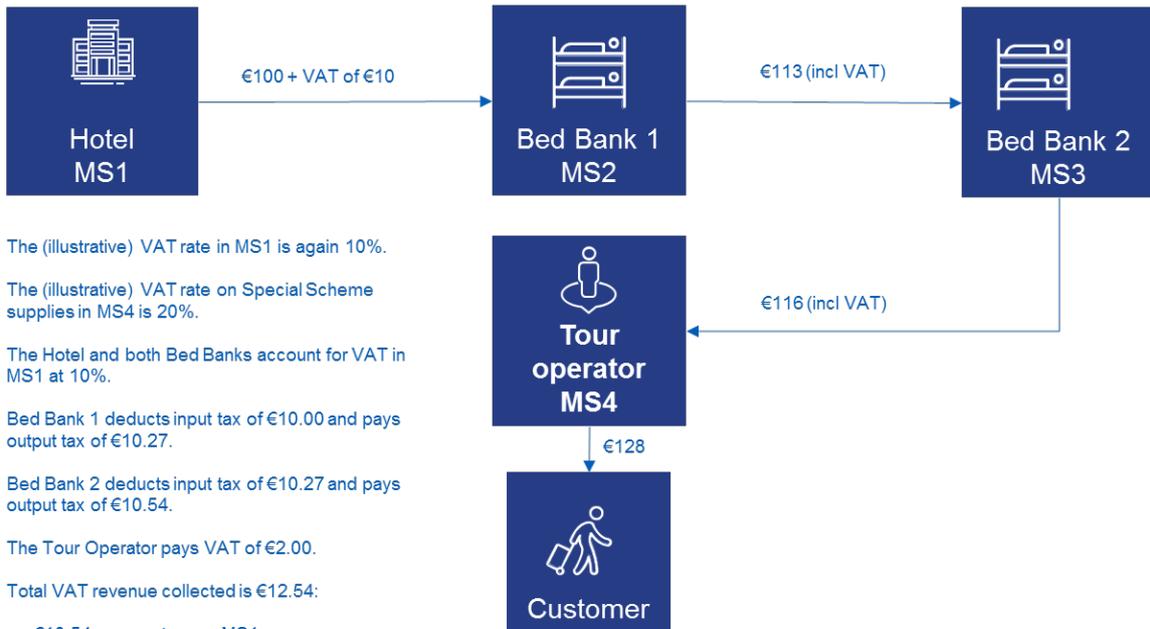
Fig. 5c

Supply of accommodation only: Example 2 Bed Banks not in the Special Scheme



Fig. 5d

Supply of accommodation only: Example 3 Bed Banks account for VAT in MS1



The (illustrative) VAT rate in MS1 is again 10%.

The (illustrative) VAT rate on Special Scheme supplies in MS4 is 20%.

The Hotel and both Bed Banks account for VAT in MS1 at 10%.

Bed Bank 1 deducts input tax of €10.00 and pays output tax of €10.27.

Bed Bank 2 deducts input tax of €10.27 and pays output tax of €10.54.

The Tour Operator pays VAT of €2.00.

Total VAT revenue collected is €12.54:

- €10.54 to MS1
- €2.00 to MS4

The effective VAT rate is 10.86%

Fig. 5e

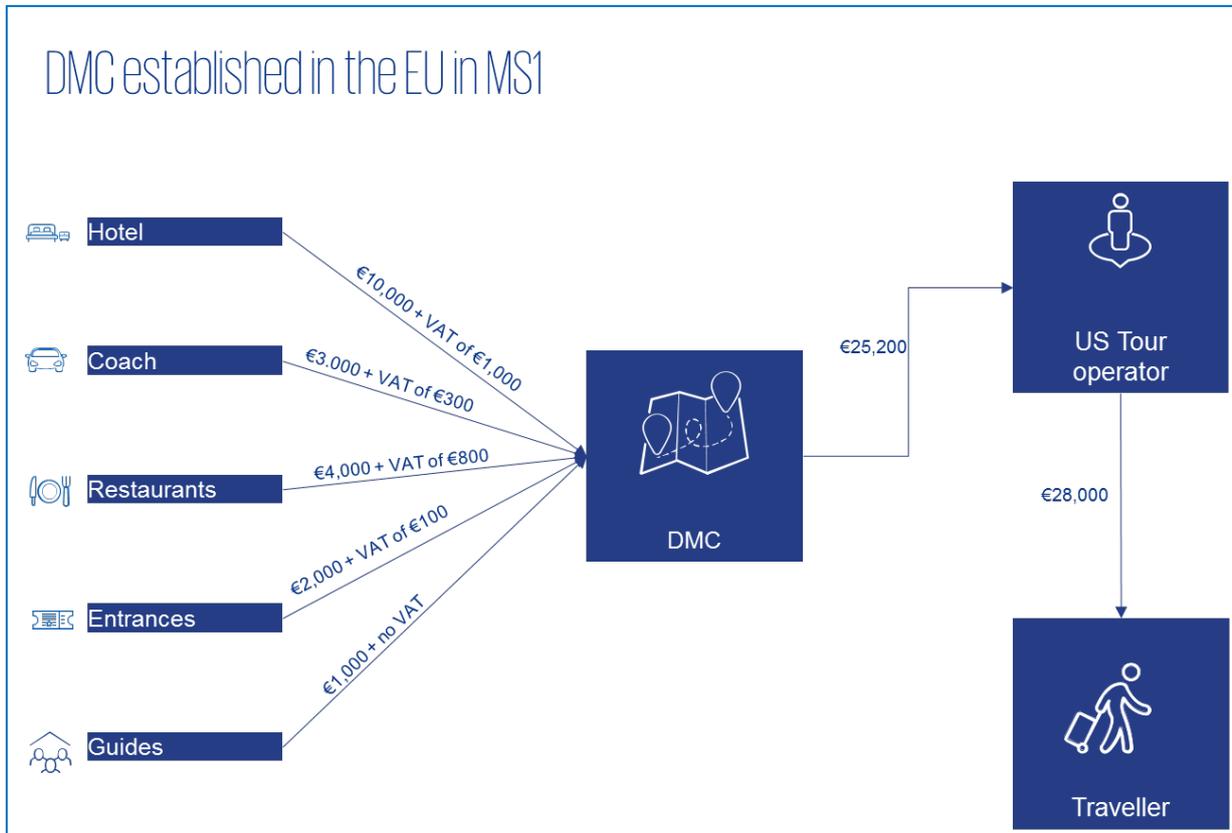
	 Hotel in MS1	 Bed Bank in MS2	 Bed Bank in MS3	 Tour operator in MS4	Total VAT collected
All MS treat wholesale supplies as falling in Special Scheme	€100 + VAT of €10 in MS1	€113 incl. €0.50 margin VAT in MS2	€116 incl. €0.50 margin VAT in MS3	€128 incl. €2 margin VAT in MS4	€13 across four Member States
MS2 & MS3 treat wholesale supplies as falling under normal rules whilst MS1 treats under Special Scheme	€100 + VAT of €10 in MS1	€113 incl. nil margin VAT	€116 incl. nil margin VAT	€128 incl. €2 margin VAT in MS4	€12 across two Member States
All MS treat wholesale supplies as falling under normal rules	€100 + VAT of €10 in MS1	€113 incl. VAT of €10.27 less input tax of €10 in MS1	€116 incl. VAT of €10.56 less input tax of €10.27 in MS1	€128 incl. €2 margin VAT in MS4	€12.56 across two Member States
MS 2 & MS3 treat wholesale supplies as falling under Special Scheme whilst MS1 treats under normal rules	€100 + VAT of €10 in MS1	€113 incl. VAT of €10.27 less input tax of €10 in MS1 AND €0.50 margin VAT in MS2	€116 incl. VAT of €10.56 less input tax of €10.27 in MS1 AND €0.50 margin VAT in MS3	€128 incl. €2 margin VAT in MS4	€13.56 across four Member States

In this illustration (assuming a 10% VAT rate), the total VAT collected differs by €1.56 or 13% between the two most extreme examples. The aggregate magnitude of this issue across the EU will be driven by differing local VAT rates, the size of wholesale mark-ups, the number of wholesalers in each supply chain, and the prevalence of wholesale supply chains in each Member State. The information obtained in the survey was not sufficiently wide reaching to seek to quantify

this. Indeed, many players in a long supply chain may be unaware of the number of wholesalers participating in the chain, so this would be extremely difficult to quantify. It is understood that many wholesalers operate on very small margins, but as many supply chain contain several intermediate suppliers, cumulatively it can be a significant issue.

5.5.7.6 DMC wholesale package illustration

Fig. 5f



We will use the above example to illustrate how the varying approaches to a wholesale package affect the profitability of the DMC and the VAT revenue generated. We firstly consider a scenario where the DMC is established in the same Member State as that in which the travel facilities are consumed. We then address a scenario where the DMC is established in a different Member State.

The DMC creates a tour package for a client established in the US which in turn will sell the tour to a group of travellers resident in the US. All parties in this example are dealing with customers in their own name.

The DMC contracts with several hotels, coach operators, restaurants, attractions and guides in order to acquire the services needed to create the package. The tour takes place wholly within MS1.

The VAT rate in MS1 on hotel accommodation and passenger transport is assumed for illustrative purposes to be a reduced rate of 10% whilst 20% applies to restaurant meals. Some entrances to attractions attract the 20% rate whilst others qualify for

the cultural exemption.¹⁴⁸ The services of guides are in principle subject to VAT but the suppliers used in this example are small businesses not registered for VAT.

It can be seen that the total cost of the services purchased by the DMC is €20,000 plus VAT of €2,200, giving a gross cost of €22,200.

The DMC sells the package of services to its US client for €25,200 which in turn sells to the final customer for the equivalent of €28,000.

5.5.7.6.1 The DMC is established in the Member State in which the travel facilities are consumed

We will now consider the effect of the four possible VAT applications we have identified for the supply of such a package: the Special Scheme, the multiple supply approach and the single supply approach with both the place of supply and rate of VAT determined by either the package's predominant element or by the place of establishment of the client.

¹⁴⁸ Article 132(1)(n) of the VAT Directive

Fig. 5g

The Special Scheme	(€)
Selling price	25,200
Cost	22,200
Margin	3,000
VAT due	500
Net margin	2,500

The DMC has made a margin of €3,000 which includes VAT at 20%. The VAT due is therefore €500, leaving the DMC with a net margin of €2,500.

The total VAT accruing to MS1 is €2,700, i.e. the non-deductible input tax of €2,200 plus the Special Scheme payment due of €500.

Fig. 5h

The Multiple Supply Approach	(€)
Selling price	25,200
Cost	20,000
VAT due	2,749
Margin	2,451

The DMC is now making a supply which falls outside of the Special Scheme. Accordingly, input tax on the costs can be deducted leaving a cost to the DMC of €20,000. The selling price of €25,200 is the consideration for all the supplies made by the DMC and needs to be apportioned as different VAT treatments apply to the various supplies made. The values are identified by a cost apportionment.¹⁴⁹ The values attributed to the accommodation and the coach transport are subject to VAT at 10% whilst the values of the restaurant meals and the entrances attract VAT at 20%. (Whilst some of the entrances purchased by the DMC qualified for the cultural exemption, none of the value of the DMC's supply of the same services can be exempted as the DMC is not a body governed by public law nor a cultural body as recognised by MS1¹⁵⁰). Guiding services are considered to fall within the general place of supply rule¹⁵¹ and therefore in this situation are outside the scope of EU VAT.

MS1 receives total revenue of €2,749, being the output tax payable from the primary suppliers of €2,200 plus the net payment due from the DMC of €549.

Fig. 5i

The Predominant Element Approach	(€)
Selling price	25,200
Cost	20,000
VAT due	2,291
Net margin	2,909

¹⁴⁹ The apportionment sees the aggregate cost of the reduced rate items (the accommodation and transport) expressed as a proportion of the total VAT-exclusive cost (i.e. 65%), whilst the equivalent proportion for the standard rated items (the restaurants and entrances) is 30%

Again, the supply falls outside the Special Scheme so the input tax can be deducted. If we take the accommodation as the predominant supply, the full selling price of the package is taxed at the accommodation rate of 10%. The VAT due is €2,291. The DMC makes a net payment of €91. MS1 receives revenue of €2,291, €91 from the DMC and the output tax of €2,200 from the primary suppliers.

Fig. 5j

The Reverse Charge Approach	(€)
Selling price	25,200
Cost	20,000
VAT due	Nil
Net margin	5,200

Once again the Special Scheme is not applicable so input tax can be deducted. The place of supply is the place of establishment of the client which in this example is the US so the supply is outside the scope of EU VAT. The DMC accordingly pays no VAT but deducts the input tax. Revenue accruing to MS1 is nil.

In the above examples, it can be seen that the multiple supply approach results in the greatest sum of revenue for MS1 and the Special Scheme is the second most beneficial in terms of VAT revenue. We will see in later examples, however, that the multiple supply approach can generate considerably less revenue in the context of the Member States' current approach to the taxation of wholesale supplies. In this example, the Special Scheme generates less revenue as it allows (in effect) a credit for input tax where none is charged or for a credit at the standard rate when a reduced rate is paid by the supplier. The main advantage of the multiple supply approach to the DMC, namely that VAT is declared at the rate appropriate to each supply made, is not large enough, in this example, to outweigh the benefits of the Special Scheme. The predominant supply generates less revenue than either the Special Scheme or the multiple supply approach as the full value can be taxed at the reduced accommodation rate; clearly, if accommodation in MS1 was taxed at the standard rate, a very different result would ensue. As is to be expected, the reverse charge approach, in these circumstances, generates the least revenue.

The above figures illustrate how the approach taken to the supply of a package can impact upon the profitability of a DMC. In practice, it could be expected that competition would force prices to fall where the accepted practice is to give a relatively low VAT cost so that net margins made would not differ as much as suggested by the above. It is also clear that the price payable by visitors (buying an organised package such as this) can be reduced significantly by the impact of VAT at the wholesale distribution stage.

It is also clear that, in the circumstances of this example, the multiple supply approach is the most

and for the guides (outside the scope of VAT) is 5%. VAT due can then be calculated as €25,200 x (0.65 x 1/11) + €25,200 x (0.30 x 1/6)

¹⁵⁰ The conditions imposed on the application of the exemption by Article 132(1)(n)

¹⁵¹ Article 44 of the VAT Directive

complex of the four approaches and therefore the least compliant with the desire for simplicity. We will return to this point in section 6.

5.5.7.6.2 The DMC is established in a different Member State

We can now take a look at the position if the DMC is established somewhere other than MS1.

Scenario 1: A first possibility is that both MS1 and MS2 require the inclusion of wholesale supplies in the Special Scheme. If the VAT rate in MS2 is also 20%, the overall revenue and net margin of the DMC are as illustrated in the Special Scheme example above, the only difference being that MS1 now enjoys revenue of €2,200 and MS2 has the Special Scheme margin revenue of €500.

Scenario 2: MS1 requires the inclusion of wholesale supplies in the Special Scheme but the DMC is established in MS2 which excludes such supplies from the scheme. The DMC is not subject to the Special Scheme in MS1 as it has no place of establishment (or fixed establishment) there. It is not subject to VAT either in MS2 as, viewed from the perspective of MS2, all supplies made are outside the scope of MS2's VAT system. It makes no difference in this situation whether MS2 considers a wholesale package to be a multiple supply or a single supply.

Using the same figures as above, the DMC incurs costs in MS1 of €20,000 plus VAT of €2,200. As MS1 considers the supplies made by the DMC to fall within the Special Scheme, no deduction of the input tax should be allowed. No VAT is payable in MS2 and therefore the DMC declares no VAT on the supplies made and recovers no input tax. With a selling price of €25,200, the DMC makes a net margin of €3,000. MS1 retains the benefit of the €2,200 VAT charged by the principal suppliers. MS2 receives no revenue.

It should be noted that the same result is achieved in these circumstances if the DMC is established in a third country.

Scenario 3: A very different result of course is achieved if the positions are reversed so that MS1 now excludes wholesale supplies from the Special Scheme whilst MS2 requires the use of the scheme. To illustrate the effect, we will assume that MS1 considers the multiple supply approach to be the correct application of VAT to packages falling outside of the scheme. MS1 would therefore consider the supplies made by the DMC to be subject to VAT in MS1. The rules in MS1 would therefore oblige the DMC to register. The DMC would deduct the input tax of €2,200 and declare output tax of €2,749 (as calculated above in the multiple supply approach). In addition, MS2 would require the payment of VAT under the Special Scheme. If the standard rate in MS2 is 20%, the DMC would pay VAT of €500 (assuming the inclusion of VAT-inclusive costs in the calculation is correct even though deduction of the VAT has been achieved, although as noted elsewhere in this report, this point is not free from doubt).

MS1 would enjoy revenue of €2,749 and MS2 €500. The DMC would see a net margin of €1,951.

The payment of VAT on the same supplies twice is incorrect and in practice it is possible that the DMC would assert its right under the CJEU decisions in *Kingdom of Spain et al*¹⁵² to pay VAT only in MS2. If so, MS1's revenue would be €2,200 and MS2 would see €500.

If the DMC in the above example was established in a third country, there would of course be no basis for the payment of VAT under the Special Scheme. It is possible that the DMC may register and pay VAT in MS1 in accordance with the practice of that Member State but, in our experience, such compliance is very unusual. The most likely scenario is that the DMC would not pay any VAT and MS1 would accrue just the benefit of the €2,200 charged by the principal suppliers.

Scenario 4: An interesting result arises if MS1 considers a wholesale package to be a single supply, the place of supply of which is determined by Article 44 of the VAT Directive. If MS2 takes the multiple supply approach, the DMC's supply is outside the scope of VAT in MS2 as the place of supply from MS2's perspective of each supply within the package is MS1. No output tax is payable in MS2. In MS1, the place of supply is determined by the place of establishment of the client, in this case the US. No output tax is due in MS1.

However, the DMC is considered by MS1 to make a supply which would be taxable in MS1 if the place of supply was MS1 and accordingly a right to deduct the input tax incurred in MS1 exists.¹⁵³ On this basis, the DMC can deduct the input tax of €2,200 but pays no VAT on its supplies. The net margin is €5,200 and no VAT revenue accrues to any Member State. This is the same outcome as achieved by the Article 44 reverse charge illustration where the DMC is in the same Member State as the services are consumed.

We can conclude that the purpose of the Special Scheme, as interpreted by the CJEU, is to collect VAT in the Member State of consumption through the DMC's inability to deduct input tax on the costs of the principal suppliers and on the margin achieved in the DMC's State of establishment. That approach generates total tax revenue of €2,700 (either enjoyed wholly by MS1 or shared between MS1 and MS2 depending on the place of establishment of the DMC). The VAT revenue generated by the other approaches varies between nil and €3,249 (although that last figure would require the DMC to accept the double taxation of his supplies).

In terms of an effective VAT rate, measured against the wholesale supply value of €25,200, the outcomes differ from 0% (the reverse charge approach) to 14.8% (the double taxation model). The rate achieved in the Special Scheme model is 12%. It is thought likely that no VAT would be declared by the US tour operator on the final selling price of €28,000.

Before leaving this subject, we should point out that the reverse charge approach is not always beneficial for

¹⁵² Case C-189/11 and associated cases, see section 3.4.9

¹⁵³ Article 169(a) of the VAT Directive

the DMC. There are two situations in which the approach can be detrimental. First, if a DMC supplies a package to a client in the same Member State, the supply would be treated as a single supply subject wholly to the local standard rate, regardless of the place in which the travel facilities themselves are enjoyed.¹⁵⁴ This would often be a considerably larger sum of VAT than if, for example, the Special Scheme or the multiple supply approach applied. If the client was in the Special Scheme, there would be no deduction of the VAT due. Second, a travel agent within the scheme may purchase a package from a wholesale supplier outside that Member State – if that travel agent is established in a Member State which considers a wholesale package to be subject to the reverse charge, the agent must pay reverse charge VAT at the local standard rate regardless of the VAT treatment applied to the supply by the wholesale supplier in its own Member State. The reverse charge cannot be deducted as it is a cost falling within the Special Scheme.

5.5.7.7 Conclusion on wholesale supplies

It has not been possible to quantify these differences with hard economic data. Nevertheless, our experience is of widespread significant differences in the application of VAT in this sector and this experience is illustrated in section 5.5.7. The illustrations above also demonstrate the considerable variation in revenue collected and the profitability of DMCs in a range of circumstances. On balance we consider this amounts to a distortion of competition in the DMC sector.

5.5.8 Other B2B supplies

Practice by the Member States as regards services supplied for a business client's own use is more consistent than that applied to wholesale supplies. The compulsory use of the Special Scheme is much more common in this sector.

Nevertheless, there are Member States which consider services supplied to all taxable persons, no matter what the use of the service, to be excluded from the scheme. These Member States are Austria, Germany and Slovakia.

When the *Commission v Spain* judgment is implemented fully in these Member States, clearly there will be substantial changes to the VAT accounting procedures of the travel agents that are affected. The sectors primarily concerned with this issue are the TMC and MICE areas, which would no longer benefit from input tax recovery. It is likely that many of the travel agents affected would decide to switch to a business model under which they acted solely as an intermediary in order to permit the recovery of input tax by their clients on the costs of travel, accommodation etc. which the clients need for the purposes of their economic activities.

As described above, the application of the Special Scheme to supplies made to taxable persons means the loss of input tax deduction by that taxable person client as the travel agent cannot deduct the VAT charged by its own suppliers and must pass on a gross

VAT-inclusive cost to the client. It also creates a VAT cost for the travel agent on any margin achieved which the client cannot recover (unless the Member State involved allows for the stating of the VAT due on the margin on the invoice).

Acting as an intermediary allows these difficulties to be avoided and is already the norm in Member States which apply the Special Scheme to B2B supplies in the TMC and MICE sectors. However, intermediary status imposes constraints on the taxable person involved, notably a difficulty in setting their own price for the service. It also can cause difficulties in ensuring that the client receives the correct documentation to support input tax deduction. This is a well understood problem in the TMC and MICE sectors where we find VAT impacting on how businesses must operate.

It follows that travel agents outside the Special Scheme are placed at a competitive advantage when supplying services to taxable persons when compared to suppliers operating within the scheme. It also follows that travel agents established in a Member State which correctly applies the Special Scheme is placed at a competitive disadvantage when compared to travel agents established in a Member State which excludes (or permits the exclusion) supplies to taxable persons from the scheme. It should be noted of course, that third-country suppliers e.g. in Norway have no EU VAT constraints in respect of the fiscal implications that may arise on their margins, regardless of how they operate.

Nevertheless, we note that some of the apparent competitive disadvantages described above are off-set to an extent by the benefit of simplification afforded by the Special Scheme as previously discussed, although the anecdotal feedback received by KPMG from businesses in these sectors generally points to a strong desire for the rules to be modified, as the simplification savings are perceived to be less beneficial than the potential for input tax recovery under the normal VAT rules.

As mentioned at section 5.5.1, the blocked input tax on B2B supplies has been indicatively estimated to be worth circa €1.15bn annually across the EU. In addition, irrecoverable Special Scheme output tax on B2B supplies has been indicated to be worth circa €0.29bn.

Meanwhile per section 5.5.2 no data is available to indicate the extent to which businesses which are currently structured as intermediaries would in fact act as principals in the hypothetical absence of the Special Scheme (or vice versa). For this reason, the impact of the inclusion of B2B supplies in the Special Scheme cannot be quantified, although the figures above give a useful indication.

5.5.8.1 Application by Member States

When travel services are supplied to business customers for consumption (i.e. for travel for a business purpose, not for onward supply) twenty-three Member States treat these services in the same manner as a "business-to-consumer" supply for the

¹⁵⁴ Albeit subject to possible relief under Article 59a(b) of the VAT Directive where the travel facilities are consumed outside the EU

purposes of the Special Scheme and they are therefore in conformity with the decisions of the CJEU.

By contrast, Slovakia, Germany and Austria do not apply the Special Scheme in this circumstance (and normal VAT rules apply). Spain and Sweden allow a choice between application of the Special Scheme or application of the normal VAT rules. Previous 2011 surveys undertaken by the Commission Services indicated that Spain did not provide such a choice as optionality was introduced with effect from 1 January 2015.

In Latvia, we understand that the definition of a traveller for the purposes of the Special Scheme is not formally defined, however in practice the scheme applies to businesses for consumption.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Conforms with legislation/case law
- Not in conformity with legislation/case law
- Optional to apply Special Scheme (not in conformity)

There are significant differences in the approach to this issue of fundamental importance to the functioning of the Special Scheme which lead to important differences in the way that travel agents operate.

The German rules put German businesses at an advantage compared to businesses elsewhere in the EU. Whilst this is distortive there is no evidence that this has led to changes in behaviour such as businesses outside of Germany seeking to procure services from German travel agents to benefit from a VAT advantage. On this basis, the value of VAT under-collected as a result is considered to pertain to German businesses only. The business questionnaire does not enable quantification for Member States, although we note that the German travel market is one of the largest per the statistics at section 2.

5.5.9 Meaning of intermediary

Article 306 of the VAT Directive excludes from the Special Scheme transactions where travel agents act solely as "intermediaries". The interpretation of "intermediary" differs subtly from Member State to Member State. Subject to local variations in the interpretation of "intermediary", all Member States other than Lithuania *exclude* bookings made as intermediaries from the scope of the Special Scheme. Meanwhile, if a "secret profit" is made, Romanian rules would consider this indicative of sales made as principal, and therefore would fall within the scope of the Special Scheme.

It is common in some business sectors for a business to supply a "package" of travel facilities to a traveller for a single price, where the business acts as principal in relation to one travel facility and intermediary in relation to another. In this case in Lithuania, Cyprus, Belgium,

Slovenia and Hungary the Special Scheme supply would also "taint" the VAT treatment of the supply made as intermediary, such that the whole package falls to be within the scope of the Special Scheme. Whilst it is understood that the Special Scheme would not apply to the element supplied as intermediary in the remaining 24 Member States, the issue is not as clear in the Czech Republic, Latvia, Luxembourg and Romania. These four Member States stated the lack of available guidance on the matter as a reason for being unclear as to the VAT treatment.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Conforms with legislation/case law
- Not in conformity with legislation/case law
- Guidance not clear

The meaning of intermediary has received considerable attention in recent years in the UK. Various taxpayers have been involved in disputes over their status in relation to the Special Scheme. Several of the disputes have been heard in court¹⁵⁵ and the decided position is that the taxable persons involved have been held to have acted as intermediaries with the effect that they do not fall within the Special Scheme. It is considered unlikely that travel agents acting in the same way in other Member States would be treated in the same way given the propensity of the Member States to interpret statutes more teleologically. If so, the UK interpretation of the rules has created a competitive advantage in favour of UK travel agents.

5.5.10 VAT recovery by businesses receiving Special Scheme supplies

In section 5.5.5 we have considered invoicing of Special Scheme supplies and note that this can be the cause of commercial difficulties for travel agents.

In practice, although in general Special Scheme output tax is not recoverable as input tax by a business customer, five Member States, namely Belgium, Finland, France, Hungary and Sweden, have indicated that such VAT is recoverable as input tax subject to normal rules.

In regards to Belgium, if a business receives an invoice issued by a travel agency under the Special Scheme, there will be a VAT amount shown on invoice, based on a fixed margin percentage that Belgium applies. This VAT can be deducted if incurred for business purposes, as per guidance from the Travel Industry Federation in Belgium.

Whilst this issue is a fundamental inconsistency in application of the Special Scheme rules, the consistency across 23 Member States ensures that the distortive impact of this issue pertains only to the other five Member States and therefore is likely to be small in overall quantitative terms.

¹⁵⁵ See in particular the Supreme Court decision in HMRC v Secret Hotels 2 Ltd (2014) UKSC 16

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

■ Practice conforms with legislation/case law

■ Practice not in conformity with legislation/case law

5.5.11 Scope of the Special Scheme

There is a lack of clarity of the scope of the Special Scheme which derives both from differences in Member States' interpretation and application of the rules, and from a lack of clarity at the level of the EU VAT Directive, which does not precisely and prescriptively define the scope of the scheme in a granular way.

This issue leads to differences in treatment between similar supplies in different Member States. However, more significantly, the uncertainty over the scope of the Special Scheme also fundamentally influences the magnitude of the other issues and potential distortions outlined in this section. For example, if the broadest interpretation of the scope of the Special Scheme was applied by all Member States (i.e. the fullest list of services considered to be travel facilities), the significance of other differences (such as treatment of wholesale supplies, etc.) would be more pronounced. Conversely if the narrowest interpretation of the scope of the Special Scheme was applied by all Member States (i.e. a narrow list of services considered to be travel facilities), the significance of other differences would be lessened.

Therefore, to have harmonised rules defining the scope of the Special Scheme and addressing the treatment of wholesale supplies is the minimum requirement to address the two distortions of competition outlined in this section. In practice, harmonisation of rules is likely to require detailed implementing regulations and guidance from the Commission.

5.5.11.1 Single travel services

Some Member States consider that the Special Scheme only applies to "packages" and a "package" must by its very definition consist of more than one item. Therefore, such Member States consider that the sale of, say, just a hotel room without a flight cannot be in the Special Scheme (the CJEU in *Van Ginkel*¹⁵⁶ and *Star Coaches*¹⁵⁷ has given some guidance on this point, but the application by Member States does not appear to be consistent).

Based on the KPMG questionnaire, fourteen Member States apply the Special Scheme to a single travel service and so are in conformity with CJEU case law. For completeness, Belgian rules apply a unique

concept of a "journey" and will apply the Special Scheme to a single travel service if it comprises part of a "journey".

Meanwhile, eight Member States apply the Special Scheme only where some additional "booking service" is provided. In *Van Ginkel*, the CJEU ruled that the application of the Special Scheme was not conditional on these additional services being provided. As such, the Special Scheme continues to apply to a supply of a single service (e.g. hotel accommodation). A number of Member States apply the "information/booking" condition in what may be a mis-application of the *Van Ginkel* decision albeit one which is supported by the *Star Coaches* judgment. Interestingly, for the Czech Republic, Malta and Greece, the previous Commission surveys in 2011, indicated that the Special Scheme applies to a single supply without an additional booking service – implying a recent change in application of the rules in these Member States.

In Estonia, although in principle the Special Scheme applies to a single travel service, in practice normal VAT rules are regularly applied. Meanwhile, Romanian rules provide an explicit "opt-out" of the Special Scheme at the taxpayer's discretion, whereby a single supply (excluding passenger transport) can optionally be taxed under normal rules. In Latvia, the legislation does not specify how many items should be included in a package for it to fall within the Special Scheme. Meanwhile in Hungary and Slovenia, there is no clear guidance from the tax authority.

In summary, there appears to be confusion across Member States as to the treatment of a single supply of, for example, hotel accommodation and the supply of, for example, hotel accommodation with a booking service.¹⁵⁸ Another area specifically relates to car hire which in some Member States, when supplied on a standalone basis is deemed to be outside of the Special Scheme.

Differing treatment of single travel services creates potential for meaningful distortions only in respect of B2B supplies on which input tax might be recoverable absent application of the Special Scheme. The supply of single travel services will comprise a subsection of the B2B sector, which also frequently involves flights and accommodation sold together. A precise calculation of the impact of this issue would require a detailed breakdown of travel agent's turnover at an individual line-level, and this was not within the scope of the business questionnaire. However we think this issue would account for only a fraction of the indicatively estimated circa €1.15bn input tax and circa €0.29bn output tax indicated to pertain to B2B supplies and hence it is not considered to be significant in its own right on aggregate for the EU as a whole, but needs to be considered in conjunction with the meaning of travel facilities as discussed at 5.5.11.2 below.

¹⁵⁶ Case C-163/91

¹⁵⁷ Case C-220/11

¹⁵⁸ See upcoming German CJEU proceedings in respect of single items

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Conforms with legislation / case law. i.e. supply of a single travel service
- Appears slightly different to legislation/case law
- Can opt-out of Special Scheme if there is a single supply
- No guidance/guidance not clear

5.5.11.2 Differences in what constitutes travel facilities

Based on the KPMG questionnaire, eleven Member States apply the Special Scheme only to a prescribed list of travel facilities. Meanwhile, in the remaining seventeen Member States the liability of certain services to the Special Scheme depends on whether those services are packaged with other elements. For example in many Member States restaurant meals, catering, admission tickets, sports facilities etc. are not subject to the Special Scheme unless packaged along with a Special Scheme supply. Differences in the scope of the Special Scheme are outlined in Annex 1.

We can use the example of car hire to illustrate the effect of differences in approach.

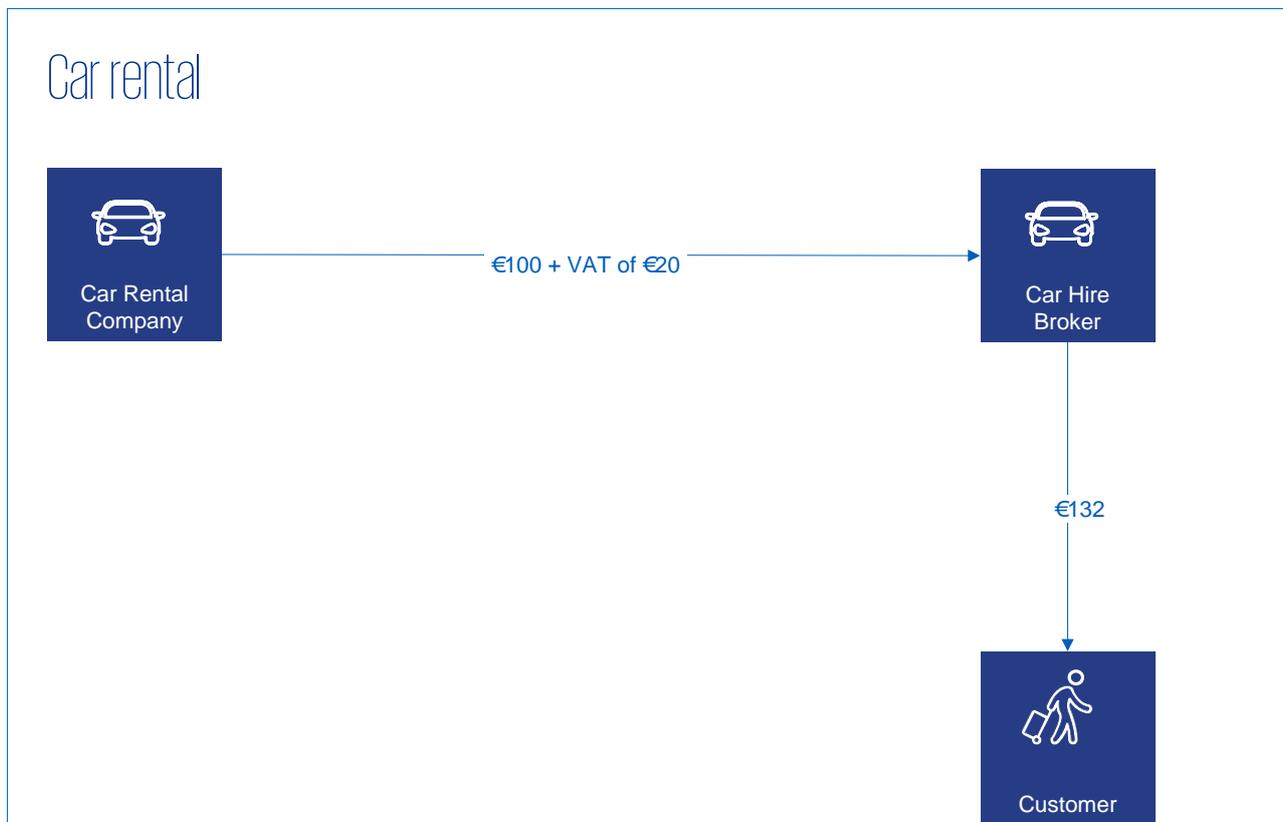
In some Member States, the supply of car hire as a single service is considered to be a travel facility and accordingly, subject to the other conditions of the scheme, the supply of car hire is subject to VAT on the margin. However, other Member States consider that car hire is not a travel facility and therefore falls outside the Special Scheme with the effect that its supply is subject to the normal VAT rules.

It is possible therefore that a supplier of car hire services could establish his business in a Member State which considers car hire to fall outside the Special Scheme and pay VAT in that Member State only on hires for which the car is put at the disposal of the customer in that state.¹⁵⁹

It would follow that the supplier involved should have no liability to pay VAT on hires in those Member States which consider the Special Scheme to apply as those states would expect VAT to be paid within the Special Scheme in the Member State in which the supplier is established.

The above points are illustrated by the following examples.

Fig. 5k



¹⁵⁹ Article 56.1 of the VAT Directive

The car rental company is established in MS1 and owns the cars to be rented to customers. It does not fall within the Special Scheme and the rental of cars in this example is supplied in MS1 where the cars are put at the disposal of the customer.¹⁶⁰ The illustrative rate of VAT in MS1 on car hire is 20%.

The car hire broker is established in MS2 where the standard rate is also 20%.

There are four scenarios to consider. In each, the supply by the car rental company is made in MS1 and the VAT rate applicable is 20%.

Scenario 1: Both MS1 and MS2 consider car hire to fall within the Special Scheme. The car hire broker accounts for VAT within the Special Scheme and cannot deduct the input tax on the rental cost. The gross margin is €12 and VAT payable is €2, leaving a net margin of €10. The total VAT revenue generated is €22, €20 of which accrues to MS1 and €2 to MS2. The full value of the supply to the final consumer is subject to VAT at 20%.

Scenario 2: MS1 considers car hire to be within the Special Scheme but MS2 does not. In MS2, car hire in all circumstances is deemed to be supplied in the Member State in which the car is put at the disposal of the customer. The car hire broker is not subject to VAT on its supply of the car hire. In MS2, there is no application of the Special Scheme and the broker has no obligation to pay VAT in MS1 as that Member State considers that VAT should be paid in MS2 under the scheme. The broker is unable to deduct the input tax incurred in MS1. The broker therefore retains its margin of €12. Total VAT generated is €20 which all remains with MS1. The value added by the broker, as measured by its margin, is not subject to VAT.

Scenario 3: Neither of MS1 nor MS2 consider car hire to be within the Special Scheme. Under the rules of MS1, the broker now has an obligation to register and pay VAT in MS1. The supplies made are again outside the scope of VAT in MS2. Accordingly, the broker registers in MS1, deducts the input tax of €20 and pays output tax of €22. The net margin made is €10 and the total VAT revenue is €22 which accrues wholly to MS1. As in scenario 1, the full value of the hire is subject to VAT at 20% but the broker has had to obtain a registration in MS1 to achieve this outcome.

Scenario 4: MS1 does not include car hire within the Special Scheme but MS2 does. The broker is now expected to pay VAT in MS2 where it is established. As in scenario 1, it therefore pays output tax of €2 in MS2. However, MS1 also expects VAT to be paid. If the broker registers in MS1, it would deduct the input tax of €20 and pay output tax of €22. This creates double taxation on the value added by the broker. The net margin of the broker is €8 and total VAT revenue is €24, €22 of which belongs to MS1 and €2 to MS2.

The net margin of the broker varies between €8 and €12 depending on the combination of interpretations

adopted by the two Member States involved. It is clear that a lack of consistency creates a situation from which a supplier may be able to benefit but also that a supplier could be faced with a risk of double taxation.

The size of the distortion above would, however, be limited by the existence of a clear rule on the place of supply to be adopted whenever the Special Scheme is not applied. Where there is no such clarity, the scope for distortion is much greater.¹⁶¹ One such area is guiding services. Our experience is that some Member States consider the services of a guide (sold as a single service) to be a travel facility whilst many do not. There is also inconsistency in the place of supply rule to use when the scheme is not applied, some Member States believing that the supply should fall within the general place of supply rule¹⁶² whilst others consider it to be taxable where performed when supplied to a non-taxable person.¹⁶³

Using the same model and figures as above, but substituting guides' services for car hire, we can see a larger difference in possible outcomes. One scenario could be the application of the Special Scheme in MS1 but non-use of the scheme in MS2 combined with a place of supply determined by the supplier's place of establishment. The broker would then be required to pay output tax in MS2 of €22 but MS1 could be expected to refuse any claim for input tax deduction as the Special Scheme is considered to apply. The broker is left with a negative margin of €10.

In contrast, if neither Member State applied the Special Scheme, but MS1 considered the place of supply to be the supplier's place of establishment whilst MS2 applied a place of supply determined by the place of physical performance, the supply would be outside the scope of VAT in both MS1 and MS2 and the broker would be entitled, in principle, to deduct the input tax incurred in MS1. The broker's net margin is now €32.

The guides' services example is extreme and is not one we would expect to happen often in practice but the car hire circumstances can be expected to exist more regularly. What is clear is that the differing approaches to the inclusion of services within the scheme can result in significant variations in revenue collected and in net margins made by travel agents.

It should be borne in mind that the major differences in interpretation of scope per Annex 1 pertain to "peripheral" elements of Special Scheme packages (such as airport lounges and restaurant meals), with widespread agreement on the treatment of core travel elements such as accommodation and flights. For this reason we think the impact of these inconsistencies are quantitatively less important in total across the EU than other issues identified in this section, on the basis that the financial value of the disputed peripheral services is relatively small (and the profit margin attributable to these elements is even smaller). However, the lack of a precise harmonised definition of the scope of the Special Scheme (i.e. a precise list of travel facilities) leads to many inconsistencies and

¹⁶⁰ Article 56 of the VAT Directive

¹⁶¹ Problems which can exist in a travel environment where there are differing approaches to the place of supply were illustrated in *RCI Europe v Commissioners for Revenue and Customs* (Case C-37/08) in

which the CJEU was asked to consider the place of supply to be adopted by a supplier of timeshare exchange services

¹⁶² Article 44 or 45 of the VAT Directive depending on whether the client is a taxable person

¹⁶³ Article 54 of the VAT Directive

difficulties for taxable persons who operate in multiple Member States. It also negates the simplification purpose of the Special Scheme and can lead to no taxation or double taxation in certain circumstances as demonstrated in this section.

For these reasons we have concluded that the lack of a harmonised approach to the meaning of travel facilities in conjunction with the differing approach to single travel facilities amounts to a distortion of competition.

5.5.11.3 Duration

For twenty six of the Member States, the duration of the travel services is irrelevant. However, in Finland and Italy, day-trips of a duration less than 24 hours (and without overnight accommodation) would be taxed outside of the Special Scheme, subject to normal rules.

5.5.11.4 Purchases from non-VAT registered businesses

Whilst the majority of Member States treat travel services as subject to the Special Scheme regardless of the VAT registration status of the original supplier, Greece and the Netherlands do not treat the re-supply of travel services purchased from non-VAT registered businesses (e.g. tour guides, guest houses or other establishments with a turnover below the registration threshold) as subject to the Special Scheme.

In Finland, the guidance on this matter is unclear. Meanwhile in Hungary, there is no VAT registration threshold and therefore all taxable persons will be VAT registered. As such, all purchases will be subject to the Special Scheme.

This variation in approach can lead to non-taxation or double-taxation as follows:

Non-taxation

A Greek travel agent buying a B&B room from a non-VAT registered UK supplier will pay no VAT on the purchase but will follow normal place of supply rules and account for no Greek VAT on the sale, while the UK authorities will expect no UK VAT to be accounted for on the understanding the Special Scheme applies in Greece. Ultimately, no VAT will therefore be accounted for by either the Greek travel agent or the UK primary supplier and therefore these transactions generate no VAT revenue.

Double taxation

A UK travel agent buying a B&B room from a non-VAT registered Greek supplier would account for VAT under the Special Scheme in the UK whilst the Greek authorities will also expect the UK travel agent to account for Greek VAT under the normal place of supply rules. By definition any difference in treatment between businesses beneath and above the VAT registration thresholds are small in magnitude and therefore not considered a significant distortion for the purposes of this study on aggregate for the EU as a whole.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

■ Conforms with legislation/case law

■ Not in conformity with legislation/case law

■ Guidance not clear

5.5.11.5 Electronically supplied services

With the exception of Romania, all Member States agree travel facilities bought online (in the circumstances of the Special Scheme) should not be treated as electronically supplied services. In Romania it appears that some suppliers have been deemed to be supplying electronically supplied services, though this is on a “case-by-case” basis.

5.5.12 Mixed packages of in-house and Special Scheme B2B supplies

The *MyTravel* case (see section 3.4.6) outlines that that in-house services (when supplied together with services bought from other taxable persons) must be valued by reference to their market value whenever this market value can be established. A travel agent may only use an actual costs basis to identify the market value where he can prove that that basis accurately reflects the structure of the package supplied or where it is simply not possible to establish the market value. A typical alternative to the use of market value is to base the apportionment of the total price by reference to the cost of the in-house and bought-in services.

5.5.12.1 Invoicing in-house supplies packaged with Special Scheme supplies

In respect of a B2B supply of a package containing a mixture of in-house and Special Scheme supplies, the invoicing requirements outlined at section 5.5.5 apply.

5.5.12.2 In-house items itemised on an invoice

In respect of those twenty-five Member States that per section 5.5.5 require an invoice to be issued, twenty-one Member States confirmed that the invoice must itemise the in-house and Special Scheme supplies separately (Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Netherlands, Portugal, Poland, Slovakia, Slovenia, Spain, Sweden and the UK). The Czech Republic responded that the itemization is optional, while Italy responded that separate invoices must be issued for each element of the package.

Furthermore Denmark, Latvia, Lithuania, Poland, Slovenia, Spain and the UK allow the option of issuing either a single invoice or separate invoices for the Special Scheme and in-house elements respectively.

5.5.12.3 Output tax itemised for each element of the mixed package

In respect of those twenty-five Member States that responded per section 5.5.5 that an invoice is required, Belgium, Finland and Hungary responded that a separate amount of output tax must be shown for each element of the invoice.

Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia and the UK responded that an amount of output tax may only be shown for the in-house element of the invoice, while similarly Italy indicated that output tax can only be shown on the invoice issued for the in-house element of the package.

France responded that it is optional for the supplier to state an amount of output tax is shown for each element of the invoice.

In respect of “in-house” supplies this therefore results in “trapped” VAT which is declared but cannot be recovered in absence of a VAT invoice. This is a clear inconsistency between Member States which will have a financial impact on affected businesses in up to three Member States. In aggregate the value of this trapped VAT is considered unlikely to be significant across the EU as whole, albeit harmonisation of these rules would create a more level playing field.

No guidance could be obtained on this issue for Luxembourg.

Malta and Ireland also stated that an amount of output tax may only be shown for the in-house element of the invoice. Although the Maltese and Irish legislation is not clear on this point, in practice per section 5.5.5 the Special Scheme VAT would not ordinarily be itemised for Special Scheme supplies.

In Greece, Spain and Sweden, it is necessary to show the VAT attributable to the in-house supply, however, it is optional to display the VAT attributable to the Special Scheme element of the supply.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Output tax for each element must be shown
- Output tax cannot be shown for Special Scheme element
- Optional whether to display output tax for the Special Scheme element
- Other / no specific guidance available
- Full value of supply falls outside of the Special Scheme

5.5.12.4 Valuation and Apportionment of a mixed Special Scheme and in-house B2B Supply

Concerning a package supplied to a business customer for consumption/own use comprising a mixture of Special Scheme and in-house services, in twenty two Member States the package margin should be apportioned between the Special Scheme and in-

house elements so that only a percentage of the margin is accounted for under the Special Scheme, with the in-house element accounted for under normal VAT rules.

In Hungary, a package containing in-house and Special Scheme supplies is considered a single supply, all of which is subject to the Special Scheme. This is an anomaly which may impact on the financial position of affected business but on aggregate is not considered likely to be significant from the perspective of EU VAT revenue.

In Spain and Sweden, the application of the Special Scheme is optional for B2B transactions, however if a business opts to apply the Special Scheme, then the margin should be apportioned.

There is no clear legislative guidance available on this issue in Latvia, Luxembourg and Slovakia.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Full value of supply falls within the Special Scheme
- Margin apportioned between in-house and Special Scheme element
- Full value of supply falls outside of the Special Scheme
- Optional whether the Special Scheme applies
- No guidance available

Of those Member States that require margin to be apportioned for a B2B supply of a package containing a mixture of in-house and Special Scheme supplies. Croatia, Bulgaria, Ireland, Malta, Slovenia and United Kingdom responded that either a market value or cost based method could be used.

Denmark, Netherlands, Spain and Sweden responded that the apportionment would be based on a “market value” method, unless no such market value can be found, a cost based method should be used. For completeness, as noted above, it is optional to apply the Special Scheme in Spain and Sweden.

Cyprus, Poland and Romania responded that the apportionment should be calculated on a cost based method. Similarly, although there is no guidance in Lithuania in practice it is understood that the apportionment should be calculated on a cost based method. Therefore all of these countries would appear not to apply the CJEU decision in *MyTravel*.

Belgium, the Czech Republic, Estonia, Finland, Greece, Hungary, Italy, Latvia, Portugal and Slovakia responded that no clear guidance was available, though Finland did indicate that in practice the apportionment would be based on a market value method.

Differences between “cost-based” and “market-value-based” methods are unlikely, in our view, to be sufficiently significant in magnitude on aggregate for the EU as a whole to create a distortion of competition.

For completeness, the French response indicated that the margin is not required to be apportioned on the basis that each element of the package is given a “commercial price” such that the question of need to apportionment does not arise.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Apportionment based on cost-based method
- Apportionment based on market-value. If no market-value can be ascertained, apportion based on cost
- No apportionment required
- Either market value or cost based method applicable
- No guidance available

5.5.12.5 Presentation on invoice of apportionment of a mixed Special Scheme and in-house B2B supply

Further to the above, Member States including Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Ireland, Latvia, Malta, Netherlands, Sweden and the UK indicated that the apportionment would be shown on separate lines of the invoice.

Meanwhile, Latvia, Lithuania, Poland and Spain indicated that separate lines or a separate invoice is possible and Greece, Portugal and Romania responded that no clear guidance was available and for Hungary no guidance could be obtained, while Italy would require a separate invoice for each element of the package.

This is merely an administrative issue and is not considered to form a distortion of competition.

5.5.13 Mixed packages of bought-in and intermediary supplies

When a package comprising a mixture of Special Scheme supplies and elements arranged as intermediary is provided to a B2B customer for consumption/own use, invoicing requirements vary across Member States.

In Cyprus, such a package would be treated as a single transaction, outside the scope of the Special Scheme and subject to normal rules.

In Bulgaria, the intermediary element would be required to be invoiced directly by the principal, and therefore an invoice for solely the bought-in element will be sent to the customer with no VAT on the invoice per section 5.5.5. Latvia and Slovenia responded that the intermediary and Special Scheme elements should be invoiced separately. Denmark, Finland, France Ireland, Lithuania, Malta, Netherlands, Sweden and the UK indicated that the supply should be apportioned with each element itemised separately. The same goes for Spain, albeit for a B2B supply it is possible to waive the application of the Special Scheme.

However, Croatia, the Czech Republic, Estonia, Hungary and Poland indicated that the full supply would be subject to the Special Scheme with no apportionment required. This difference of treatment results in a higher VAT burden for suppliers of such mixed packages based in these Member States. This may incentivise suppliers to structure their arrangements differently, in order to avoid packaging supplies arranged as intermediary with supplies made as principal. This is not considered to represent a significant distortion of competition on aggregate for the EU as a whole.

No guidance on this issue could be obtained in Italy, Luxembourg, Portugal, Belgium, Greece, Romania or Slovakia.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Full value of supply falls within the Special Scheme
- Full value of supply falls outside the Special Scheme
- Value of supply apportioned or separated
- Intermediary element invoiced directly by intermediary
- No guidance available/obtained

5.5.14 Mixed Packages including bought-in, in-house and intermediary elements

The above sections dealt with mixed packages including Special Scheme supplies alongside either supplies made as intermediary or in-house supplies. When a package comprising a mixture of all three types of supply, i.e. Special Scheme, in-house and intermediary elements are provided to a B2B customer for consumption/own use, invoicing requirements vary further across Member States. This is unsurprising given the inconsistencies outlined at sections 5.5.12 and 5.5.13.

In the following Member States, the presence of an agency supply in this mixed package effectively overrides the “in-house” element and the treatment outlined at section 5.5.13 prevails:

- In Cyprus, this mixed package would be treated as a single transaction, outside the scope of the Special Scheme and subject to normal rules.
- Conversely, the Czech Republic, Hungary and Estonia responded that the whole package would be treated subject to the Special Scheme with no apportionment required.

In the following Member States, the treatment of mixed “intermediary” packages per section 5.5.13 is consistent with the treatment of mixed “in-house” packages explained at section 5.5.12. The invoicing for a package including Special Scheme elements and both in-house and intermediary elements is therefore treated similarly:

- Denmark, Finland, France, Ireland, Malta, Slovenia, Sweden and the UK responded that the

apportionment between all three elements would need to be shown on separate lines on the invoice. The same goes for Spain albeit for a B2B supply it is possible to waive the application of the Special Scheme. In France there is an option to issue three separate invoices, one for each element of the package.

- Latvia and Slovenia responded that each element should be invoiced separately. Meanwhile, Italy also responded that each element should be invoiced separately, although they were unable to provide guidance per section 5.5.
- Croatia responded that both the intermediary and the Special Scheme element will be subject to the Special Scheme with the apportionment for the in-house element shown on a separate line.

In Bulgaria, the intermediary element will be invoiced directly by the principal, and therefore an invoice for solely the bought-in and in-house element will be sent to the customer with the apportionment shown on separate lines.

For Luxembourg, Netherlands Portugal, Greece, Belgium, Romania and Slovakia no clear guidance could be obtained on this issue.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Full value of supply falls within the Special Scheme
- Full value of supply falls outside the Special Scheme
- Value of supply apportioned or separated
- No guidance available/obtained
- Special Scheme and intermediary element subject to Special Scheme, in-house element is apportioned
- Special Scheme does not apply to B2B transactions
- Optional to apply the Special Scheme for a B2B supply

5.5.15 Mixed Packages – conferences and events

There is inconsistency across Member States over the treatment of a taxpayer that buys in several facilities (venue, accommodation, travel, entertainment) for the onward B2B provision of a conference or similar event. Although one may assume that such a conference equates to a mixed package comprising “in-house” and Special Scheme elements, in practice the VAT treatment varies. Whilst we are not aware of any detailed specific guidance published in this respect of the MICE sector in any Member States, the following paragraphs outline established practice in respect of conferences in particular, making a comparison to the general treatment of in-house supplies.

Seven Member States (Croatia, the Czech Republic, Finland, France, Italy, Greece, Netherlands) responded that the full value of the conference falls within the Special Scheme, though the French response indicated that if the travel elements were viewed as

ancillary then the general place of supply rules would apply. This contradicts the general treatment by these Member States of in-house supplies, as outlined at section 5.5.12.4 which ordinarily would require an apportionment to be made between the in-house and Special Scheme elements respectively.

Denmark, Hungary, Poland, Romania, Slovenia and Spain responded that a conference would not be subject to the Special Scheme. This contradicts the general treatment of in-house supplies by these Member States.

For completeness Spain noted that the Spanish Tax Directorate does not disregard the possibility that such a supply would be subject to the Special Scheme, but for a B2B supply it is possible to opt-out of the application of the Special Scheme such that the general B2B rules would apply. The Swedish response although stating that the full value would fall within the Special Scheme noted that in the MICE sector, the supplier usually treats the travel facility separately from the remaining conference elements – and in Sweden the travel agent may also apply the general rule for B2B transactions.

The UK, Cyprus, Malta and Ireland responded that the value of the conference would be apportioned so that only the travel elements are accounted for within the Special Scheme with the remainder of the package accounted for under normal rules. This is consistent with the general treatment by these Member States of in-house supplies, as outlined at section 5.5.12.4. For Belgium, Luxembourg, Bulgaria, Latvia, Lithuania, Portugal, Sweden, Slovakia and Estonia no specific guidance is available in respect of conferences and therefore it is presumed that the rules on in-house supplies per section 5.5.12.4 apply.

As noted above, in Germany and Austria, the Special Scheme does not currently apply to B2B transactions. However from 1 May 2019 such a B2B supply in Austria would fall within the Special Scheme if it is for the benefit of a “non-entrepreneurial” traveller.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

- Value of conference apportioned
- Full value of conference falls within the Special Scheme
- Full value of conference not subject to the Special Scheme
- No guidance available/obtained
- Special Scheme does not apply to B2B supplies (not in conformity with legislation / case law)

5.5.16 Margin calculation

The Special Scheme requires output tax to be declared not on the sales value of the travel facilities, but on the margin. This requires the margin to be calculated, and each Member State has its own rules under which this calculation is undertaken.

Whilst the terminology differs from one Member State to another, margin calculation methodologies fall under the following two broad categories:

- An “overall” or “global” margin calculation that allows losses made on one transaction to offset profits made on another transaction in the same period; or
- A “transaction by transaction” margin calculation that does not allow losses made on one transaction to offset profits made on another transaction in the same period.

The advantages of a calculation based on the aggregation of sales and associated costs over a period are simplicity and an ability to offset any negative margins against positive margins on other supplies.

Accordingly, a travel agent established in a Member State which allows for a form of global calculation enjoys lower administration costs and potentially a lower VAT cost when compared to a travel agent established in a Member State which requires a separate VAT calculation for each supply made.

It should also be borne in mind that a sale by sale calculation by its very nature identifies the actual margin on each sale. A “global” calculation (albeit the calculation methodology varies in each Member State) makes assumptions about the level of mark up made which could lead to some, albeit small, distortions / differences between the two approaches.

Following the CJEU decision in *Commission v Spain*, there is inconsistency across Member States on the definition of a “transaction by transaction” basis compared to a “global” margin calculation. As already noted, for the purposes of this report the key differentiator between these two calculation types is considered to be the availability of “loss relief” by offsetting profit made on one transaction against a loss on another.

Based on the KPMG questionnaire, the VAT rules in eleven Member States describe calculating the Special Scheme VAT liability in a way that does not allow for the offsetting of losses. As per *Commission v Spain*, the offsetting of losses is not allowed as the margin should be looked at on a transaction-by-transaction basis.

AT	BE	BG	HR	CY	CZ	DK
EE	FI	FR	DE	EL	HU	IE
IT	LV	LT	LU	MT	NL	PL
PT	RO	SK	SI	ES	SE	UK

■ Conforms with legislation/case law

■ Not in conformity with legislation/case law

■ No guidance / guidance not clear

Meanwhile, fourteen Member States do allow losses to be offset (i.e. not in conformity with CJEU case-law).

Sweden allows a choice of either the transaction basis or a simplified procedure. Based on a strict interpretation of *Commission v Spain*, we would expect

this not to be in conformity with the rules on calculating the Special Scheme margin.

Ireland allows taxpayers to use simplified accounting methods based on estimated margins, but they are required to adjust any estimate to actual margin for each transaction.

Estonia allows taxpayers to use the average margin of the previous calendar year, upon written application to the Estonian tax authority. However, the default position is that loss offsetting is not allowed and the calculation is done on a transactional basis.

There is no legislative guidance on the appropriate method to use in Luxembourg

5.5.16.1 Practical implications

As described in section 4, the CJEU concluded in *Commission v Spain* that there is nothing in the rules of the Special Scheme to allow for a calculation of the VAT payable on any basis other than by reference to each single supply provided by the travel agent. The practice of Spain in allowing travel agents to make an overall determination of the taxable amount in aggregate on all Special Scheme supplies made in a period could not be permitted.

Our analysis has demonstrated that many Member States allow for a form of simplified, aggregated calculation. Such an approach is associated with two main advantages:

- A simplified basis of calculation which benefits both travel agents and tax authorities as regards their need to review the declarations of travel agents; and
- Automatic credit for any negative margins made by the travel agent (as such negative sums are deducted from the positive margins made on other supplies in the same period of account) which appears to be fiscally reasonable.

The main difficulty in applying the CJEU’s judgment is the effect it has on calculating VAT due. The judgment requires identification of the margin every time a service is provided by the travel agent. This requires identification of the taxable amount, i.e. the margin, every time a supply is made. It is submitted that this could mean calculating VAT payable numerous times for just a single provision of travel facilities, i.e. for example, the travel agent may receive a deposit, stage payment and final balance each of which would crystallise a supply and each would represent the making of a supply. To comply with the judgment, a travel agent would need to identify the margin inherent in each payment. There is no clear way in which this could be done other than through very significant expenditure of IT systems and/or resources, to allow such tracking. Even if this were possible, other factors such as exchange rate fluctuations for example, have an effect which would impact the margin.

Furthermore, the declaration of VAT due once full payment is received could not be considered to be final as there are numerous circumstances in which the final cost is not known at that time:

- Rebates or similar received subsequent to the provision of the travel facility (based on, for example, the level of business placed with the supplier over a period) and which would have the effect of reducing the cost of all supplies purchased over a period;
- The cost of in-house services supplied with bought in services where the actual costs basis for the valuation of the in-house services is used;
- Difficulties in identifying cost where services have been block booked and the cost for the services per unit can only be known at a later date.

The travel agent's cost of a single service may change several times after the service has been performed requiring the agent to adjust the VAT payable potentially on several occasions.

The above indicates that at least fourteen Member States do not comply currently with the full requirements of the CJEU's judgment. It is understood that Member States have considered it to be appropriate to require (or at least to allow) an aggregated basis of calculation as it was recognised that the alternative, (i.e. to calculate VAT in the way set down by the CJEU), would be very difficult. In our view, this is one area where the Special Scheme causes a material issue for the industry with regard to compliance requirements.

However, no other industry is allowed for VAT purposes to offset losses (albeit under normal rules the offsetting of input tax recovery against output tax may provide a similar result).

The only possibility allowed for a simplified calculation can be found in Article 318 of the VAT Directive relating to the supply of goods under the margin scheme for taxable dealers, but it is clear from the provision that such a global calculation is only allowed for simplification purposes rather than to offset losses. In addition, Member States are required to consult the VAT Committee before seeking to provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period for which the taxable business submits VAT returns.

5.5.16.2 Retrospective Adjustments

Five Member States, namely Slovakia, Belgium, Italy, Croatia and Romania do not allow retrospective adjustments to be made where the final profit margin differs from the "preliminary" or expected margin at the time of the transaction.

Cyprus, Estonia and the UK calculate an estimate of the Special Scheme VAT liability in each VAT accounting period based on the prior year, with an annual adjustment made once per year to correct these estimates. (In Estonia there is an alternative calculation method which does not require annual adjustment). Ireland allows an estimate on either an annual or periodic VAT return basis with a requirement to make an annual adjustment. The remaining Member States calculate the Special Scheme liability each VAT period in accordance with periodic VAT return frequency. The majority of Member States require

payment of the Special Scheme liability in accordance with periodic VAT returns, while Lithuania and Estonia require monthly liability settlements.

Of those Member States in which a retrospective adjustment of the final profit margin is required, Bulgaria, Denmark, Estonia, Ireland, Malta and Slovenia responded that there was no corresponding requirement to issue a corrected invoice.

In contrast, Member States including the Czech Republic, France, Portugal, Poland and Spain responded that there is a requirement to issue a corrected invoice. Similarly in Sweden where the option to display VAT on the margin per section 5.5.5.2 is taken up and a retrospective adjustment of the final profit margin is required, a corrected invoice should be issued.

Meanwhile the Lithuanian response was that a correcting invoice is only required where the supply contained a mixture of elements (such as in-house and Special Scheme items). Where the supply only contains Special Scheme items a correcting invoice is not required.

5.5.16.3 Fixed profit %

The majority of Member States require an "actual" calculation of profit and therefore do not allow a fixed profit percentage to be used to calculate the VAT due. However, in Sweden and Austria there is an option to apply a fixed profit percentage, and in Belgium it is compulsory to apply a fixed profit percentage (different fixed rates are applicable dependent upon the underlying nature of the supply).

5.5.16.4 Income subject to the Special Scheme and allowable costs in margin calculations

There is significant inconsistency between Member States regarding which income streams are subject to the Special Scheme and allowable costs in margin calculations – see Annex 1 for a summary.

5.5.16.5 Margin calculated by reference to VAT inclusive costs

A practical issue is whether a travel agent who has achieved input tax deduction in a Member State which considers the Special Scheme not to apply should calculate the margin (in the travel agent's Member States of establishment) using the gross VAT inclusive cost or the actual net cost. Article 308 of the VAT Directive requires use of the actual cost and this may be interpreted to mean that a travel agent who has recovered input tax must use the net cost. However, this is not necessarily how the Special Scheme was implemented in practice. For example in the UK, local legislation requires the use of the VAT inclusive value in all cases. Where this is so, the travel agent is effectively allowed a double credit for input tax. If the implementation of the Special Scheme were to be harmonised, such an effect would not exist.

5.6 Competitive advantages enjoyed by travel agents established outside the EU

The place of supply rule within the Special Scheme is an origin based rule, i.e. the travel agent's supply is subject to VAT in the Member State in which the travel agent has established his business or has a fixed establishment from which the supply is made.

This is often interpreted to mean that a travel agent without a place of establishment (or fixed establishment) in the EU cannot be subject to EU VAT.¹⁶⁴ The validity of this interpretation was examined by the Commission Services in 2014.¹⁶⁵ A number of different interpretations were identified by them. Subsequently, the Member States in the VAT Committee considered the proper treatment of third country (non-EU) travel agents and a large majority concluded that such agents should be considered to fall outside of the Special Scheme. Based on the analysis made, it presumably follows that the large majority of Member States in question thereby concluded, under the normal rules, that those third country travel agents should be registered for VAT in each Member State in which the travel services they supply take place.

Our purpose here is not to comment on whether third country travel agents have an obligation to register for EU VAT. We merely note that the VAT Directive is ambiguous on this point and that the CJEU has not pronounced on the subject. Furthermore, regardless of the rights and wrongs of the technical arguments in this area, our experience is that few third country travel agents seek registrations in the EU and that few Member States attempt to enforce such registrations.

It might be concluded therefore that either:

- The current scheme facilitates the non-taxation of third country travel agents. This is the effect if the VAT Directive is interpreted as applying to all travel agents but only imposing a VAT charge on agents if they have a place of establishment or fixed establishment within the EU; or
- The current scheme does not cover third country travel agents with the effect that they should apply the normal rules on place of supply, valuation, liability and input tax deduction. Accordingly, they should register in Member States in which they supply services and be subject to the rules of the Member State(s) involved.

There are also apparent inconsistencies across Member States in the understanding of what constitutes a sufficient footprint in the EU to create a fixed establishment for VAT purposes. One of the requirements of this study is that we consider how the rules can best be reformed or harmonised for travel agents established within the EU and those in third countries aiming at creating a level playing field. These points are considered in section 6.

It might be concluded that third country travel agents currently enjoy competitive advantages over their EU

counterparts. However, this is not necessarily the case and the position depends on the sector in which the travel agents operate and the application of the current rules in the Member State in which the travel agent competing with a third country agent is established.

5.6.1 Tour operators

In the tour operating sector, where most customers are not taxable persons and accordingly input tax deduction does not feature, and where most travel agents pay VAT on the gross margin achieved, it seems realistic to conclude that third country travel agents enjoy a competitive advantage. Neither EU nor third country travel agents are able to deduct input tax on the costs of services falling within the Special Scheme but third country agents do not pay the output tax which would be required of an EU agent (at least when selling travel taking place within the EU).

For example, a travel agent based in Norway, Switzerland or Turkey that makes supplies that are used and enjoyed in the EU would not be required to account for its local VAT equivalent in Norway, Switzerland or Turkey. Further, the travel agent would not be required to account for VAT under the Special Scheme on the supplies used and enjoyed in the EU. This leads to non-taxation on the margin.

5.6.2 DMC

The situation, however, is more nuanced in practice in the DMC sector. If all Member States included wholesale supplies in the Special Scheme, it would be reasonable to conclude that the competitive position would be same as that described for tour operators above.

However, as we have established, there is a large variation in the approach towards wholesale supplies (particularly as regards the supply of packages) and therefore a consideration of the current competitive environment in the DMC sector requires us to take into account the Member State in which the EU travel agent is established and the Member State in which the travel facilities themselves takes place. The competitive position of the EU travel agent is a factor of the applicability of the Special Scheme in the agent's own Member State, whether the scheme is used for wholesale supplies in the Member State(s) in which the travel occurs and where, (in both cases) the scheme is not applicable, what version of "normal" VAT is considered to be correct (where the supply consists of a package).

5.6.2.1 FIT

For FIT and other instances of the supply of a single item, the normal rules vary little between Member States and apply to third country and EU travel agents alike. Where the travel facility in question is supplied in a Member State which does not apply the Special Scheme, then we conclude that the legislation itself does not create any difference in obligations between EU and third country wholesale suppliers. In both cases, the travel agent should register (subject to any local rules on the point), pay VAT on supplies made in accordance with the rules in that Member State and

¹⁶⁴ However, local VAT or sales taxes may of course arise

¹⁶⁵ Commission Working Paper 814 dated 31 July 2014

deduct input tax (again subject to the rules in that state).

5.6.2.2 Packages

For packages, where the travel takes place in a Member State which does not apply the Special Scheme but does use any of the multiple supply, single supply or predominant supply approaches, it can be seen that the VAT regime also does not distinguish between EU and third country travel agents as the rules (i.e. those for place of supply, valuation, liability of supply and input tax deduction) are the same for both groups. Where the multiple or predominant supply approach applies, the travel agent has an obligation to register where each supply within a multiple supply or the main supply under a predominant supply model is supplied. This obligation applies equally whether the travel agent is established within the EU or not. Where the single supply approach applies, the place of supply is the place of establishment of the client. Again, this applies regardless of the place of establishment of the supplier.

In each case, in principle, both for FIT and packages, input tax incurred on the purchase of the travel services to be supplied by the travel agent is deductible. In the case of the multiple and predominant supply models (for package supplies), this deduction is likely to be achieved via a VAT registration but in the case of the single supply model, recovery outside of the Member State in which the travel is established is likely to be achieved under the EU VAT refund scheme¹⁶⁶ or the refund scheme for third country businesses,¹⁶⁷ assuming in that latter case that the travel agent is not established in a country to which repayments are blocked under the reciprocity condition.¹⁶⁸

Where the Special Scheme is not applied at the moment, we can conclude therefore that the VAT Directive does not itself lead to differential treatment between EU and third country suppliers. Indeed, it might be said that adoption of the CJEU's decision would introduce a degree of unequal treatment as either third country agents would be excluded from the scope of EU VAT (if the Special Scheme is interpreted to apply to such suppliers but that they have no EU place of supply) or they would be subject to a different regime i.e. the normal rules on place of supply, valuation, liability and input tax deduction, whilst EU agents would be within the Special Scheme.

However, whilst the current exclusion of wholesale supplies from the Special Scheme might be seen to create a level playing field (in those Member States in which the Special Scheme is not applied), in practice the situation may be different. Many wholesale suppliers specialise in travel facilities taking place in their own Member State and it is to be expected that such businesses are registered for VAT in the Member State involved. This way, VAT is accounted for in the way required by that Member State on a large part, maybe the full value, of that travel agent's wholesale turnover. Where such a business makes supplies in

another Member State (which does not apply the Special Scheme), then a liability to register and pay VAT in that other state exists. In our experience, third country wholesale suppliers commonly are not aware of any obligation to register in any Member State. In practice, EU travel agents operating in this sector are very much more likely to be more compliant than competitors operating outside the EU.

Accordingly, in practice, travel agents established in the EU are likely to suffer a competitive disadvantage whether or not the Special Scheme is applied in the Member State in which they are established and/or in the state in which the travel facilities take place. One situation in which this is not the case is where the travel agent supplies packages, is established in a Member State which has adopted the single supply approach and organises packages which take place in his own Member State.

5.6.3 TMC

In the TMC sector, many travel agents have chosen to operate as intermediaries with the effect that they fall outside the Special Scheme. Fees and commissions earned from taxable persons fall within the general place of supply rule¹⁶⁹ and accordingly VAT is chargeable on supplies made to a client in the same Member State (subject to any local exemption or other relief which might apply). Supplies made to clients established elsewhere in the EU are subject to VAT in the client's Member State and it is the responsibility of the client to pay the VAT¹⁷⁰, subject to the rules applied in that Member State.

Where a third country TMC acts as an intermediary, the effect should be the same as described above. The TMC would have no obligation to charge VAT but the EU client would be liable to declare VAT¹⁷¹ on services received from such a TMC. The impact in terms of cost for the client should be the same in both situations.

Where a TMC deals with customers in his own name so that the Special Scheme applies, costs for the client are likely to be increased as the VAT on the travel facility itself is not recoverable and a sum of output tax on the margin is created where the TMC is established in the EU and in a Member State which applies the scheme to B2B supplies. Here the EU TMC is faced with a disadvantage as it is unlikely that the third country competitor would pay any VAT. However, the position is dependent on the interpretation placed on the application of the Special Scheme to third country travel agents. Two interpretations are possible: either third country travel agents are covered by the scheme but are not subject to VAT as they have no EU place of establishment (or fixed establishment) or they fall outside the scope of the scheme and accordingly are subject to the normal rules on place of supply, valuation and input tax deduction. If the former interpretation applies, the third country competitor would also be unable to deduct any input tax and could not provide any means by which the client could deduct any tax. In practice, therefore, the disadvantage

¹⁶⁶ Directive 2008/9/EC

¹⁶⁷ Directive 86/560/EEC

¹⁶⁸ Article 2(2) of the VAT Directive

¹⁶⁹ Article 44 of the VAT Directive

¹⁷⁰ Article 196 of the VAT Directive

¹⁷¹ Again in accordance with Articles 44 and 196 of the VAT Directive

faced by a TMC established in the EU is likely to be limited to the VAT paid on the margin.

However, if third country travel agents are considered to be outside the Special Scheme and thereby subject to the normal VAT rules, a third country TMC may enjoy a competitive advantage over a TMC established in a Member State which requires the use of the Special Scheme. Whilst the EU TMC would be unable to deduct input tax, could not raise a VAT invoice and would have to pay VAT on its margin, a third country competitor could register in the Member State in which the travel facilities are consumed, deduct the local input tax and provide a VAT invoice and thus provide the business client with the means to recover input tax denied to them when purchasing from many EU TMCs.

Where the TMC buys and re-sells travel facilities in a Member State which does not apply the Special Scheme to B2B supplies, the effect is that input tax should be deductible, the TMC would charge VAT on his selling price and provide an invoice to provide the client with the means to deduct its own input tax. This applies equally to EU and third country travel agents so in theory no distortion exists. In practice, if an EU agent is registered and compliant in such circumstances but a third country agent is not, then the EU agent is in a better situation as it can offer the client the means to reduce the final cost via input tax deduction whereas the third country agent cannot do so.

5.6.4 Travel agents

Travel agents act mainly as intermediaries and fall outside of the Special Scheme when doing so.

Travel agents typically earn commissions from principal suppliers such as tour operators, hotels, airlines etc. and also often charge fees to their customers. To assess any competitive advantages by third country (non-EU) travel agents over their EU counterparts (or vice versa) we need to consider the rules (principally the place of supply rules) applicable to the commissions and fees charged.

Commissions receivable from suppliers such as tour operators, hotels and airlines are consideration for intermediary services supplied to a taxable person and accordingly fall within the general place of supply rule.¹⁷² The place of supply is the place where the principal has established his business or has a fixed establishment to which the service is provided. For the reasons discussed above in relation to TMCs, it should make no difference to the outcome whether the travel agent is established in the EU or not. Where the travel agent is established in a Member State and the principal is in the same Member State, the travel agent should charge VAT in accordance with the rules of that Member State. Where the travel agent and principal are located in different Member States, no VAT should be charged and the principal should declare local VAT using the reverse charge mechanism. If the principal is within the EU but the travel agent is located in a third

country, local VAT should be declared via the reverse charge in each case.

Thus it can be seen that no differences in VAT payable on commissions should exist and no potential comparative (dis)advantage should arise in this context. It is also worth noting that VAT payable (whether to a travel agent in the same Member State or under the reverse charge mechanism) is normally deductible in full by the principal, so whether VAT is declared or not typically makes no difference to VAT revenue and does not affect the competitive status of EU and third country travel agents.

The place of supply of intermediary services supplied to a non-taxable person is the place where the underlying transaction is supplied.¹⁷³ This rule applies equally to EU and third country suppliers so again no difference in outcome should exist. However, application of this place of supply often results in travel agents having obligations towards multiple Member States to register and pay local VAT. We consider it probable that an understanding of this requirement is more likely amongst EU travel agents and that it is more likely that EU travel agents will be compliant with this requirement. This would mean that EU travel agents would pay VAT in circumstances in which third party agents would not but, if this is the case, it arises from non-application of the rules rather than a difference in application between EU and third country travel agents.

5.6.4.1 Electronically supplied services

We should also consider the outcome if the services of a travel agent are considered to be electronically supplied services. The Commission Services recently published guidelines¹⁷⁴ on the circumstances in which online platforms and similar selling travel services should be treated as supplying electronically supplied services. The guidelines make it clear that the Member States have agreed almost unanimously that in many circumstances such a platform should be considered to supply electronically supplied services¹⁷⁵ and not intermediary services. Although according to Article 7(3)(t) and (u) of the VAT Implementing Regulation travel facilities are not covered by the definition of electronically supplied services,¹⁷⁶ it cannot be excluded that some Member States would in the future treat online travel agents as supplying electronically supplied services.

The place of supply of electronic services supplied to a taxable person is determined by the general place of supply rule. This is the same test as applied to intermediary services so we can immediately conclude that the effect of categorising B2B services under the electronic supply heading is the same as under the intermediary heading. The positions of both EU and third country established travel agents is the same when supplying electronically supplied services as when supplying intermediary services.

¹⁷² Article 44 of the VAT Directive

¹⁷³ Article 46 of the VAT Directive

¹⁷⁴ Guidelines resulting from 107th meeting of 8 July 2016, document D – taxud.c.1(2017)1402399 – 914 (1/2)

¹⁷⁵ As the services require only minimal human intervention and are largely automated

¹⁷⁶ Point (t): tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online; and point (u): accommodation, car-hire, restaurant services, passenger transport or similar services booked online

However, the place of supply of electronic services supplied to non-taxable persons is different, being the place where the person is established, has his permanent residence or usually resides.¹⁷⁷ As with the intermediary rule, this test applies regardless of the location of the supplier. Accordingly, no matter where the travel agent is established, if the agent provides services to a non-taxable person and those services are considered to be electronically supplied (taxed at the standard rate), the place of supply is the place where the customer lives. Where that place of residence is within the EU, the supplier should account for VAT in the Member State in question at the rate stipulated by that Member State. Again, no difference in obligation exists between travel agents established in the EU and those established elsewhere and we can conclude, therefore, that in theory the rules do not create any competitive differences between EU and third country travel agents.¹⁷⁸

5.6.5 MICE

The position of MICE operators is complex. As discussed elsewhere in this study, there are significant variations in the approach of Member States to the taxation of MICE. It is necessary in many Member States, however, to apply the Special Scheme to at least a part of many events. In those cases where EU MICE operators use the Special Scheme, for the reasons already given in this section, they are placed at a potential disadvantage when compared to a third country operator providing the same service. It should be noted, however, that the disadvantage is limited to payment of VAT on the margin: input tax on associated costs is not deductible whether the supplier is established in the EU or not.

In many circumstances, however, MICE services do not fall within the Special Scheme. Depending on the nature of the service and the interpretation placed on it by the Member State(s) involved, in our experience services often fall within any of the general rule,¹⁷⁹ the rule for immovable property¹⁸⁰ and the rule for admission.¹⁸¹

We have considered the effect of the application of the general place of supply rule for other sectors in the section and the effect for MICE is considered to be the same: no difference in outcome should arise for supplies made by EU MICE operators when compared to those made by third country suppliers.

The place of supply of services connected to immovable property is the place where the property is located. Again, this applies regardless of the location of the supplier. Therefore, we should conclude that no differences exist for MICE within and without the EU when supplying services which are considered to be connected with immovable property.

The place of supply of admission services is the place where the event in question takes place. Once again, there is no difference in principle in the applicability of this rule between EU and third country suppliers. All suppliers should comply with the rules of the Member State in which the admission is supplied. This often means registration in the Member State involved and the payment of local VAT (and the deduction of associated input tax). Again, therefore it can be seen that no differences should exist between EU and third country operators and accordingly the VAT rules should not create any distortions of competition between suppliers in the EU as a whole and those outside the EU.

¹⁷⁷ Article 58(c) of the VAT Directive

¹⁷⁸ This assumes that the third country travel agent is in fact remitting the VAT due in the EU

¹⁷⁹ Article 44 of Directive 2006/112/EC

¹⁸⁰ Article 47 of Directive 2006/112/EC

¹⁸¹ Article 53 of Directive 2006/112/EC

Identify, assess and
compare options for
reform



6 Identify, assess and compare options for reform both under the current place of supply rules and under place of supply rules based on the destination principle

6.1 Introduction

The aim of this section is to identify, assess and compare options for reform.

This will involve a qualitative analysis of the costs, benefits, opportunities and risks associated with each of the options considered and a quantitative overview of the effect of each option on Member States' revenue.

Our purpose is not to reach definitive conclusions on how the VAT system for travel agents should change. Rather, our task is to consider the effect of the current rules, to identify ways in which the rules may be changed and to establish the effects of the possible reforms identified.

We also consider what the effects would be if there was no reform of the Special Scheme but all Member States adopted the current rules as interpreted by the CJEU.

The options discussed below represent several approaches to the taxation of travel and tourism within the EU. The Commission will, in the final analysis, be the one to decide whether changes to existing legislation are required and, if so, to present these to Member States who will make the final decision.

6.2 Section Summary

We have concluded that reform of the Special Scheme is desirable.

The analysis which follows sets out our views on the likely effects of various ways in which the VAT regime for travel might change.

A key conclusion from industry feedback is that there is not a desire to abolish the Special Scheme entirely although we note there are ways in which it might be changed to alleviate issues associated with the scheme as discussed in detail in section 5. In addition, based on the reform objectives we have identified, we do not believe the Special Scheme should be applied compulsorily to B2B supplies and that accordingly its use in the B2B sector should be optional.

Our analysis distinguishes between the five sectors covered by this study, namely the tour operating, TMC, travel agency, DMC and MICE sectors.

It is also important to consider how travel agents established outside of the EU might be brought within the scope of EU VAT and our following analysis considers how this might be done.

Many of the options under consideration would involve the payment of VAT in multiple Member States. We believe that a form of the current MOSS arrangement might be available to assist travel agents in their compliance.

6.3 Background

As we have described elsewhere in this study, all consideration of ways in which the application of VAT to travel may be reformed needs to be addressed against the wider VAT objectives of the Commission.

6.3.1 The VAT Green Paper

In 2010, the Commission published its VAT Green Paper¹⁸² to launch a consultation on the functioning of the VAT system and how the system should be reframed. The Commission stated¹⁸³ that it was time to look at the VAT system to:

- Strengthen its coherence with the single market;
- Improve its economic efficiency and robustness to strengthen its capacity to raise revenue;
- Strengthen its contribution to other policies;
- Reduce the costs of compliance and collection.

6.3.2 The 2011 conclusions to the Green Paper consultation

The 2010 Green Paper referred to the origin and destination principles as alternative bases for the taxation of intra-EU transactions. In 2011, the Commission presented its conclusions¹⁸⁴ from the process began a year earlier in the Green Paper. One of the conclusions was that the definitive VAT system should be based on the destination principle.

The Commission also concluded that a lack of harmonisation deters efficient intra-EU trade and prevents citizens from reaping the benefits of a genuine single market.

Lack of harmonisation creates a price in the form of complexity, compliance and legal uncertainty. SMEs often do not have the resources to deal with these issues and therefore refrain from engaging in cross-border trade. We have demonstrated that there is a high degree of dis-harmonisation in the application of VAT in the travel sector between Member States and it is considered that the problems identified in the 2011 paper are prevalent in the travel industry. These problems undermine the operation of a single market in travel services.

¹⁸² Green Paper On the Future of VAT: Towards a simpler, more robust and efficient VAT system, COM (2010) 695 final of 1 December 2010

¹⁸³ Section 1 Introduction on page 1

¹⁸⁴ Communication from The Commission to The European Parliament, The Council and The European Economic and Social Committee on

the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, COM(2011) 851 final of 6 December 2011

The Green Paper notes¹⁸⁵ that two issues associated with the destination principle need to be addressed: the definition of the place of destination and the mechanism by which the VAT is paid – either via the reverse charge (for B2B supplies only) or via the charging of VAT by the supplier. The Green Paper then goes on to discuss the destination principle in relation to B2B supplies. It had stated¹⁸⁶ that “the main feature of taxation at destination is that VAT revenues accrue directly to the Member State of consumption, according to domestic rates and exemptions”.

In the context of travel services, therefore, we believe that the destination principle should be considered to mean the accrual of VAT to the Member State in which the service in question is consumed and that the payment of VAT in that Member State is based on the rules in force there. Part of our work is to consider what the destination principle means in relation to travel services and how the Special Scheme rules can be framed to observe the application of the destination principle.

6.3.3 The VAT Action Plan

In its VAT Action Plan¹⁸⁷ of 2016, the Commission set out the pathway to the creation of a single EU VAT area based on the principle of taxation in the country of destination.¹⁸⁸

The Commission stated that the EU VAT system now urgently needs reform¹⁸⁹ and that it:

- Needs to be simpler for businesses to use. Compliance costs are significantly higher in single market trade than in domestic trade, while complexity is stifling business, especially small and medium-sized businesses (SMEs);
- Must combat the growing risk of fraud. The “VAT gap” between expected revenue and revenue actually collected is estimated at €170bn, while cross-border fraud alone accounts for €50bn of revenue loss each year;
- Needs to be more efficient, in particular at exploiting the opportunities of digital technology and reducing the costs of revenue collection;
- Must be based on greater trust: trust between business and tax administrations, and between EU tax administrations.

In the course of its recent Communication “A Fair and Efficient Tax System in the European Union for the Digital Single Market”¹⁹⁰ the Commission confirmed that digital technologies are transforming the business world and having an important impact on taxation systems. New ways of delivering traditional services are putting pressure on Europe’s taxation system and the travel industry is no exception.

In the field of taxation, policy makers are struggling to find solutions that would ensure fair and effective taxation as the digital transformation of the economy

accelerates. The application of VAT to travel services is one of these challenges where the objective is to ensure tax neutrality between traditional and on-line digital businesses and that revenues accrue to the Member State of consumption.

6.4 Our approach to the assessment and comparison of reform options

Based on the above documents and technical specifications of this study, we consider that all options must be considered against the following objectives:

- To promote simplicity for businesses and control of compliance costs;
- To assist in Member States’ control and administration of the VAT system and reduce collection costs;
- To promote a harmonised application of VAT to the activities of travel agents;
- To combat fraud and to help reduce the “VAT gap”;
- To introduce the principle of taxation in the Member State of destination;
- To identify an appropriate way in which VAT in the Member State of destination can be collected;
- To approximate the obligations of EU and third country travel agents so that equal competition is promoted
- To remove the distortions of competition and material issues created by the current rules themselves and by the differing applications of those rules. In addition, it is clear that any new rules must not introduce any new distortions of competition.

6.5 Introduction to the options for reform

We have assessed the operation of the current Special Scheme and we will now look at possible ways in which the rules might change. In doing so, we take into account the Commission’s wider objectives.

We should recall that the purpose of the scheme is two-fold:

- To adapt the normal VAT rules to overcome the practical difficulties which would otherwise exist for many suppliers of travel services; and
- To assist in a fair allocation of revenue between the Member States.

We consider that the objectives of a reformed Special Scheme should be consistent with the above.

¹⁸⁵ Paragraph 5.4

¹⁸⁶ Paragraph 4.2

¹⁸⁷ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan for VAT, COM(2016) 148 final of 7 April 2016

¹⁸⁸ In section 1 Introduction page 4

¹⁸⁹ In section 1 Introduction page 3

¹⁹⁰

https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf

Our task requires us to consider the merits in continuing with a margin based scheme and a comparison of such a scheme with the application of the normal rules on place of supply, valuation and input tax deduction and also the effects of the introduction of a reduced rate or exemption from VAT for the activities of a travel agent. We also consider various options in the way in which a future scheme could be framed. Our comments on the effects of the various reform options fully take into account the circumstances and features of the five business sectors adopted for this study.

Having considered what we believe to be the most important concept in relation to a retained Special Scheme, the application of normal VAT, we will assess options:

- Against the initial objectives of the Special Scheme;
- Against the destination principle;
- In terms of alleviating the distortions of competition we have identified and as discussed in section 6.8;
- Against the current rules as adopted by the Member States;
- Against the current rules as interpreted by the CJEU (as described in section 3);
- In terms of the administrative burdens placed on business, analysing the effect separately for small, medium and large businesses;
- In terms of their potential economic, social, geographical and environmental impacts;
- As regards their impact on the competitiveness of EU travel agents;
- Against current VAT priorities such as the destination principle and the use of MOSS;
- Against anticipated developments in the travel market;
- As regards their impact on Member States' VAT revenues.¹⁹¹

We will furthermore consider the extent to which the destination principle is already implemented by the current rules and how a MOSS system (a single electronic registration and payment mechanism) might be incorporated and what the requirements of a MOSS for travel agents might be.

6.6 The distortions of competition and other material issues we have identified

A key part of the assessment of options for reform is their effectiveness in alleviating the distortions of competition which arise as a result of the varying application of the current rules by the Member States. By definition, if one assumes that the rules of the Special Scheme could be applied consistently by all

¹⁹¹ It should be noted that a fundamental objective of VAT can be said to be the generation of revenue. This aim is however too general to be assessed by this targeted study and we limit our analysis to the description of impacts on Member States' VAT revenues.

Member States, there should not be any inherent distortions of competition that are created. However, as our analysis has shown, application of the rules by the Member States differs in a number of ways and we concluded in section 5 that such differences of application have created two distortions of competition arising from:

- The varying treatments of wholesale supplies, including the differences in the application of "normal" VAT where the Special Scheme is considered to be inapplicable; and
- The varying definitions of "travel facilities".

We have also concluded¹⁹² that the rules of the Special Scheme (as interpreted by the CJEU) create two material issues, namely:

- Differences in the taxation of travel agents established in the EU and those in third countries; and
- The need to calculate the margin on a transaction by transaction basis.

Our analysis of reform options sets out to remove the above material issues.

In addition, we have concluded that the inability of a travel agent to deduct input tax on costs is a significant drawback of the scheme when providing services to a business client. We have, therefore, also considered how the rules might be framed so that the current difficulties in this regard are alleviated.

Furthermore, there are numerous other aspects of the current rules and their application which, whilst not creating a distortion of competition or giving rise to a material issue, do nevertheless create differences in the VAT approach to the same transaction in different circumstances and/or contribute to the uncertainty faced by travel agents and we also consider how these other smaller features might be alleviated.

We will consider what we believe to be important concepts and considerations in the context of reform under a number of headings.

6.7 Adoption of the current rules as interpreted by the CJEU by all Member States

If each Member State was required to adopt local legislation and procedures as necessary to give full effect to the CJEU's interpretation¹⁹³ of the scheme, this would require considerable change in many Member States and much change for many travel agents, many of whom would face increased VAT liabilities and greater administrative complexity.

Application of the CJEU decisions should lead to greater harmonisation amongst Member States and therefore certain of the distortions of competition and other problems we have identified would disappear. For example, all travel agents throughout the EU would have to treat B2B supplies (subject to the normal

¹⁹² Again see section 5

¹⁹³ As summarised in section 3

scheme conditions) as within the Special Scheme. This would be of great importance in the DMC, TMC and MICE sectors. Whilst such an approach would at least remove some of the uncertainties faced by many at the moment, and help to equalise treatment in this area, it would perpetuate the inability to deduct input tax on business travel expenditure which, whilst an inherent aspect of the Special Scheme, is the cause of many of the current problems we have identified. It would also make travel and tourism within the EU, for both EU and third country citizens, more expensive. This is illustrated by the examples set out in Annex 3 and which we discuss in detail below.

The objective of a harmonised application of VAT to travel agents would be partly achieved. Adoption of CJEU judgments would mean far greater consistency for travel agents established in the EU but there would still be variable approaches on the meaning of “travel facilities” and certain other aspects of the operation of the scheme so the harmonisation objective could not be said to be fully achieved by just enforcing established case law.

Furthermore, there would be no greater equalisation of the obligations of EU and third country travel agents and there would be no progress towards the adoption of the destination principle. Therefore, this measure would reduce the distortion of competition in the B2B sector amongst EU travel agents but would permit the continuation of a different treatment of third country travel agents competing with EU agents in the B2B area. Even if third country travel agents were thought to be taxable under current rules, they would be taxed on a different basis to EU agents so there would be no equality. From a practical perspective, we are not aware of the payment of such VAT by third country travel agents regularly taking place.

Finally, the enforcement of a sale by sale basis to the calculation would perpetuate the existing material issue we have identified in this area.

Therefore, we believe that continuation of the current rules as interpreted by the CJEU would see the continuation of many of the existing problems associated with the scheme and a failure to satisfy the objectives of reform. Furthermore, as this approach would increase the application of VAT to the B2B sectors in many Member States the drawback we believe to arise from the non-deductibility of input tax on business travel costs would be increased. Accordingly, we do not believe that this option should be pursued.

We have, however, considered the effect in the DMC sector. This is perhaps the sector most affected. We have established that some Member States require wholesale suppliers of travel facilities to include the supplies within the Special Scheme whilst other Member States expect normal VAT to be applied. If the Special Scheme was adopted by all Member States as interpreted by the CJEU, all wholesale supplies made by EU established travel agents would fall within the scheme. Clearly, for those travel agents established in a Member State which already requires the Special Scheme to be used, there would be no change (in this aspect of the scheme) but travel agents established in a Member State which does not require

the use of the scheme would need to change the basis of VAT accounting and the quantum of VAT payable would change. However, we do not believe that the effect on VAT liabilities would be uniform and we illustrate the possible effects in Annex 3.

These illustrations use two Member States to demonstrate what we consider to be likely outcomes. Data to perform precise calculations in this area is not available so we have necessarily had to rely on our experience of the sector. The basis of our model and the assumptions we have made are set out in Annex 3.

The purpose of the illustrations is to show the effect of the adoption of the Special Scheme on VAT revenue generated. Our analysis aims to show possible effects on the payments of VAT due from the suppliers of the wholesale services and takes no account of the VAT due from the primary suppliers (i.e. the hotels, restaurants etc) or from any re-supplier of the travel facilities (e.g. a B2C supplier such as a tour operator).

We have used the UK and one other member State (“MS2”) to illustrate the effects. MS2 is intended to represent generally those Member States which do not include wholesale supplies in the Special Scheme. The UK, which also does not require the use of the Special Scheme, is considered to be in a different situation to many in terms of the revenue effects due to the high use of the standard rate in the UK on travel and tourism services when supplied under the normal rules. The purpose of the illustrations is therefore to show how the revenue effect of the application of the Special Scheme by all Member States would not be uniform.

In the model we have adopted, application of the Special Scheme in MS2 would see VAT payable by DMCs on inbound travel to that Member State increase by nearly 49%. In contrast, the same change in the UK would see revenue fall by a little over 1%.

In many Member States (as represented by MS2 in the illustrations), many of the services which are purchased and supplied by a DMC are eligible for a reduced rate. Where the Special Scheme applies, the margin is taxed at the standard rate and therefore taxation of the value added, or margin, is at a higher rate under the Special Scheme than is due when applying the normal rules. The Special Scheme also allows a deduction in calculating the margin for costs which are not subject to VAT, i.e. costs on which input tax deduction is not possible under the normal rules. In itself, this feature reduces the VAT payable under the Special Scheme but in the MS2 model this effect is outweighed by the rate differential and hence the increase in revenue when the Special Scheme is adopted.

In the UK, however, the same rate (20%) is applied to the margin and the majority of the component parts of the services provided and therefore the effect of the application of the Special Scheme is less pronounced. There is an increase in VAT payable on those services subject to VAT at a rate lower than the standard rate but this accounts for a relatively small part of the services modelled. There is also the effect of the inclusion of costs in calculating the margin on which no input tax is incurred. The effect of this in the UK illustration is largely to counter the effect of the application of the standard rate to the full margin and

hence there is relatively little difference between the revenue generated by the normal rules and that due under the Special Scheme. Given the greater use of the reduced rate for travel and tourism related services generally in Member States other than the UK, we believe it is likely that the adoption of the Special Scheme by those Member States which currently do not apply it to wholesale supplies would create an increase in VAT revenue.

To allow for a comparison, both illustrations adopt the multiple supply approach to calculate output tax payable on the supply of packages. In reality, however, the use of the single supply approach by some Member States complicates further the identification of the revenue effect of the adoption by all Member States of the Special Scheme for wholesale supplies.

We should also consider the effect on revenue where the wholesale supplies are made in relation to travel consumed in a Member State which does adopt the Special Scheme. If all wholesale supplies of travel in such a Member State were made by a DMC established in that State, the uniform adoption of the Special Scheme for wholesale supplies would have no effect. However, we do not think that this would be the case. It is far more likely that a part of the services involved would be supplied by DMCs established elsewhere. To the extent that the services are supplied by DMCs established in a Member State which does not currently require the use of the Special Scheme, adoption of the CJEU decision would generate additional revenue.

6.8 The proper treatment of a “package”

Where the conditions are satisfied for the application of the Special Scheme, the treatment of a “package” is clear. However, the analysis that follows considers the effect of the application of “normal” VAT and therefore we need to address the status of a package, i.e. a combination of two or more services, particularly in the context of single or multiple supply. As we describe in section 5.5.7.6, the classification of a package as a single or multiple supply has a significant bearing on the VAT consequences of the supply where the Special Scheme does not apply and is a significant contributory factor in the creation of differing VAT outcomes.

It is important that there is consensus on the interpretation of a package if harmonisation and equality of treatment are to be achieved (to the extent the Special Scheme might not apply in future). However, at present, we understand that Member States apply one of three approaches in determining the proper treatment of a package where the Special Scheme is not applied. These are described at section 5.5.7.3 and outlined here for ease of reference.

- 1 The multiple supply approach, i.e. treat the package as two or more separate supplies, identify the supplies involved, attribute a value to each part and tax each part accordingly.

- 2 The single supply approach, of which there are two variants:
 - a. The predominant supply approach, i.e. identify the main item within the package and the treatment of the single supply then depends wholly on the rules applicable to that main item.
 - b. The “general rule” approach, i.e. subject to certain tests, a package is a single supply taxed where the client is established using the reverse charge,¹⁹⁴ where the client is a taxable person.

The CJEU has held¹⁹⁵ that the approach to take is as follows:

“In this respect, taking into account, first,..... that every supply of a service must normally be regarded as distinct and independent and second, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical customer, with several distinct principal services or with a single service.”

There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.”

It follows that a single supply exists where either the combination of goods and services comprises a single supply from an economic point of view which it would be artificial to split or where there is a predominant service to which other services are ancillary.

Where a single supply does exist, the circumstances of the supply must be considered in order to identify its predominant elements from the viewpoint of a typical consumer. Both qualitative and quantitative considerations should be taken into account when doing so.

The CJEU has consistently held that where a single supply exists, it takes its treatment from the predominant element of that supply. It follows that the place of supply and rate of VAT to be applied are determined by the nature of the predominant element. On this interpretation, a package of travel facilities comprising, for example, accommodation, transfers and catering would be subject to VAT as a supply of accommodation if the circumstances demonstrated that it should be treated as a single supply and

¹⁹⁴ Under Article 44 of the VAT Directive

¹⁹⁵ Card Protection Plan v C&E Commrs (Case C-349/96)

accommodation was the predominant element within the package. A question exists, however, on how to treat a package considered to be a single supply where the package is consumed in two or more countries.

As described above, an alternative interpretation of a single supply is what we have termed the “general rule approach”. In the context of a travel package, this sees the combination of various travel services to form a single, indivisible supply from an economic point of view that it would be artificial to split and in which no one service type is predominant. The supply is then considered to fall within the general place of supply rule.¹⁹⁶

It is necessary to look at the circumstances of individual transactions to determine which of the above approaches should be adopted. Therefore we do not make any judgment on which should be adopted and, where appropriate, consider the effects of each in the analysis that follows. We would note, however, that it would assist greatly in the achievement of a harmonised position if detailed guidance to be followed by all Member States and taxable persons could be made available.

6.9 Mini One Stop Shop (MOSS)

From 1 January 2015, the place of supply of telecommunications, broadcasting and electronic (“TBE”) services to non-taxable persons (i.e. B2C supplies) changed from the place of establishment of the supplier to the place where the customer is established, has a permanent address or usually resides. This change applied to both EU and third-country suppliers.

Alongside the change in the place of supply rules, the Mini One Stop Shop (“MOSS”) was introduced with effect from 1 January 2015 as an optional scheme which allows businesses that make B2C supplies of TBE services in Member States in which they do not have an establishment to account for the VAT due on those supplies via an electronic web-portal in a chosen single Member State. This is a simplification measure to reduce the administrative burden and cost to businesses making such supplies. Otherwise they would be obliged to register for VAT, file returns and make payments in each Member State where they make such supplies.

The MOSS scheme’s legislative basis is in the VAT Directive. In addition, Commission Implementing Regulation (EU) No 815/2012 as well as Council Regulation (EU) No 904/2010 and Council Regulation (EU) No 967/2012 (amending the VAT Implementing Regulation) deal with how the scheme should function in practice. The Commission Services have also released explanatory notes and guidance¹⁹⁷ which, while they are not legally binding, provide practical and informal guidance about how the provisions should be applied.

Within MOSS, there are distinct Union and non-Union schemes. The former is for taxable persons that have an establishment within the EU but are making supplies to Member States in which they are not

established. The non-Union scheme is for taxable persons that have no establishment within the EU. The rules are almost identical for both schemes, the only difference being the criteria used to determine where the business can register for MOSS. In this regard, where a supplier of TBE services has no establishment in the EU and is not registered for VAT in any Member State, the supplier can choose to register for MOSS in any Member State through the non-Union scheme.

Once registered for MOSS, the supplier is required to account quarterly for VAT due on all B2C supplies of TBE services by electronically sending a VAT MOSS return and payment to the tax authority where it has chosen to register. These returns, along with the VAT paid, are then transmitted by this tax authority to the appropriate Member State(s) of consumption.

VAT MOSS registration is optional so businesses supplying TBE services could alternatively choose to register for and account for VAT in every Member State in which they supply TBE services to non-taxable customers.

It is not possible to reclaim input tax via the MOSS scheme VAT return. Where a taxable person has an entitlement to reclaim tax incurred in a Member State in which it is not VAT registered, this should be done by way of an Electronic VAT Refund (EVR) claim or a 13th Directive claim.

Certain records are required to be kept by the supplier of TBE services under the MOSS scheme, as laid out in Article 63c of the VAT Implementing Regulation. These include general information such as the Member State of consumption of the supply, the type of supply, the date of the supply and the VAT payable, but also more specific information, such as details of any payments on account and information used to determine the place where the customer is established, has a permanent address or usually resides. The records relating to MOSS returns must be retained for a period of ten years from the end of the year in which the supply was made.

The scheme is generally perceived as providing a reasonable solution to the tax collection issues associated with the growth of the digital economy, particularly for B2C supplies from outside the jurisdiction. Indeed it has been copied by non-EU tax administrations (South Africa, Norway, etc.) who address similar problems. It is clear that the Commission has reasonable ambitions to make greater use of the MOSS model. However, there are no plans to extend the MOSS to cover B2B supplies and to allow for the recovery of input tax.

6.10 The merits of a margin based Special Scheme

Our starting point is an assessment of the extent to which the current rules, as interpreted by the CJEU, are consistent with the destination principle.

¹⁹⁶ Article 44 of the VAT Directive for supplies to taxable persons and Article 45 for supplies to non-taxable persons

¹⁹⁷ https://ec.europa.eu/taxation_customs/business/vat/commission-guidelines_en

The destination principle requires that VAT accrues to the Member State of consumption in accordance with the rules in force in that Member State.

As discussed elsewhere in this study, the effect of the current Special Scheme can be summarised as follows:

- VAT on services purchased by the travel agent accrues to the Member State in which the supplier has declared the VAT;
- VAT payable on the margin accrues to the Member State (if any) in which the travel agent is established;
- There is no VAT on the margin whenever the destination of the travel is outside of the EU;
- Any in-house supplies supplied by the travel agent are taxed in accordance with the normal place of supply rules.

The services purchased by the travel agent are taxed in accordance with the rules of the Member State in which the supplier believes the supply to be made, i.e. often the Member State in which the travel takes place, and VAT accrues to that Member State as the travel agent is unable to deduct this input tax. Therefore, we can conclude that the effect of the current Special Scheme is in line with the destination principle to the extent of the treatment of the bought-in services and assuming that the place of supply rules applied by the suppliers of those services are consistent with the destination principle.

For the service of the travel agent himself, we need to consider the nature of the travel agent's service and where that service is consumed. We consider that there are two possibilities: Scenario A, where the travel agent's service could be seen as the creation of a travel package (where applicable) and generally the management of the provision of services to the customer in return for the margin generated. In Scenario B, the travel agent could be seen to supply the travel facilities itself at a marked up price.

The Special Scheme applies to travel agents who deal with customers in their own name.¹⁹⁸ It is clear from the VAT Directive¹⁹⁹ that a person acting in his own name who takes part in a supply of services shall be deemed to have received and supplied those services himself. This suggests that a travel agent dealing with customers in his own name should similarly be deemed to receive the supply of the travel facilities and to supply those travel facilities to his client. However, where the "transactions entrusted by the travel agent to other taxable persons" are performed outside the EU, the travel agent's services shall be treated as an intermediary activity exempted pursuant to Article 153.²⁰⁰ Article 153 exempts (with credit for input tax) intermediary services in relation to transactions carried out outside the EU. As the travel agent within the Special Scheme is considered to be an intermediary when selling services performed outside the EU, it

does not seem unreasonable that he is also an intermediary when selling "EU services".

As there is uncertainty about this point, we consider it necessary to ask ourselves where the service in both scenarios is consumed or enjoyed by the customer.

As above, the Special Scheme ensures that the margin value is taxed in the Member State of the travel agent's establishment. In the first interpretation, namely that the travel agent supplies its own separate service, we consider that this is not a proper implementation of the destination principle. Rather, it can be seen as consistent with the origin principle.

We should also note that, although the current general rule for the place of supply of services to a non-business customer is the Member State in which the supplier is established,²⁰¹ in practice nearly all of these services are taxed in the Member State of consumption and in travel services, like accommodation, catering and the hire of a means of transport.

It may be concluded that the service of the travel agent should be subject to VAT in the Member State in which the customer consumes service to be consistent with the destination principle. What we need to address is where the customer should be considered to consume the service and we will return to this point below.

In the second interpretation, the travel agent is seen to supply the travel facilities itself. As we discussed, application of the destination principle would require VAT on the travel facilities to accrue to the Member State of consumption. The current taxation of the margin in the Member State of establishment is therefore not consistent with the destination principle.

As above, in-house supplies are not subject to VAT on the margin only and are subject to the normal rules on place of supply, valuation and input tax deduction. It follows that the Special Scheme does not affect the application of the normal VAT provisions in the case of in-house supplies. The Special Scheme in this regard is therefore consistent with the destination principle to the extent that the normal place of supply rules themselves properly identify the Member State of consumption.

We can conclude, therefore, that the current Special Scheme is partly compliant with the destination principle. Given that in most circumstances the value of bought-in services is likely to be considerably more than the margin, it can be seen that most of the VAT revenue generated within the scheme accrues to the Member State of destination (due to the non-deductibility of the VAT and again to the extent that the normal place of supply rules are consistent with the destination principle).

However we consider that the Special Scheme is not fully compliant with the destination principle and that the VAT generated by travel agents' activities (i.e. the VAT due on the margin) is consistent with the origin principle which, as we have seen, is not the basis on which the EU VAT system will develop. We need to

¹⁹⁸ Article 44 of the VAT Directive for supplies to taxable persons and Article 45 for supplies to non-taxable persons

¹⁹⁹ Article 28 of the VAT Directive

²⁰⁰ Article 308 of the VAT Directive

²⁰¹ Article 45 of the VAT Directive

consider how the Special Scheme may be made fully compliant with the destination principle and in the section below on the operation of a future Special Scheme we will consider two alternative ways in which the travel agent's service can be taxed and consider the merits of such approaches in the context of the destination principle and also the other objectives of reform.

Nonetheless, it might be concluded that the addition of extra complexity in the form of a need to allocate the margin to the Member States in which customers are resident, and declare VAT separately to multiple Member States, would achieve little in terms of the overall distribution of VAT revenue between the Member States. However, as we cover later, the continuation of the current place of supply rules would not assist with the desire to achieve equality between EU and third country travel agents, although this is not necessarily an insurmountable obstacle.

6.11 What would happen if there was no margin scheme?

We should also consider what the application of the normal rules on place of supply, valuation and input tax deduction would involve for travel agents.

There seems little doubt that application of a destination principle would see the place of supply of many, if not all, of the services typically provided by travel agents as being in the Member State of consumption. It is considered that this would be the effect of the application of the current place of supply rules for services such as accommodation, catering and the hire of a means of transport. In the case of passenger transport, it might be said that the current rules are not compliant with the destination principle as the passenger transport is taxed within each Member State in which the transport takes place.²⁰² Our experience is also, for example, that the services of a guide or similar are often not subject to VAT in the Member State in which the service is performed but rather are subject to VAT where the supplier is established (or where the client is established in the case of B2B supplies).

Nevertheless, whilst there are certainly issues of complexity to be resolved in terms of the application of the existing place of supply rules, it is clear that the destination principle would involve the payment of VAT (if a Special Scheme ceased to exist) in the Member State of consumption.

We need to consider what the normal rules on place of supply, valuation and input tax deduction would mean for travel agents. A first point to make is that the application of normal VAT would, for many travel agents, result in a lower payment of VAT. Clearly, there are a number of variables which would need to be taken into account to determine the position for any one travel agent but the application of normal VAT would mean that the rate of VAT payable by the travel agent would often be a local reduced rate as opposed to the standard rate due currently on the full value of

the margin (to the extent that the margin is made on travel facilities consumed within the EU). This reflects the existence of reduced rates available in many Member States on services such as accommodation, transport and catering. A simple example helps to illustrate this. A travel agent sells a holiday comprising a flight, accommodation and car hire. The standard rate in the Member State of the travel agent (MS1) is 20%. The flight is an international flight and is exempt (with credit) whilst the VAT rates on the other services in the Member State in which the holiday is enjoyed (MS2) are 10% for the accommodation and 20% for the car hire. The costs are:

Fig. 6a

	(€)	
Flight	500	
Accommodation	700	+ VAT of 70
Car Hire	200	+ VAT of 40
Total	1,400	+ VAT of 110
The holiday is sold for 1,700		

Under the Special Scheme, the VAT due is €190 x 1/6 = €31.66. VAT revenue of €110 (the non-deductible input tax) accrues to MS2 and €31.66 to MS1. The total revenue is €141.66.

If normal VAT is applied, the travel agent would be required to register in MS2 (subject to the treatment adopted for the package). The input tax of €110 could then be deducted and output tax due would be €117.75.²⁰³ On this basis, total revenue generated has fallen. There has also been a reallocation of revenue: MS2 sees a modest increase but MS1 loses all revenue.

In order to account for VAT in such a regime, the travel agent would require a full understanding of the rules applied in each Member State involved. This would require the travel agent to appreciate Member States' varying interpretations of certain types of service, in terms of the place of supply of that service, and to identify the appropriate rate of VAT to be applied in the Member State of supply to each supply made in that State.

Furthermore, travel agents would need to understand, in the case of packages supplied, whether the supply is considered to be a single supply or a multiple supply as determined by the Member State of supply.²⁰⁴ Furthermore, as we have seen above, where a single supply exists, it is possible to apply two differing interpretations to the way in which the single supply should be treated. Travel agents supplying identical packaged services in a number of Member States could, therefore, be faced with the need to implement accounting systems which recognise the differing

²⁰² The Commission has undertaken a study on the effects of possible changes to the place of supply of passenger transport but we understand that further work on this has been deferred

²⁰³ Calculated using a multiple supply approach: (€1,700 x 5/14 x 0%) + (€1,700 x 7/14 x 10/110) + (€1,700 x 2/14 x 20/120)

²⁰⁴ See section 5.5.7.3

treatments of the package as interpreted by the Member States involved.

Given the varying interpretations applied by Member States to packages, i.e. whether they are single or multiple supplies and, where a single supply exists, how it should be taxed, we foresee difficulties with double or non-taxation in certain circumstances, unless it is possible to reach agreement on a common approach to the treatment of packages to ensure harmonisation in this important area. The resultant complexity and multiplicity of compliance obligations are a good illustration of why the Special Scheme was considered necessary.

Where a multiple supply exists, the travel agent would need to identify the appropriate value to be applied to each supply made and identify the appropriate rate of VAT to be paid on each supply. This is the approach illustrated above. Where the package takes place in two or more different countries, there would be considerable complexity in identifying the correct VAT treatment.

Where it is considered that a package comprises a single supply, the circumstances may dictate either a predominant element approach or the application of the general place of supply rule. Under the predominant supply approach, the full value of the supply would be taxed in accordance with the rules for that predominant item. If it is considered that there is no predominant element, then it seems appropriate to see the supply as falling within Article 44 of the VAT Directive (supplies to taxable persons) or Article 45 (supplies to non-taxable persons).

Where Article 44 applies, the travel agent would charge VAT at the standard rate in force in the Member State in which the travel agent is established if the client is established in the same Member State. Where the client is established elsewhere, no VAT would be charged by the travel agent but the client would declare local VAT using the reverse charge mechanism if established in another Member State (and assuming the rules in that Member State identified the supply as falling within Article 44).

Where Article 45 applies, the place of supply would be the travel agent's Member State of establishment and VAT at the standard rate would be due regardless of the location of the holiday or of the client, unless a relief was available under that Member State's use and enjoyment rules.²⁰⁵

It is, of course, the case currently that travel agents are unable to deduct input tax incurred on travel facilities to be supplied within the Special Scheme. Were the normal VAT rules to be applied, of course this block on the deduction of input tax would not exist and travel agents would need to be in a position to offset local input tax against local output tax.

We should consider how the application of "normal" VAT complies with the objectives we have identified, as set out in section 6.4, in assessing the merits of reform options.

First, we believe that the need to introduce the principle of taxation in the Member State of destination would be satisfied, provided, of course, that the place of supply rules currently in place for the travel facilities provided by the travel agent are considered to be consistent themselves with the destination principle.

Secondly, application of the normal VAT rules would apply equally to EU and third country travel agents so that we believe the desire for equality of treatment would be satisfied in many circumstances if the normal VAT rules were to replace the Special Scheme. One situation in which equality may not be achieved is the sale of a package considered to be a single supply to which the Article 44/45 approach is correct. If a third country travel agent was to sell a package falling within Article 45, the place of supply would be the agent's place of establishment and no VAT would be due unless the Member State in which the services were consumed invoked its powers under the use and enjoyment rules.²⁰⁶

In addition, it is clear that the distortions of competition and material issues described in this study²⁰⁷ which are created by the current rules themselves and by the differing applications of the rules by Member States would of course be removed if the Special Scheme itself was abolished. Application of normal VAT should, in principle, put a travel agent onto an equal footing with suppliers of similar services who do not currently fall within the scheme, for example the principal suppliers themselves such as hotels, transport providers and restaurants etc.

Another objective is to identify an appropriate way in which VAT in the Member State of destination can be collected. We will return to this point below.

However, we believe that the application of normal VAT rules would fail a number of the objectives. First, all reform options need to be assessed in terms of their promotion of simplicity for business and the control of compliance costs. Certainly in comparison to the current operation of the Special Scheme, a move to normal VAT rules would not promote simplicity for business; on the contrary, we believe it is clear that it would, for the large majority, greatly complicate their VAT accounting. We also question whether normal VAT rules in this sector would assist the Member States in their control and administration of the VAT system. One advantage for the Member States of the Special Scheme is the automatic accrual of VAT on the purchase of travel facilities, as the travel agent is unable to deduct such VAT, and the payment of output tax in just one Member State. Clearly, a move to the application of normal VAT rules would require for many travel agents the maintaining of multiple VAT registrations and this would involve the Member States themselves in greater administration.

The application of normal VAT would also introduce the complexity of the varying approaches to the taxation of packages, thereby increasing the scope for further uncertainty, complexity and non-harmonisation of approach.

²⁰⁵ Article 59a of the VAT Directive

²⁰⁶ Article 59a(b) of the VAT Directive

²⁰⁷ See sections 5 and 6.7

We also need to consider whether the introduction of normal VAT rules would help combat fraud and to reduce the VAT gap. As far as the VAT gap is concerned, obtaining the level of VAT receipts required by the economic activity in the sector would require many travel agents to register in multiple Member States. If travel agents failed to do so, there would be a resulting shortfall in VAT and therefore we believe that a move to a complex system such as would be required to administer normal VAT in a sector such as the travel industry might be counter-productive in terms of reducing the VAT gap. The application of reduced rates by travel agents could be expected, as noted above, to reduce the level of VAT due, thus potentially reducing Member States' VAT revenue. It also follows that any travel agents with an intention to evade VAT payments may find it easier to do so in a system requiring multiple registrations as opposed to one involving a single registration in the Member State of establishment.

We have considered how travel agents could comply with obligations towards VAT in multiple countries and have discussed the point with travel agents themselves and a number of representative bodies. The overwhelming view expressed to us is that application of normal VAT as described above would be very difficult. This may be seen to be a powerful reason to retain a margin based Special Scheme. The complexity involved could discourage travel agents from selling services in a large number of Member States and could thereby form a barrier to the creation of a single market in the travel sector.

As described above, one of the key objectives is that the VAT system needs to be simpler for businesses to use. Whilst adoption of methods such as MOSS would assist in the compliance faced by travel agents, it is our view that abolition of a margin based scheme and its replacement by a system based on the application of the normal rules on place of supply, valuation and input tax deduction would increase considerably the compliance burden placed on travel agents of all sizes but it could be expected that the burden would fall disproportionately on smaller agents who, in particular, might see the compliance obligations as a barrier to the sale of travel consumed in other Member States. Such a system would also impose greater obligations on the Member States and could increase instances of avoidance and fraud.

Finally, we caveat this point to state that advances in technology and the way in which more and more taxpayer processes are becoming automated means that perhaps in the future – say within the next 10-15 years – technological advances may well allow for a solution of this type, however for the time being, such tools are not yet fully developed nor available.

6.12 Exemption without credit

The derogation under Article 371 of the VAT Directive which allowed some Member States (Denmark, France, Ireland and the Netherlands) to continue to exempt the services of travel agents has fallen into disuse and is no longer used by any of the Member

States concerned. Once abandoned, the VAT Directive does not allow for an exemption of this type to be reactivated. We have therefore concluded that, even if the extension of the exemption was in principle a conceivable option, it is not realistic in practice. We have not addressed the possibility of the introduction of an exemption for EU suppliers of travel services (EU destinations) in detail²⁰⁸.

In principle, exemption would remove many of the problems associated with the current scheme. However, whilst retaining the input tax block, it would result in the loss of the estimated €1.9bn Special Scheme output tax revenue.

It seems hard to justify exemption in this area and the exemption can be said to negate an aim of raising revenue (where blocked input tax on costs is disregarded). In addition, the introduction of exemption for travel agents runs the risk of creating new distortions of competition between agents within the exemption and suppliers (i.e. the primary suppliers – hotels, airlines etc.) outside the exemption. We do not think therefore that exemption should be explored further.

6.13 The operation of a future Special Scheme

Given the difficulties in the application of the normal VAT rules to travel services and the effects of exemption, we believe that there is a strong case for the retention of a margin based simplification.

As we have seen, the Special Scheme is already compliant with the destination principle in many respects. The one area in which we believe change may be needed is the place in which the margin VAT is due.

We consider that there are three possible bases on which the place of supply of the Special Scheme supply might be determined:

- 1 The place of establishment of the travel agent;
- 2 The place of usual residence of the customer;
- 3 The Member State in which the travel services provided are enjoyed.

The first of the above is of course the current rule and is generally not difficult to administer in practice. We have concluded that, to the extent of its place of supply rule, the current scheme is not compatible with the destination principle but that it may be treated as a reasonable proxy for the place of the customer's residence. We consider, however, that it is possible to argue that both of options 2 and 3 are compatible with the destination principle.

If we consider the travel agent to supply a separate service to the customer (i.e. as described in section 6.10), then it seems reasonable to conclude that the place of consumption of that service is the place of residence of the customer. On the other hand, if it is considered that the travel agent is the supplier of the underlying travel services (Scenario B), then the

²⁰⁸ We do not address the existing exemption for travel facilities in non-EU destinations

Member State of destination should be the preferred place of supply.

It should also be noted that options 2 and 3 above assist in the equalisation in treatment of EU and third country travel agents.

If the travel agent is considered to make a separate supply, the place of supply of the travel agent's service would be the place in which the customer is resident if a non-business person or is established (or has a fixed establishment) if a taxable person. VAT would be due in the customer's Member State on the value of the margin.

Supplies made to customers, resident in, or established outside of the EU would not be subject to EU VAT. We would also suggest that supplies to EU persons of travel facilities consumed outside of the EU should also be free of VAT. This can be justified by the exemption with credit for intermediaries taking part in transactions carried on outside the EU.²⁰⁹

We believe that the same rules should apply to third country travel agents. They would be subject to the same place of supply rules as EU travel agents and, in principle, therefore, would be liable to pay VAT when selling travel facilities consumed within the EU to an EU person.

In the name of simplicity, we suggest that a travel agent should calculate a single margin made on all supplies in a period (see section 6.14.3) and then apportion the margin between the Member States involved on the basis of the value of gross sales made to customers in each Member State. This has the benefit of facilitating the calculation in a relatively straightforward way using objective, verifiable data to assist with Member States' auditing of the declarations made.

We have also considered whether the declaration of the VAT due on supplies to taxable persons might be undertaken by the taxable person client using the reverse charge. There are, however, two problems we believe with this. First, travel agents would need to disclose what is often commercially sensitive information, namely the margin made, to the client. Second, travel agents would need to know the final margin at the time of supply and, within the terms of the global calculation, the travel agent would not know this at the time of supply. Even if a transaction by transaction basis was used, there are circumstances in which adjustments to the value would be required after the time of supply which could, in theory, require the reverse charge declarations to be adjusted several times. We have concluded, therefore, that the reverse charge mechanism would not be best placed in this situation and that accordingly the responsibility to declare the margin VAT should rest with the supplier in all cases.

We appreciate, though, that this approach could create new difficulties for certain travel agents. This would be the case where, in a B2C scenario, a travel agent supplies services to customers residing in different jurisdictions. Examples include cruise operators selling excursions (which often fall within the Special Scheme)

– the VAT treatment would depend on the place of residence of the passenger buying the excursion – and suppliers of services to tourists already in resort. An example of the latter category could be a vendor of sightseeing trips – again, such a supplier would need to know the residence of each customer.

If the travel agent's service is not a separate service but rather the travel agent is regarded as supplying the travel facilities itself, then, as described above, application of the destination principle would see the place of supply as the Member State in which the travel facilities are consumed. The travel agent would still be subject to VAT on the margin but the VAT would be payable in each Member State in which travel facilities are consumed. Once again, the VAT rate would be determined by the Member State of supply.

This model would also see equality of treatment of EU and third country travel agents. In both cases, VAT would be due on the margin when selling travel facilities consumed within the EU. However, whereas the Member State of residence/ establishment model would incorporate an exemption (with credit) when selling to non-EU customers, it is difficult to see how such a rule could be adopted in conjunction with the Member State of destination/consumption test. Therefore, EU and third country travel agents would be liable to pay VAT when selling EU travel facilities regardless of the location of the client.

For the reasons described above, we again do not think that the reverse charge mechanism should be used for supplies to taxable persons.

We need to consider the three place of supply tests set out above in the context of the overall objectives as summarised in section 6.4. The first objective is to promote simplicity for businesses and control of business compliance costs. We think that this objective would best be served by option 1. Option 3 would in our opinion be the least compliant with this objective. However, we believe that the increased complexity and compliance associated with option 2 should be manageable for most but would require clear guidance on identifying the place of residence/consumption and could be justified when looking at the wider issues arising but these points may need to be considered in detail later.

Also, we believe that in many circumstances the customer's Member State of residence is the same as the supplier's State of establishment²¹⁰ and therefore a switch to option 2 would in many circumstances mean no change in the place of taxation and no resulting change in compliance or administration, and no significant change to the allocation of revenue to Member States. In contrast, a change to the taxation of the margin in the Member State of consumption of the travel facilities would cause a significant redistribution of VAT revenue from those Member States with a net outflow of tourists to other Member States to those with a net inflow.

Taking the above into account, we believe that the retention of a Special Scheme in which the margin is treated as consideration for a separate supply of services by the travel agent taxable at the place of

²⁰⁹ Article 153 of the VAT Directive

²¹⁰ See also section 6.10

residence of the customer is to be preferred to taxation in the Member State in which the travel facilities themselves are enjoyed.

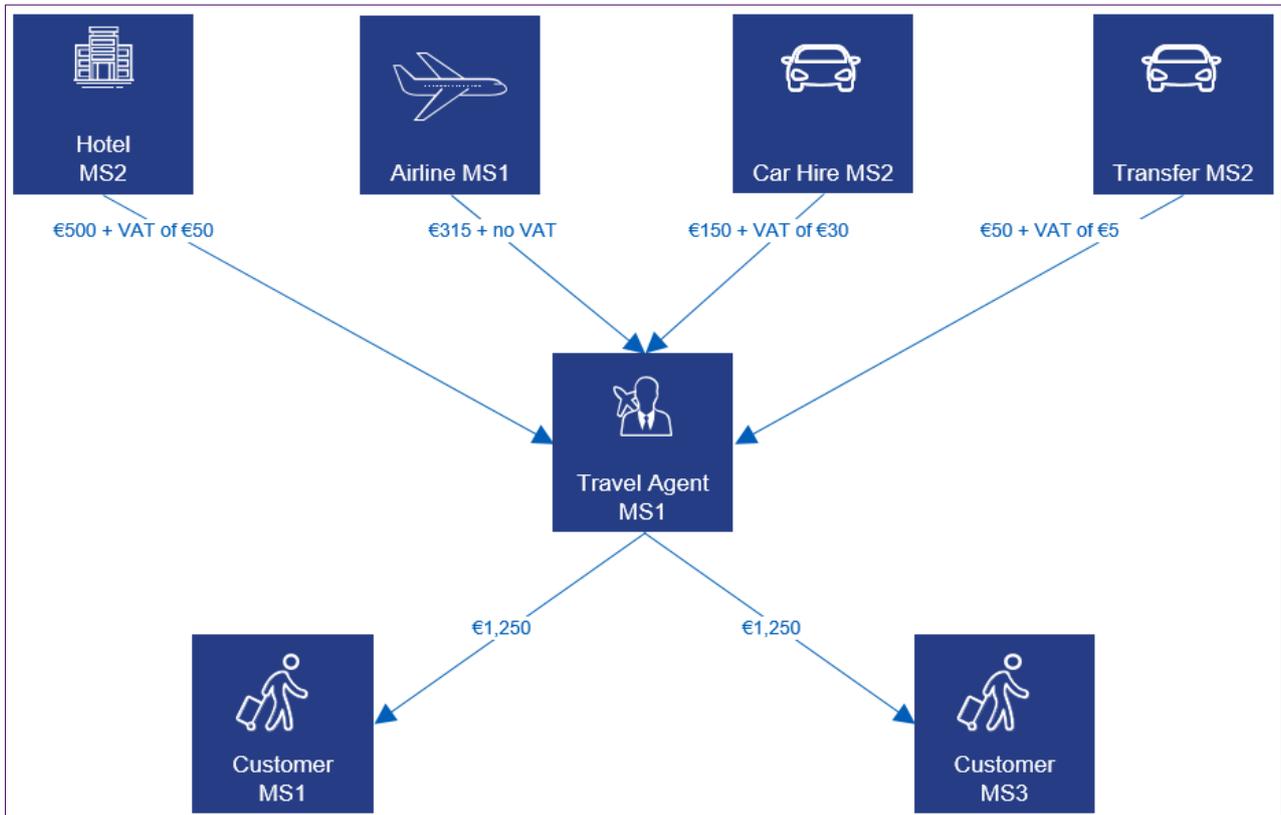
As outlined above, we believe that the Special Scheme on this revised basis could still promote simplicity for businesses and would certainly be an easier regime to implement than one based on the normal application of the place of supply rules. We also believe that this basis of a Special Scheme would assist the Member States in their control and administration of VAT. We do not consider this approach to be susceptible to fraud but it would be necessary to enforce the VAT Implementing Regulation on the identification of the place in which a customer is resident. This measure in itself would not do anything to reduce the VAT gap but we believe that measures proposed elsewhere in this report will ensure greater consistency in the application of the Special Scheme and will assist in reducing the VAT gap.

As discussed above we consider this approach will introduce the destination principle to the taxation of travel agents' services. As regards the way in which VAT on the margin should be paid, we return to this point later in section 6.16 when we consider how the MOSS could have a role to play in the compliance arrangements to be adopted.

Importantly, and as mentioned briefly above, a switch in place of supply to the customer's Member State will assist in the equality of treatment between the EU and third country suppliers. The lack of equality at the moment is created by the place of establishment place of supply. Clearly, third country travel agents have no EU place of establishment and accordingly there is no place at which the margin VAT becomes payable. Either of options 2 or 3 above would ensure that the same rule applies to EU and third country travel agents.

The above points can be seen in the following example:

Fig. 6b



The above illustrates the creation and sale of a package holiday by a travel agent established in MS1. The travel agent purchases services from a hotel, airline, car-hire company and transfer operator.

All services (except the flight) are consumed wholly within MS2 where there is a standard rate of 20% and a reduced rate of 10% which applies to the hotel and the transfer. The cost of the flight is not subject to VAT.

The total purchase cost is €1,100 including VAT of €85. The holiday is sold for €1,250 to customers in both MS1 and MS3.

We can use the above to illustrate the points described in the analysis above.

The travel agent is purchasing travel facilities from other taxable persons, providing those facilities to customers and dealing with those customers in his own

name. The Special Scheme therefore is applicable and input VAT can therefore not be deducted.

As discussed above, there are three bases on which the margin might be taxed: the current Member State of establishment basis, the Member State in which the customer is resident and the member State in which the travel facilities are enjoyed.

The current Member State of establishment basis would see the travel agent pay VAT on the margin wholly in MS1. The margin on each holiday sold is €150 and accordingly VAT of €25 would accrue to MS1 on each sale of a holiday. MS2 would enjoy revenue of €85 (the input tax which the travel agent cannot deduct) and MS1 has the €25 revenue.

The second basis is to tax the margin in the Member State in which the customer resides. €25 therefore would accrue to MS1 whenever a holiday is sold to a customer living in MS1 and the same would be paid to MS3 when a customer in that Member State purchases the holiday. The travel agent would need to ensure that it had the means to declare VAT payable to both MS1 and MS3. MOSS may be the solution for this requirement.

MS2 still has the revenue of €85 on the non-deductible input tax. The total revenue is still €110, the benefit of the €25 payable on the margin being decided by the place of residence of the customer.

The above approach may suggest that VAT should be calculated separately for each transaction, i.e. adopting the position of the CJEU in the *Kingdom of Spain* case. However, as we discuss elsewhere in this report²¹¹ we believe that the total margin could be apportioned to the Member States involved based on the gross value of sales to customers living in the Member States involved. Therefore, if in a period, the travel agent sold holidays for a total price of €125,000 to customers in MS1 and for €25,000 to customers in MS3, 83.33% of the total margin would be allocated to MS1 and taxed there whilst 16.67% would be taxed in MS3.

The third basis would see the margin as taxable in the Member State in which the travel facilities are enjoyed. If the margin is considered to be standard rated, margin VAT of €25 would belong to MS2. All the revenue of €110 would accrue to MS2.

However, as discussed in detail below,²¹² the rate of VAT due on the margin could also reflect the rates of VAT due on the services involved outside of the Special Scheme. If this approach was adopted, the VAT due on the margin of €150 would be €11.58.²¹³ The revenue for MS2 would now be €96.58. The margin of the travel agent would be increased accordingly.

Finally, we need to consider the requirement to remove distortions of competition and, as mentioned above, we will consider measures elsewhere to address this point.

6.14 The nature of the future Special Scheme

We have concluded that there are good reasons to retain a margin based scheme. Therefore, we need to consider the circumstances in which it should apply. The following points apply whichever place of supply is adopted for the future scheme.

The current conditions for the application of the scheme are the following:

- 1 The travel agent must deal with customers in his own name and not solely as an intermediary;
- 2 There must be a provision of travel facilities; and
- 3 The travel agent must use supplies of goods or services provided by other taxable persons.

We do not believe that any changes to the third condition are needed although it should be pointed out that there is no requirement that the supply to the travel agent is made by a VAT registered person – an unregistered person can be a taxable person and any services acquired from such a person should be eligible for the scheme.

We do believe that increased certainty and consistency in how the scheme operates in practice (through the use of the Implementing Regulations²¹⁴ reinforced by Guidelines or Interpretative Notes from the Commission Services) on the meaning of dealing with customers in one's own name and solely as an intermediary could assist in promoting greater consistency in the scope of the scheme.

6.14.1 Definition of travel facilities

We have identified that there is considerable variation in the interpretation applied by Member States to the meaning of "travel facilities". This concept is fundamental to the operation of the Special Scheme and it can be seen that distortions of competition can exist due to the differences in application.

We believe it is essential to define this term more clearly if the current lack of harmonisation and scope for distortions of competition are to be removed and we would advocate a list of the services which it is considered should be included in the Special Scheme. Such a list could be included in the VAT Implementing Regulation.

We highlighted the treatment of car hire in section 5.5.11.2. The same is true of the services of a guide i.e. some Member States consider this to be a travel facility, others do not and this causes uncertainty and can create double taxation or non-taxation.

A wide interpretation of the meaning of travel facility would promote both the simplification and allocation of revenue objectives of the current scheme. We support the finding of the CJEU in the *Minerva Kulturreisen* case²¹⁵ that services which in themselves are not travel facilities (in that case opera tickets) should be

²¹¹ See section 6.13

²¹² See section 6.14.4

²¹³ The input tax of €85 represents 7.72% of the VAT-inclusive purchase cost. The VAT due can (in this situation) be calculated as the margin of €150 x 7.72%. It should be noted that this approach would

not be correct if some of the supplies were of a taxable nature but no VAT was charged by the supplier.

²¹⁴ Council Implementing Regulation 282/2011

²¹⁵ Case C-31/10

included in the Special Scheme when sold in combination with one or more services which are considered to be travel facilities, provided the second service is of a nature that it could ordinarily be expected to be used in such a way. Again here, it could be achieved through regulation and soft law instruments. A wide interpretation would also help with the application of the destination principle and would reduce administrative burdens for travel agents.

6.14.2 Scope of the Special Scheme

We believe the decision of the CJEU in the *Van Ginkel* case²¹⁶ should be adopted throughout the EU. The supply by a travel agent of a single travel facility should (subject to the agreed conditions) always be within the Special Scheme. We believe that the exclusion of single travel facilities runs counter to that decision and also negates the simplification of the Special Scheme.²¹⁷ The benefits of the scheme would therefore be promoted by the inclusion of single travel facilities within the scheme.

We also believe that the duration of the service should play no part in determining if the Special Scheme applies.

We believe that these points are consistent with the objectives of the current Special Scheme notably that the inclusion of a single facility is consistent with the simplicity objective and helps to reduce administrative burdens. They are also consistent with the destination principle.

6.14.3 Nature of the calculation of VAT due

Many Member States allow (or require) the calculation of VAT due by reference to a single calculation covering all sales and related costs made within a period. The ability to do this is welcomed by many taxpayers and it is thought the approach also assists tax authorities in their control of the declarations made by travel agents.

In the *Kingdom of Spain* case,²¹⁸ the CJEU held that all travel agents should calculate VAT payable separately for each supply within the scheme. We have concluded²¹⁹ that this required basis of the calculation is a material issue arising from the current scheme rules and that there would be merits in amending the VAT Directive to ensure that travel agents have the ability to calculate VAT due globally over a period.

We are aware that the CJEU will consider certain practical implications of the application of the *Kingdom of Spain* judgment.²²⁰

We have identified a number of practical difficulties associated with the calculation of VAT due separately on each transaction. Examples are set out below.

- The final margin is often not known at the time the service is provided. The final cost of services purchased for re-sale is often not known until much later once, for example, the values of

periodic rebates, override commissions etc. are known. If the margin had to be estimated at the time of sale, the VAT paid would later need to be adjusted as information became available on rebates etc.

- Under normal tax point rules, it would also be necessary to consider the VAT due on deposits and stage payments. Given that VAT is payable on the margin, and not on the full selling price, we believe that it would be logical to estimate the margin included within such a deposit or stage payment (and then to make a final adjusting payment when the actual margin is known).²²¹
- Where in-house supplies are sold together with services within the Special Scheme, it may be necessary to identify the cost of the in-house services so that the values of the margin and of the in-house supplies can be identified (i.e. where the market value of the in-house supplies cannot be identified as per the *MyTravel* decision).²²² The cost of in-house supplies often depends on the measurement of costs over a longer period (e.g. depreciation, leasing costs etc.) making it very difficult to identify values accurately at the time services are provided.

In addition, if VAT was calculated on a supply by supply basis, it would be difficult to allow a credit for any negative margins made on individual supplies. Where a global calculation is performed over a period, any negative margins are typically taken into account when calculating the margin and accordingly credit is given. We believe it is appropriate that such a credit should be allowed: if a travel agent were accounting under normal VAT and a loss was made on an individual supply, it could be expected that a credit would be allowed in the form of the offsetting of a larger sum of input tax than was paid by way of output tax.

We believe it would be consistent with the simplification aim of the Special Scheme that the calculation should not be made difficult to administer. Acceptance that the calculation should be performed to cover all supplies and associated costs in a period would assist with the Commission's aim of promoting greater simplicity for businesses. We believe that subsidiarity requires that it should be left to the discretion of Member States to decide what the period of assessment should be, but would suggest that anything between three and twelve months is appropriate. Travel agents may also be granted the possibility to carry out separate calculations for different parts or divisions of the business or for different holiday seasons.

The calculation of VAT payable on a global basis does not affect the satisfaction of the destination principle. Nor does it affect the allocation of revenue between Member States. It is immaterial as regards the existing distortions of competition and certainly does not create

²¹⁶ Case C-163/91

²¹⁷ Although support for such an exclusion may be found in the *Star Coaches* (Case C-220/11) which seems to contradict the *Van Ginkel* decision but we believe the *Van Ginkel* decision is more consistent with the aims of the Special Scheme

²¹⁸ Case C-189/11

²¹⁹ See section 5.2

²²⁰ *Skarpa Travel* (Case C-422/17)

²²¹ We understand that this is one of the issues to be considered by the CJEU in the *Skarpa Travel* case

²²² Case C-291/03

any new distortion. It affects EU and third country travel agents equally.

In some circumstances, however, it is possible that travel agents (for example in the MICE sector where the number of transactions tends to be smaller) might prefer a sale by sale analysis. Therefore, it may be appropriate for Member States to allow a sale by sale basis as an option of a simplified, global calculation.

6.14.4 Taxation of the margin at a reduced rate

One of the effects of the Special Scheme we have identified is the taxation of the margin at the standard rate regardless of the rate applied to the individual travel facilities when supplied outside of the scheme. We have therefore considered whether it is appropriate to tax the margin at a reduced rate, albeit this not being currently allowed by the VAT Directive, to reflect the reliefs available in many Member States for many travel facilities.

If a travel agent is seen to supply the travel facilities themselves (i.e. option 3 as described in section 6.14), then we think there is a strong argument that the rate applied to the margin allocated to each Member State should reflect the rates applied in that Member State to the services supplied. However, as described above, this place of supply option is already complex without the additional need to work out an apportionment of each Member State's margin and apply different rates of VAT to parts of the margin. To simplify matters, it may be possible to agree a general reduced rate to apply to all Member States or perhaps a reduced rate applicable to individual Member States to reflect the mix of rates in that State. The availability of a reduced rate would clearly reduce VAT liabilities of travel agents but, even in its simplest form, the application of a reduced rate, in the taxation in the Member State of consumption of the travel facility itself, would introduce considerable new complexity. It is difficult to reconcile this measure with the need for simplicity and to avoid undue administrative burdens.

Both of the other place of supply models, i.e. continuation of the current basis or adoption of the place of residence test, are based on the view that the travel agent supplies its own separate services. Accordingly, it is more difficult to support the use of anything other than the standard rate for the margin, except in the former case where the travel facility is consumed outside of the EU or in the latter case where the customer is resident outside the EU or the service is consumed outside the EU.

6.14.5 Application of the Special Scheme to supplies to taxable persons

A key consideration in the operation of the Special Scheme is its applicability to the supply of services to a business customer. We now consider how B2B transactions may be dealt with within the scheme in future.

It is clear that one of the effects of the current Special Scheme is the loss of input tax deduction. The travel agent is unable to recover input tax on the costs of goods and services supplied within the scheme and therefore needs to pass on VAT inclusive costs to the customer. Where the customer is a final consumer, this helps to ensure that VAT is collected on the full value paid by the final consumer. However, VAT is intended to be neutral in so far as it applies to taxable persons (except of course for specified circumstances in which the legislation deviates from this broad principle).

The general rules of the VAT Directive establish the right of a taxable person to deduct input tax incurred on goods and services used for the purposes of his taxed transactions.²²³ One effect of the Special Scheme, however, is that it prevents recovery of input tax by a business (taxable person) client of a travel agent. We have seen above the problems which in particular exist in the TMC and MICE sectors where business clients are unable to recover input tax when purchasing services from suppliers falling within the Special Scheme. Amongst the effects of this has been the adoption of intermediary models by suppliers who would otherwise not have traded as intermediaries.

In the *Kingdom of Spain* case,²²⁴ the Advocate General opined that supplies to business clients should be included in the current Special Scheme but noted that this was the scheme's "most salient drawback".²²⁵

In the light of our experiences of the effects of the scheme, we believe it is of great importance to consider how the Special Scheme might work so as to allow business clients a deduction of input tax and to avoid the difficulties faced by travel agents selling to business clients.

The combined effect of irrecoverable input tax and irrecoverable Special Scheme output tax is indicatively estimated at circa €1.44bn across the EU. Excluding all B2B supplies from the scheme would remove this VAT cost for businesses and would reduce EU VAT revenues by a similar amount, recognising that revenue would still be generated on travel purchased by businesses in one of the exempt sectors.

It may be appropriate, however, to draw a distinction between supplies of services made to a business client where the final consumer is a business and those where the final consumer is a private person. In the TMC and MICE sectors, the final consumer typically is a business and costs incurred are cost components of the supplies made by that final business consumer. In the DMC sector, however, the final purchaser is often a non-business person and protecting the right to deduct input tax in such circumstances might be seen as less important. We will return to these points below.

We also need to consider the place of supply if the Special Scheme is applied to supplies made to a business client. We discussed above²²⁶ the possibility of either the customer's place of residence or the place of consumption of the travel facilities themselves as the Special Scheme place of supply and we need to

²²³ Article 168 of the VAT Directive

²²⁴ Case C-189/11 (see section 3.4)

²²⁵ See section 3.4.9

²²⁶ See section 6.13

consider both approaches in the context of supplies to taxable persons.

We have discussed²²⁷ benefits of the use of the customer's usual place of residence as the Special Scheme place of supply if the travel agent is considered to supply a separate service to the customer and that we believe this helps to identify the place of consumption of the travel agent's service where the customer is a private person. The question arises whether the same approach would work for supplies to taxable persons? We know that the general rule for the supply of services to a business client is to tax the service at the place of establishment of the client.²²⁸ It would be consistent therefore with the existing EU general rule to see a travel agent's supply (within the Special Scheme and where the travel agent is considered to supply his own separate service, i.e. option 2 in section 6.13) to a business client as taxable in the country in which the client is located, but we need to consider if this is an appropriate result for B2B supplies of travel facilities (in terms of satisfying the destination principle).

We have also considered the taxation of travel agents' services in the Member State in which the travel facilities are consumed and we also need to assess how this option could work for supplies to taxable persons.

A key consideration in this section is the proper treatment of a package of travel facilities, i.e. is the package a multiple supply or a single supply and, if the latter, what is the proper position to adopt.

We will consider these points in the sections below in which we separately consider the positions of travel agents within the TMC, MICE and DMC sectors.

6.14.5.1 TMC sector

As covered above, the business of a TMC is to arrange for the provision of travel services to a business client. This can be done in the TMC's own name or as an intermediary. The TMC has a range of agreements with hotels, airlines etc. and manages the procurement of the required travel business on behalf of a corporate client.

Our work has highlighted a number of issues as far as TMCs and the Special Scheme are concerned:

- There is no possibility of deducting input tax when the TMC deals with customers in its own name. This often makes the TMC uncompetitive, creating irrecoverable input tax for the client on travel services purchased for use in the course of his business activities and it also creates irrecoverable VAT on the travel agent's margin.
- This can encourage business clients to purchase services direct from principal suppliers and not to engage the services of the TMC.
- TMCs have often adopted intermediary status as a means to overcome the problems associated with the Special Scheme.

- Providing clients with the documentation needed to evidence their purchase of services from primary suppliers such as hotels is often difficult. This can lead to the introduction of concessions such as that adopted in the UK²²⁹ which allows a TMC to raise the document which clients can use in the place of invoices raised by the primary suppliers to support deduction of input tax.
- The differing approaches of Member States to the application of the Special Scheme to the treatment of supplies made to business clients lead to differing treatments of TMCs.
- TMCs in third countries would enjoy a competitive advantage over TMCs established in many Member States if the Special Scheme rules are interpreted not to cover third country travel agents.²³⁰

We have considered three ways in which the business of TMCs might fall within the VAT system:

- 1 Keep the Special Scheme. This would perpetuate the current problems but a consistent application of the rules would at least ensure that TMCs are treated equally by all Member States. The TMC's place of supply within the Special Scheme could be either the client's place of establishment or the place of consumption of the travel facilities, depending on the interpretation adopted.
- 2 Exclude TMC services from the Special Scheme. The TMC would be the supplier of the travel services and the normal rules on place of supply, valuation and input tax deduction would then be applicable. In particular, the place of supply of the services supplied by the TMC would be determined by the place of supply rule for the service in question. Accordingly, the TMC would apply the place of supply rules for accommodation, passenger transport, car hire and the other services typically supplied by a TMC.

TMCs typically organise services consumed in multiple jurisdictions. Therefore, it could be expected that supplies would be made in many Member States. This could be expected to create greater complexity and administration for the TMCs affected. The TMC would need to identify the rate of VAT to be applied and would also be responsible for the deduction of input tax charged by the principal suppliers.
- 3 Include TMC services in the Special Scheme but allow an option to exclude those services from the scheme (or alternatively exclude a TMC from the scheme but allow for an option to include services in the scheme).

Option 1 above would satisfy the need for simplicity and should also assist in the control and administration of the VAT system. It could also assist in the application of the destination principle in this area (if the place of supply is changed as discussed). Changing the place of supply would also put third country TMCs in the same position as those

²²⁷ See section 6.13

²²⁸ Article 44 of the VAT Directive

²²⁹ The "billback concession", see HM Revenue & Customs Brief 21/10

²³⁰ See section 5.5.3

established in the EU. This is an important point for the reasons discussed below. However, we have seen that the Special Scheme causes difficulties now in terms mainly of the lack of input tax deduction and therefore we think we should be looking for a reform solution which overcomes the current problems without introducing undue complexity.

Option 2 would introduce considerable complexity for many and it is questionable whether it would satisfy the objectives we have identified in Section 6.4. Excluding all B2B supplies from the Special Scheme would lead to considerable compliance difficulties for both EU and third country travel agents, whereas the distortions and material issues created by non-deductibility of input tax, the varying treatments of wholesale supplies, the differing treatments of EU and third country travel agents and the different interpretations of travel facilities would all be removed for B2B supplies.

It is also important to note that a number of Member States deny deduction of input tax on certain travel costs. Accordingly, the exclusion compulsorily of the services of a TMC from the Special Scheme would require a TMC to register in certain Member States when doing so would produce no tangible benefit for the client in terms of input tax deduction.

Third country TMCs would in principle be subject to the same rules as EU based TMCs and, in practice, might be required to register (from a competitive point of view) as doing so would be the only way they could provide clients with the means to recover input tax.

This approach therefore achieves many of the objectives but the complexity of VAT accounting and compliance for many would be onerous and, for this reason, we do not think that total exclusion of B2B

supplies from the scheme satisfies the reform objectives.

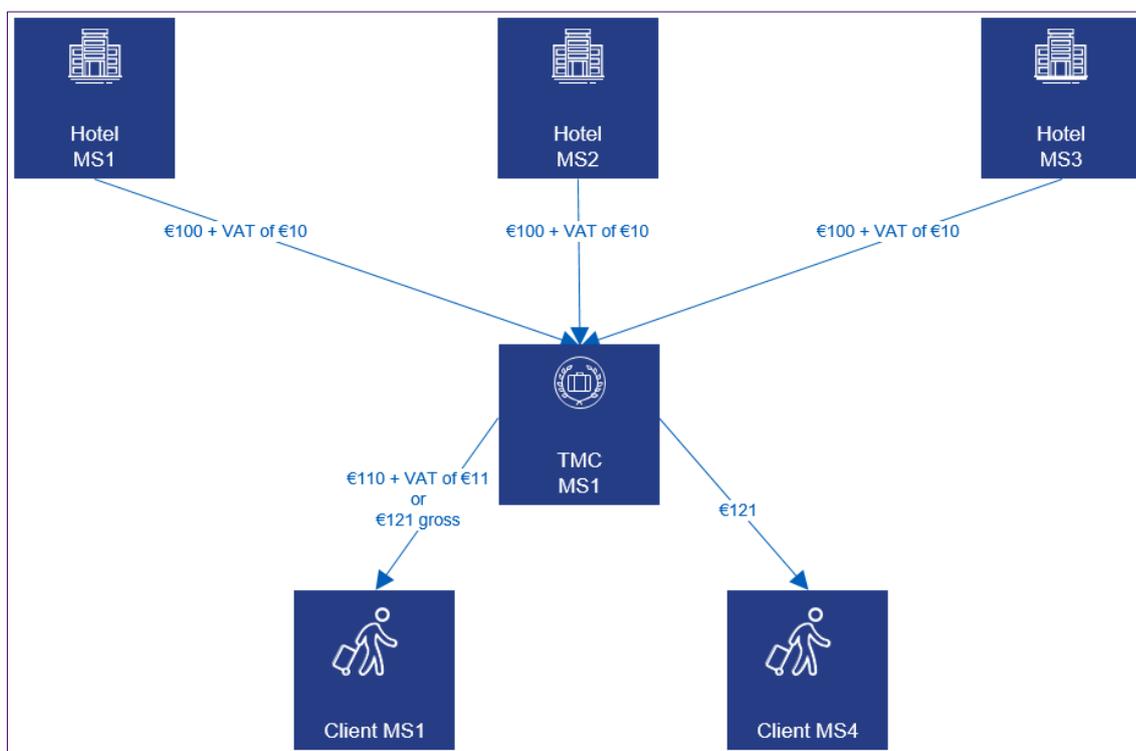
For the above reasons, we believe consideration needs to be given to allowing an option to use the Special Scheme. This might be framed in such a way that a TMC (dealing with customers in his own name) is within the Special Scheme unless the TMC already has a VAT registration in the Member State in which the supply would ordinarily be made and opts to exclude the supplies from the Special Scheme. Such an approach would facilitate the ability of TMCs to provide clients with the right to deduct input tax but without requiring the TMC to register in all Member States in which the travel they provide is consumed. TMCs would need to decide which Member States they should register in – this would largely be determined by the rules of deduction in the Member States and the expectations of the TMC's clients towards input tax deduction.

Where an option is allowed, we prefer an option to exclude B2B supplies from the Special Scheme rather than an option to include such supplies in the scheme. We acknowledge that there are differing views in respect of the reform of the Special Scheme and the attractiveness or otherwise of optionality. Where an option is to be allowed, we explain our preference for an “opt-out” option in section 6.14.6.

The place of supply of the TMC's margin where a TMC opts for a supply to remain within the Special Scheme would be either the place of establishment of the client or the place of consumption of the travel facilities depending on the approach adopted more widely in this respect.

The above can be illustrated by the following example.

Fig. 6c



The above illustrates the supply of hotel accommodation in MS1, MS2 and MS3 by a TMC established in MS1. For ease of illustration, the VAT rate applicable to hotel accommodation in each of the Member States is 10% and the standard rate in each is 20%. The purchase price of the accommodation is €100 plus VAT. The TMC's gross selling price in each case is €121. The TMC sells the accommodation in its own name.

The TMC has two clients, one in MS1 and the other in MS4.

Following the suggested approach above, the TMC must apply the Special Scheme unless there would be an option to apply normal VAT. The place of supply of the accommodation supplied by the TMC in any case in which the Special Scheme is not applied is the Member State in which the hotel is located.

As far as the supply of the hotel in MS1 to the client in MS1 is concerned, the TMC agrees that it will sell the services outside the Special Scheme. It is assumed that the TMC already has a VAT registration in its home Member State and therefore it is in a position to exercise the option to dis-apply the Special Scheme. Accordingly, the TMC deducts the input tax of €10 and sells for €110 plus VAT of €11. The client deducts its own input tax of €11 leaving a net cost of €10. The client has achieved a VAT-free cost of the accommodation and this is the appropriate outcome given that the client is using the service in the course of its taxable business.

Where the TMC sells accommodation in either MS2 or MS3, its existing registration in MS1 does not facilitate the exclusion of the supply from the Special Scheme. Where the TMC wishes to apply the normal VAT rules to the supply, it must obtain a registration in the other Member State involved. If we assume that the client normally makes a claim for input tax incurred in MS2,²³¹ it is reasonable to think that the client would require its TMC to supply it with the means to deduct the VAT due in MS2. The TMC would obtain a registration for MS2 (possibly via the MOSS system). Given that the rate in MS2 is the same as in MS1, the outcome is the same as illustrated for MS1.

However, MS3 does not allow deduction of input tax on hotel costs and therefore there is no prospect of deduction by the client. Accordingly, the TMC decides there is no reason to exclude the supply from the Special Scheme. The place of taxation of margin would be determined by the approach considered to be appropriate. Under the current Special Scheme, the margin VAT would be payable in MS1 where the TMC is established. If the preferred approach was to view a travel agent as supplying its own separate service to the client, the place of supply would also in this example be MS1 as that is the place of establishment of the client. However, if the travel agent was considered to supply the travel facilities themselves, the place of supply would be MS3, the location of the hotel. The gross margin is €11 and the VAT due, i.e. €1.83 is the same in both Member States given that the standard rate is 20% in both.

Let us assume that the client in MS4 is an exempt business unable to deduct input tax. A likely scenario then would be the application of the Special Scheme, although it should be noted that the TMC may prefer to apply the normal VAT rules for supplies of accommodation in those Member States for which it already has the means of paying local VAT in place. If the Special Scheme is applied to all supplies to the MS4 client, the margin made would be taxable in MS1 under the current model but would be taxable in MS4 if the margin was considered to be the consideration for a separate supply to the client. If the TMC was considered to supply the accommodation itself, the margin would be taxable in each of the Member States in which the hotels are located.

The above approach would ensure in principle that the same treatment applies to EU and third country TMCs so the objective we have identified in section 6.4 of equality of treatment would be satisfied. This is important as the current interpretation of the Special Scheme may introduce an important competition distortion in favour of a third country TMC. As we describe in section 5.5.3, if the current scheme is interpreted to mean that third country travel agents are not covered by the Special Scheme and that normal VAT applies instead, it follows that a third country TMC is entitled to register in each Member State in which services are supplied, deduct input tax and provide his business client with a VAT invoice. Such a procedure gives the third country TMC an inherent advantage over a TMC established in any Member State which requires a TMC to adopt the Special Scheme. However, if the place of supply within the scheme is either the client's place of establishment or the place where the travel facilities are consumed, then the third country TMC falls within the scheme (albeit potentially with the same right to opt-out as any opt-out available to an EU based TMC – see section 6.15) and the potential competitive advantage is removed.

We should point out that nothing in the above would affect a TMC's ability to organise its business so that it provides the travel services as an intermediary with the effect that the Special Scheme would not apply and neither would there be an obligation to register in other Member States where the Special Scheme is not applicable.

In our experience, TMCs do not ordinarily create packages for their clients. Rather, they sell individual stand-alone services to clients. We have not, therefore, in the TMC context considered the question of the correct approach to take for the sale of a package²³² (where the Special Scheme does not exist) but this is an important consideration for the MICE and DMC sectors and we consider the point below. Our following analysis can be considered to apply also to TMCs where they do create a package of services.

6.14.5.2 MICE

The issues in the MICE sector in many respects are similar to those for TMCs. Indeed, many TMCs also operate in the MICE sector.

²³¹ Under 2008/9/EC

²³² See section 5.5.3

Again, we have seen the input tax effects from the application of the Special Scheme and that many MICE operators have chosen to operate as intermediaries to overcome the effects of the Special Scheme.

In addition, the interpretations of the Member States again lead to differing treatments of MICE operators, not just in the application of the scheme itself but also in terms of the application of VAT where the Special Scheme does not apply.

We believe that the options for reform are the same as described above for the TMC sector but for MICE we need to give greater consideration to what the rules would be where the Special Scheme does not apply.

The situation is complicated by the fact that many events contain services which cannot be described ordinarily as travel facilities. A key consideration is what happens where travel facilities (for example accommodation, passenger transport) are provided but other services not ordinarily considered to be travel are provided as well. The *Minerva Kulturreisen* case²³³ told us that opera tickets sold alone are not travel facilities but that they do fall within the Special Scheme when sold with travel facilities. Therefore, to what extent do event services which would not ordinarily be considered to be travel facilities fall within the scheme when supplied together with accommodation and/or passenger transport? We have previously advocated a broad approach to the question of which services should be included in the Special Scheme and the same therefore must be true in the MICE sector.

Accordingly, we believe that services such as entertainment, the use of sports facilities and food and drink, which are often included in a corporate event, should be treated as falling within the Special Scheme, assuming as per the *Minerva Kulturreisen* judgment that the MICE organiser is also providing travel facilities. Even so, the organiser often provides facilities such as AV, meeting rooms, external speakers and such services seem too far removed from the concept of travel to fit comfortably within the Special Scheme. This does highlight a difficulty, however, where the normal approach on the identification of a single or multiple supply suggests that an event must be treated as a single supply: where this is the case, is it consistent to include a part of the event in the Special Scheme and the other part as subject to normal VAT?

We should also consider whether and when travel facilities supplied as part of an event might be considered to be ancillary to the main purpose of the event. It seems clear that in many circumstances any travel facilities provided are not the main purpose of the event but are supporting in nature. Following CJEU case law, we might describe the travel facilities as a means of better enjoying a principal service²³⁴ so that the Special Scheme should not apply. However, in terms of the *Madgett and Baldwin* decision, these potentially ancillary services are unlikely to form only a small part of the package (event) value,²³⁵ suggesting that the Special Scheme is applicable.

Again as for TMCs, the compulsory inclusion of MICE services in the Special Scheme would not allow input tax deduction by business purchasers of the MICE services. On the other hand, the mandatory exclusion of such services from the Special Scheme may be difficult in terms of compliance but this does depend on the normal rules to be applied where the Special Scheme is not used.

The VAT Directive states that the place of supply of the services of organisers of activities such as entertainment, education, fairs and exhibitions is the place where the activities (i.e. the fair/exhibition etc.) take place.²³⁶ However, this is a rule only for B2C supplies and therefore does not apply in most MICE circumstances.

There is no specific rule for the B2B supply of the organiser's services and therefore we might conclude that such services fall within the general rule²³⁷ and are supplied where the client is established. Our experience is that this is how many Member States apply the rules at the moment and third country travel agents in the MICE sector may enjoy an advantage.

The MICE position therefore needs to be considered against the following factors:

- Should B2B supplies be within the Special Scheme?
- If yes, what is the scope of the Special Scheme? Should it apply to the entire event? Or just to those parts treated as travel facilities? Is the splitting of an event between the Special Scheme and normal VAT rules acceptable where the wider circumstances would normally dictate that the event must be treated as single supply?
- If all or any part of an event falls outside of the Special Scheme, what treatment should be applied?

In line with that described above for the TMC sector, the use of the Special Scheme being optional for supplies to taxable persons would be the most business friendly approach and also the one most likely to ensure compliance. However, where a MICE operator organises services for a non-taxable person, we believe that the Special Scheme should apply, at least to the extent that the services provided are travel facilities (assuming that it is acceptable to split an event between use of the scheme and normal VAT when the event would ordinarily be considered a single supply).

For supplies to taxable persons, we think consideration should be given to framing the law so that the Special Scheme applies and that the MICE operator is granted a possibility to opt to exclude the supply from the scheme. What that means in practice will be determined by the interpretation placed on the supply made by the MICE operator and we return to this point below.

The extent to which services provided fall within the Special Scheme (where the option to exclude is not

²³³ Case C-31/10, see section 3.4.8

²³⁴ See for example Card Protection Plan (Case C-349/96) and section 6.8

²³⁵ Joined Cases C-308/96 and C-94/97, see section 3.4.4

²³⁶ Article 54 of the VAT Directive

²³⁷ Article 44 of the VAT Directive

taken) will be determined by the approach described in section 6.14.1 on the definition of travel facilities.

We envisage four possible treatments (where the client is a taxable person) depending on the nature of the event and the preference of the MICE operator:

- The entire event falls in the Special Scheme – the MICE operator chooses not to opt-out of the scheme and the nature of the event is such that it is seen to comprise only travel facilities. An example could be the organisation of an incentive for a corporate client comprising passenger transport, accommodation, food and drink, entertainment and the use of sports facilities.
- The entire event falls outside of the Special Scheme as the MICE operator would be allowed to opt-out of the scheme
- The entire event falls outside of the Special Scheme as the event contains no travel facilities.
- Split events – the MICE operator does not opt-out of the Special Scheme and the event contains travel facilities and non-travel facilities. An example might be a conference comprising accommodation, food and drink, evening entertainment and the organisation, production of the conference content itself and the provision of conference facilities such as meeting rooms and audio visual. This point is again subject to resolution of the question as to whether an event ordinarily considered to be a single supply could be the subject of two forms of VAT accounting.

Where the Special Scheme does not apply because either the supplier has opted out of the Special Scheme or because the event organised does not include travel facilities, the treatment of the services will be determined by the normal rules on place of supply, valuation and input tax deduction. It is important to consider what these rules mean in the context of MICE.

Where a MICE organiser supplies a standalone service, for example accommodation or the hire of a venue, then the organiser should be subject to VAT in the Member State in which the service would ordinarily be considered to be supplied, assuming that the organiser has sold the services in his own name. In the case of accommodation or venue hire, the place of supply would be the Member State in which the property involved is located.²³⁸ The organiser would need to register in that Member State if he opted for the Special Scheme not to apply or the supply in question is not considered to be a travel facility.

However, we understand that the business of a MICE operator is not typically to sell such standalone services. Rather, the role of such an organiser is to create events to satisfy the requirements of a client and comprising a broad range of services purchased from third party suppliers and their own management and organisational expertise. Each event needs to be considered on its own merits but we believe that it can often be appropriate to view the supply made in such circumstances as a single supply.²³⁹ There are though

two approaches which might be taken to determine the place of supply: as have discussed previously, the supply might either be treated as supplied in the place in which the predominant element of the supply is considered to be supplied or it could be viewed as taxable where the client is established.²⁴⁰ Determining which of these approaches should be preferred is, we believe, crucial to the taxation of the MICE sector (and also to the DMC sector as discussed below).

We need to consider both in the context of their compatibility with the destination principle but also in terms of the simplicity for taxpayers, ease of control by the Member States, effect on the VAT gap and how they affect EU and third country MICE operators.

Where a predominant element can be identified, the non-Special Scheme taxation of an event will be as follows: the event will be supplied in the place in which the predominant item is considered to be supplied. Regard must be had to the nature and purpose of the event to determine what the predominant element is. In some cases, the predominant element might be considered to be a business meeting or similar to which services such as accommodation and catering are ancillary. In such a situation, it may be appropriate to see the full value as falling within the place of supply general rule²⁴¹ so that VAT is paid in the place of establishment of the client (using the reverse charge mechanism where applicable). It is worth noting that such an interpretation would mean the non-application of the Special Scheme in all circumstances (i.e. not only where the supplier has opted out of the Special Scheme) assuming that a “business meeting” is not considered to be a travel facility.

In other cases, however, the predominant element may be entertainment. Such a conclusion would also lead to the conclusion that Article 44 applies. The same might be said of an event the main feature of which was advertising/business promotion/marketing. Such an approach would often mean the payment of VAT in a Member State other than that in which the event takes place.

If, however, it was considered that admission to an event was the predominant feature (which might be the case for a corporate hospitality event, for example), the place of supply would be the place in which the event takes place.

We need to consider if this predominant supply approach would have the effect of taxing the supply in compliance with the destination principle. Where the appropriate place of supply rule determines that the supply should be taxed in the Member State in which the event actually takes place, the result would certainly seem compatible with the destination principle. It would also be relatively straightforward in that registration and payment of VAT would be required in only one Member State. The same rules would apply to EU and third country MICE operators so equality of treatment, in principle, would be achieved.

Many events comprise numerous different services and we believe it will sometimes not be possible to identify a predominant element. Where this is so, and

²³⁸ Under Article 47 of the VAT Directive

²³⁹ As discussed in section 6.8

²⁴⁰ Under Article 44 of the VAT Directive

²⁴¹ Article 44 of the VAT Directive

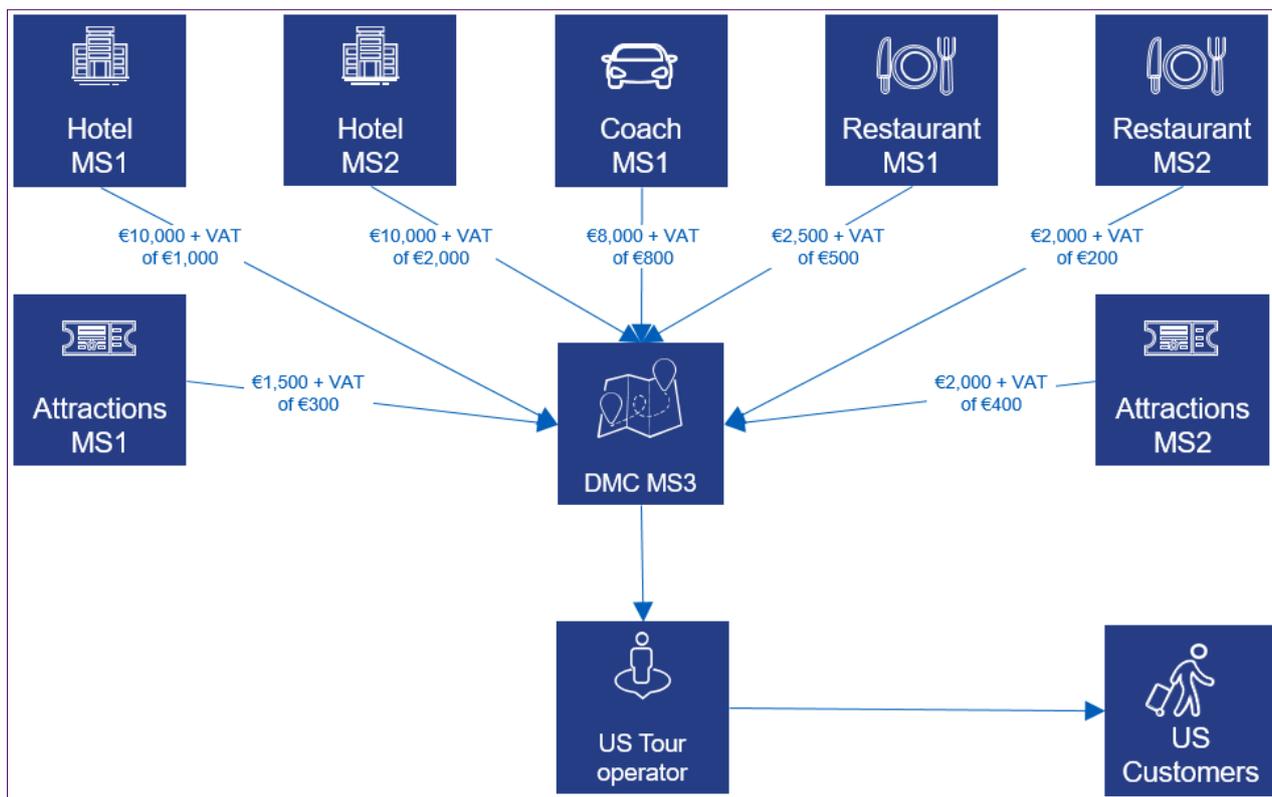
assuming that the circumstances require the event to be treated as a single supply, it would appear that the correct approach is to treat the event as falling within the Article 44 place of supply general rule.

We must also recognise that in certain circumstances, an event might be considered to be a multiple supply. In such a situation, it would be necessary to identify the supplies, the place of supply of each supply and account for VAT accordingly. A typical event might be seen to consist of supplies of accommodation, entertainment, catering, transport, meeting facilities, AV and similar. Each would need to be assessed on its

own merits but it is likely that some at least of the supplies would be taxable in the Member State in which the event takes place. To this extent, this approach is consistent with the destination principle. However this approach would introduce greater complexity than the single supply approach.

It can be seen that the MICE sector is complex and that the considerations of a suitable future VAT regime are similarly complex. We set out below an analysis of how VAT might work in the light of the above considerations and in the context of one event.

Fig. 6d



The above illustrates the organisation of an event by a MICE operator established in MS1 for a business client also established in MS1. The MICE operator purchases services from various suppliers all established in MS2 where the event is to take place.

The hotel, venue, restaurant and coach operator all charge local VAT either at a reduced rate of 10% or at the standard rate of 20%. The AV/production company treats its services as falling within the general place of supply rule²⁴² and therefore does not charge VAT but expects the MICE operator to account for VAT in MS1 using the reverse charge.

The aggregate cost paid to the local suppliers is €50,400 including VAT of €5,400 (both figures not including the reverse charge VAT due on the AV/production cost). In addition, the MICE operator is to provide its own staff during the event to ensure the

smooth running of the event. The price agreed with the client is €60,000.

In line with the analysis above, we believe consideration should be given to allowing the MICE operator a choice between the application of the Special Scheme and the use of normal VAT. The difficulties in this situation, which we believe is typical of the MICE sector, are that, first, the event contains a service, the AV/production, which we do not think should be viewed as a travel facility and which therefore should not fall within the Special Scheme and a second, the venue, which might also be considered to fall outside the scheme. In addition, the services to be provided by the MICE operator in the form of its own staff providing services during the event are not capable of falling within the scheme. Second, it is not

²⁴² Article 44 of the VAT Directive

immediately apparent what the result of the application of normal VAT should be.

If the MICE operator chose not to opt-out of the Special Scheme, given a wide scope to the meaning of “travel facility” we believe that the hotel, restaurant and coach services should be accounted for within the scheme. The venue perhaps may qualify for inclusion, depending on the nature of the event and the use to be made of the venue but for the sake of this illustration we will assume that the venue is not a travel facility. It would be necessary therefore to calculate the margin made on the hotel, restaurant and coach services and to pay VAT on this margin in the appropriate Member State. This would be MS1 under the current place of supply test and also if the place of supply became the client’s place of establishment. It would be MS2 if the place of supply was the place where the travel facilities are consumed. As the standard rate in this example is 20% in both Member States, it makes no difference to the margin VAT payable by the MICE operator.

Following the *MyTravel* judgment of the CJEU,²⁴³ the valuation of those parts of the event not within the Special Scheme should be made by reference to their market value. It is common practice in the MICE sector that prices for each individual part of an event are agreed with the client and so we will take the prices so agreed as the market value. If the prices agreed with the client for those services are €13,000 for the venue, €7,000 for the AV/production and €4,000 for the work of the organiser’s staff (all values including any VAT due), it can be seen that the selling price of the Special Scheme services is €36,000. The cost of the same services is €32,400 and accordingly the Special Scheme margin is €3,600 and the VAT due is €600, payable in MS1 or MS2 depending on the place of supply approach adopted.

We then need to consider how to treat the €24,000 attributed to services falling outside of the Special Scheme. It is likely we believe that the MICE operator should be seen to make a single supply. For the reasons given above, the predominant supply approach is likely to require the application of the place of supply general rule.²⁴⁴ If the predominant supply approach is not preferred, then the same place of supply rule should be applied so either way MS1 is the place of supply. The MICE operator should therefore charge €24,000 plus VAT of €4,800 (assuming that the contract allows for the addition of VAT). If the client is using the event in the course of taxable business activities it can deduct the €4,800 as its input tax.

The MICE operator should be entitled to deduct the input tax on the venue and AV/production. A claim could therefore be made to MS2 for recovery of the €2,000 incurred on the venue cost. The VAT on the AV/production cost was paid in MS1 under the reverse charge so the MICE operator can offset the same value of VAT as input tax in MS1.

This approach generates revenue in MS2 of €3,400 in the form of irrecoverable input tax on the Special Scheme costs. If the place of supply of the operator’s margin is MS1, the margin VAT of €600 accrues to MS1. If the client is able to deduct input tax in full,

there is no further revenue accruing to MS1. Total VAT revenue generated is €4,000.

There are two problems with the above. First, it is clearly very complex: in this situation, due to the typical combination of travel facilities with non-travel services, the current Special Scheme does not achieve its objective of simplicity. Continued use of a Special Scheme, albeit operating in a different way, would perpetuate the difficulties in this sector. Second, the application of the Special Scheme means the client suffers an irrecoverable VAT cost on services used for its taxable purposes.

If the MICE operator elects to dis-apply the Special Scheme, it would need to consider what normal VAT means. For the reasons described above, we believe it likely that the event supplied should be considered to be a single supply. The predominant nature of the event may require use of Article 44 to determine the place of supply. If a predominant nature cannot be determined, we believe Article 44 should also apply.

The effect is the charging of VAT on the full €60,000 value. Again, if the client is fully taxable, this VAT can be deducted. In this model, it also follows that the MICE operator can recover all input tax incurred in MS2. There is no revenue for either MS1 or MS2 but, as the services have been used in the course of taxable business activities, we submit that this can be seen as the correct outcome.

6.14.5.3 DMC

We have identified earlier in this report there is distortion of competition in the wholesale or DMC market. Our analysis has identified that considerable differences exist both in the application of the Special Scheme to the sector and also in the nature of VAT to be applied when the scheme is not applicable.

Identifying a suitable reform option for the DMC sector is therefore critical to the smooth operation of VAT in the travel sector.

However, the DMC sector covers many different business activities, for example:

- Wholesale tour operators who sell FIT services i.e. typically services such as accommodation, coach travel and other local services on a wholesale standalone basis to other tour operators.
- Wholesale tour operators and DMCs who create travel packages and sell on a wholesale basis to other tour operators and MICE operators.
- Bed Banks who sell accommodation to tour operators, travel agents, TMCs and MICE operators. Bed banks can sell in their own name or as an intermediary. Equally, the Bed Bank’s client might sell in his own name or as an intermediary.

Ideas for reform of the DMC/ wholesale sector therefore need to take into account the differing natures of operators within this sector.

We think it is reasonable, in line with earlier comments, that input tax deduction should be possible where the

²⁴³ Case C-291/03

²⁴⁴ Article 44 of the VAT Directive

final consumer is a business. This might apply, for example, where the DMC sells to a MICE operator who in turn uses the service in question in providing an event service to a business client. But as discussed earlier, should the Special Scheme apply where the final customer is not a business? Furthermore is it realistic to think that intermediate suppliers will know the identity and status of the final customer?

We consider that the main criteria to assess the validity of reform options in this area are the following:

- Input tax deduction where a final business client is the purchaser should be possible
- VAT should accrue to the Member State of consumption
- The system must not be onerous in terms of its operation for businesses and tax authorities and neither must there be a risk of VAT fraud
- Equality of treatment should be achieved between EU and third country DMCs

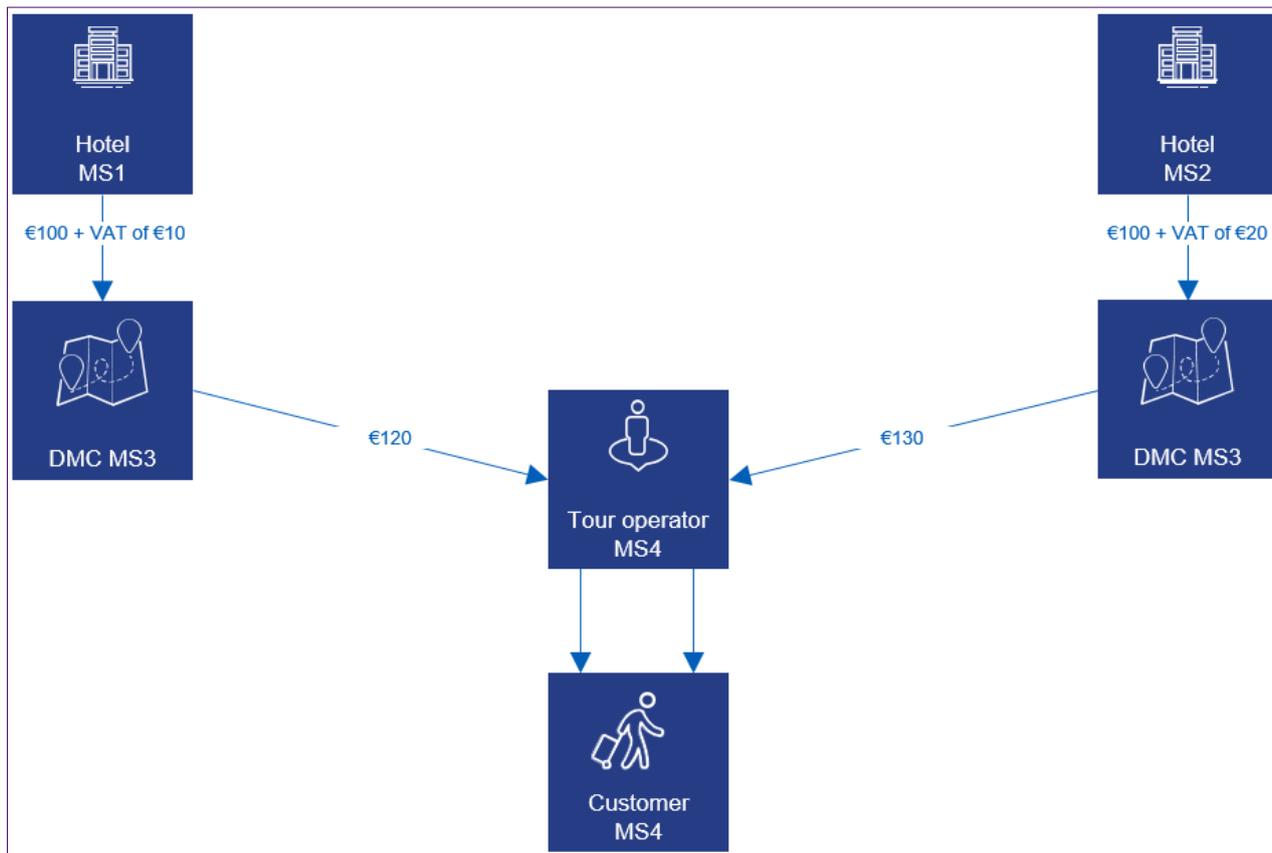
In addition, it is essential to consider how VAT should be applied in all circumstances in which the Special Scheme is considered not to apply.

The application of VAT in the DMC sector must, of course, be consistent with the approach more widely for B2B supplies, namely the approaches to be taken in the TMC and MICE sectors. Accordingly, we believe that there is merit in the approach in applying the Special Scheme and that the DMC is granted the possibility to opt for normal VAT. The way to treat a package of travel facilities (where the Special Scheme does not apply) is also very important in this sector.

We have considered the above approach in the context of the three scenarios mentioned above, namely the FIT supply of services by a DMC/wholesale tour operator, the creation of a travel package to be sold on a wholesale basis and the wholesale supply of accommodation by a Bed Bank. The following examples illustrate significantly different outcomes in the level of VAT revenue generated. Member States would need to determine whether their overriding objective is to take VAT revenue from all tourism enjoyed in the EU or to use the VAT system to stimulate inbound tourism. This consideration is important in determining the approach for the travel sector as a whole but seems particularly important in the DMC sector as a large part of it is concerned with organisation of services to be consumed ultimately by inbound tourists.

6.14.5.3.1 The supply of FIT services

Fig 6e



The above illustrates the purchase of hotel accommodation located in MS1 and MS2 by a DMC established in MS3. The accommodation is sold to a tour operator client in MS4. The DMC's purchase price in both cases is €100 net. In MS1, the rate applicable to hotel accommodation is 10% whilst in MS2 it is 20%. The DMC supplies the accommodation in MS1 for €120, including VAT, and that in MS2 for €130, again including VAT. The standard rate in all the Member States is 20%.

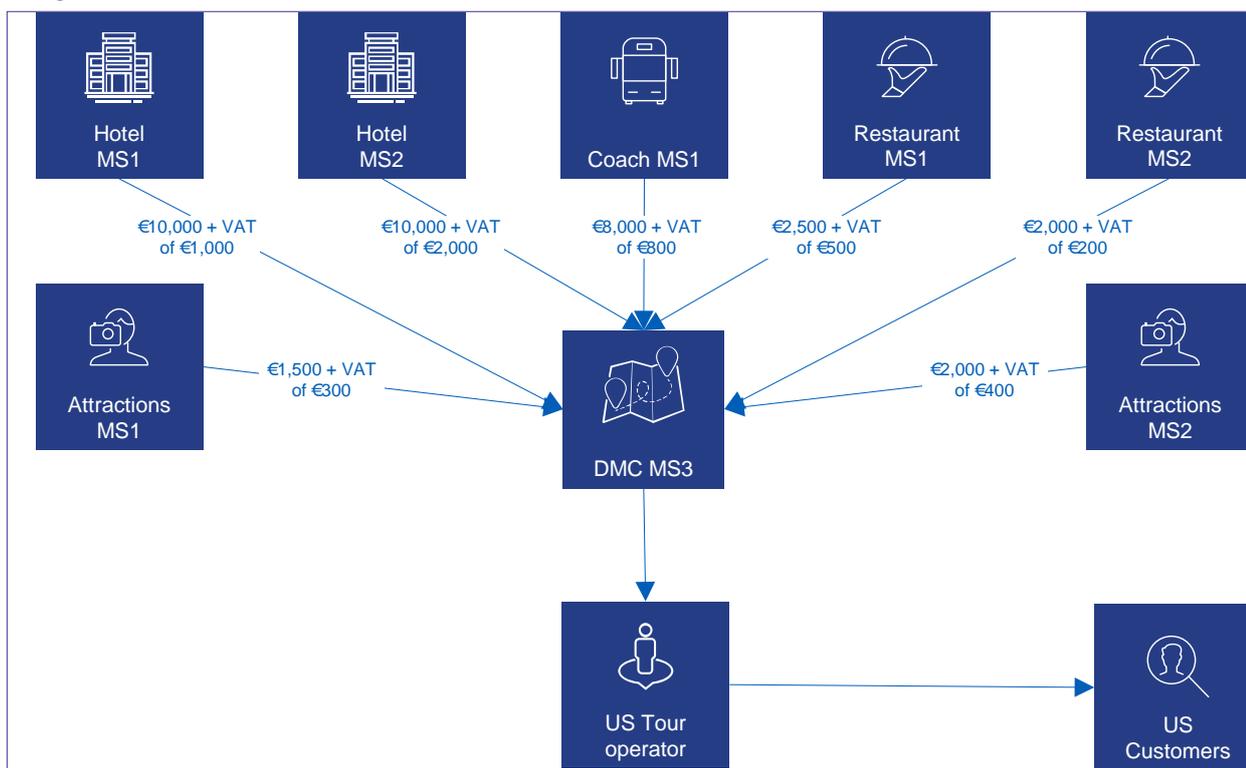
In this example, it is envisaged that the tour operator client is making a B2C supply and therefore cannot deduct input tax. Therefore we assume that the Special Scheme would apply, even if the DMC could opt to dis-apply the Special Scheme. In this case, the DMC would have a margin of €20 on which the VAT due is €3.33. Where this is payable depends on the place of supply adopted. If the current place of supply is

retained, the full margin is taxable in MS3. However, if the place of supply is the client's place of establishment, the €3.33 accrues to MS4 and the DMC must have a means to of declaring the VAT to MS4. If the place of supply is the place where the travel facilities are consumed, the DMC makes a margin of €10 in both MS1 and MS2 and must pay VAT of €1.67 to both Member States (although, as noted elsewhere, in this model it may be thought appropriate to apply the reduced rate of 10% to the margin in MS1, reducing the VAT payable there to €0.91).

In case it would be open to the DMC to opt either or both of the supplies out of the Special Scheme, this would require to have the means of paying VAT in MS1 and/or MS2. In MS1, normal VAT would involve deduction of input tax of €10 and payment of output tax of €10.91. In MS2, the DMC would deduct input tax of €20 and pay output tax of €21.67.

6.14.5.3.2 Creation of a travel package to be sold on a wholesale basis

Fig. 6f



The above illustrates the creation of a tour package for a US tour operator client by a DMC/wholesale tour operator established in MS3. The tour is to take place partly in MS1 and partly in MS2. The DMC contracts with hotels, coach operators, restaurants and attractions in the two Member States. In MS1, a rate of 10% applies to accommodation and passenger transport and 20% to the other services. In MS2, 10% applies to passenger transport and restaurant services and the other services attract 20%. The total cost incurred is €36,000 plus VAT of €5,200. The price agreed with the tour operator is €50,200.

The role of the DMC is that of a typical DMC/wholesale tour operator, namely to design an itinerary to meet the needs of the client, identify suitable third party suppliers, contract on suitable terms with the chosen suppliers, amend bookings if necessary and to be available to resolve any unexpected problems during the tour.

Once again, we assume that the DMC has a choice: to apply the Special Scheme or not. If the scheme is applied, the margin is €9,000. As the standard rate is 20% in each of the Member States involved, the VAT due whichever is the place of supply is €1,500. If the current place of supply continues to apply, the €1,500 is due in MS3. However, if the place of supply is the place of establishment of the client, the place of supply in this example is the US and no VAT is due on the margin. If the place of supply is the where the travel

facilities are consumed, the margin will need to be apportioned between MS1 and MS2.

A convenient way of doing this would be based on the costs of services purchased in the two Member States. An analysis of VAT-exclusive costs shows that 50% of the cost was incurred in each of MS1 and MS2.²⁴⁵ The margin made in each Member State would therefore be €4,500. As discussed before, it may be appropriate to reflect the local rates applied to the services when supplied outside of the scheme in this model.

Whatever place of supply is used, the DMC cannot deduct the input tax of €2,200 in MS1 and €3,000 in MS2. Total revenue generated therefore is €6,700 if either the place of supply is the DMC's place of establishment or the places where the travel facilities are consumed (assuming no application of the reduced rate to the margin). If the place of supply is the client's place of establishment, the revenue is limited to the €5,200 as the margin is not subject to VAT.

In this example, the final consumers are private persons and no input tax deduction is possible. It is likely that the DMC knows that the final customers are not in business. It may be concluded that the Special Scheme is the appropriate basis of VAT. However, as we have stated elsewhere, we believe that consideration should be given to the ability to exclude travel facilities from the scheme so that the right of taxable persons to deduct input tax can be preserved. In practice, it is difficult to see how the legislation could be framed so that B2B supplies in the TMC, MICE and

²⁴⁵ €18,000 of net cost in each Member State, assuming that the coach cost is split equally between the two Member States

DMC sectors are eligible for exclusion (in the DMC sector only where the final client is a business) but DMC activities are compulsorily within the scheme (when the final client is not a business) as it seems inevitable that there will be situations in which a wholesale supplier does not know the identity of the client. Whilst that may not be the case in a situation such as that illustrated here, it may well apply in the next example involving Bed Banks.

Accordingly, where an option is introduced, the legislation could be framed so that the DMC in this example has the ability to use “normal” VAT. What that would mean depends on the interpretation placed on the package he has created. If it is seen as a multiple supply, each component part of the package should be seen as a supply made in the Member State in which it takes place. The DMC would need to identify the supplies made, attach a value to each and then account for VAT in the Member State of supply at the rate stipulated by that State. Input tax incurred could then be deducted.

An appropriate way of doing the valuation may be an apportionment based on costs. This would mean that the VAT due in MS1 would be €2,704 whilst the equivalent values in MS2 would be €3,549.²⁴⁶ Input tax of €2,200 would be deductible in MS1 and €3,000 in MS2.

Revenue generated for MS1 would be €2,704 and €3,549 for MS2, giving a total of €6,253 compared to €6,700 under the Special Scheme (with the place of establishment or place of consumption of the travel facilities basis) or €5,200 where the place of supply is the client’s place of establishment.

The multiple supply approach creates less revenue (except when compared to the use of the client’s establishment as the place of supply within the Special Scheme) as the multiple supply allows for the taxation

of the DMC’s “value added” at a rate less than the standard rate on a large part of that value added.

The multiple supply approach is not the only one, however, to be considered if normal rules are applied to this DMC. In our opinion, a good case can be made that the services provided should be seen to be a single supply. If so, it may be taxable on the basis of its predominant nature or under Article 44 (B2B) or Article 45 (B2C) of the VAT Directive. In this example, we are concerned whether a predominant nature or element can really be identified. Even if it could be, the tour takes place in two locations and the predominant supply would presumably need to be apportioned across the two Member States.

The place of supply under Article 44 and Article 45 would be the US, where the customer or the supplier is established. Accordingly, it would be outside the scope of VAT. No VAT would be due on the selling price of €50,200. In addition, the supply made to the DMC is still taxable and thus depending on the Member State input tax incurred in MS1 and MS2 could be deductible. On this assumptions, the result would be no VAT revenue generated for any Member State and thus either an increased profit margin of the DMC or lower prices offered by the DMC.

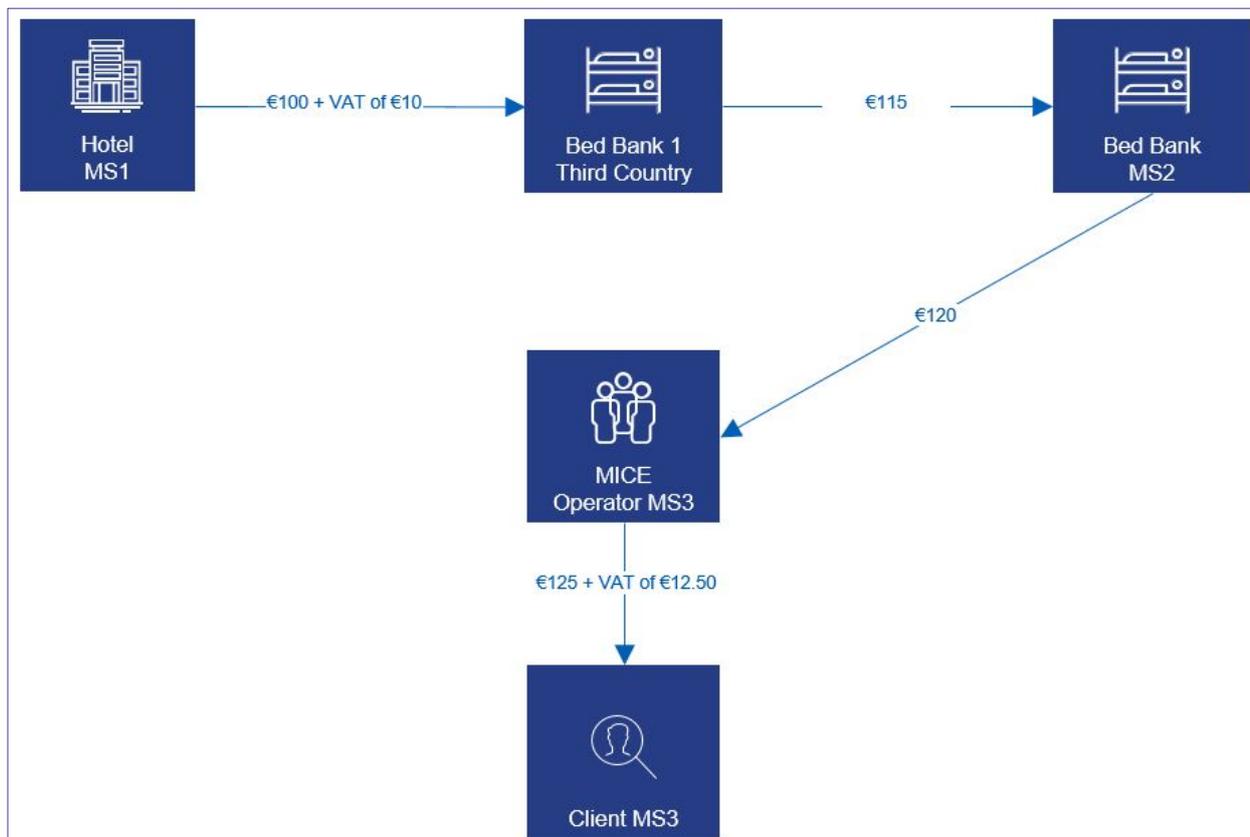
However, in order to prevent non-taxation, MS1 and MS2 could in the latter scenario invoke Article 59b of the VAT Directive and consider the place of supply of any or all of the services as being situated within their territory, because the effective use and enjoyment of the services takes place within their territory.

The DMC would then need to identify again the supplies made, attach a value to each and account for VAT in the Member State of supply at the rate stipulated by that State, while deducting input tax incurred. This would lead to the same results as under the multiple supply approach.

²⁴⁶ Based on apportionment of the total selling price to each component of the package by reference to the VAT-exclusive costs and then application of the 10% or 20% rate as appropriate.

6.14.5.3.3 Wholesale supply of accommodation by Bed Banks

Fig. 6g



In this example, we look at a supply chain of accommodation located in MS1. We first have Bed Bank 1 located in a third country and secondly Bed Bank 2 located in MS2. That Bed Bank 2 sells the accommodation to a MICE operator in MS3. For the purpose of this illustration, it is assumed that the MICE operator has elected not to apply the Special Scheme and that the services provided to the client, also established in MS3, are taxed in MS1. The accommodation supplied to the client is just a part of a wider range of services provided by the MICE operator (and taxed as appropriate in MS1). As far as the accommodation is concerned, the MICE operator declares VAT at the rate appropriate in MS1 and deducts any VAT charged to it in MS1 as its input tax. Both of the Bed Banks have quoted gross prices of respectively €115 and €120,

Under the current rules of the Special Scheme, it is generally accepted that Bed Bank 1 falls outside the scheme. It may have an obligation to register in MS1 but in reality is unlikely to have registered. Bed Bank 2 is making a wholesale supply of a single item: its current position will be determined by the interpretation of the Special Scheme in its Member State. Similarly, current interpretations mean that the position of the MICE operator is far from certain. Our purpose here is not to illustrate the current uncertainties and difficulties but to illustrate how the ideas set out in this section may apply to this situation but it is clear that a supply chain such as this faces difficulties.

Under a future regime, we assume that the third country Bed Bank 1 would be able to consider its position under the Special Scheme and whether electing for application of the normal rules would be preferable. Under the Special Scheme, if the current place of supply rule was maintained, Bed Bank 1 would not be subject to the scheme and the margin of €5 would be untaxed. Under a revised scheme, however, the place of supply could be either the place of establishment of the client (Bed Bank 2) or the place where the accommodation is consumed. In the former situation, Bed Bank 1 would need to pay margin VAT of €0.83 (assuming a VAT rate of 20%) to MS2 whilst in the latter situation, €0.83 (again assuming a standard rate of 20%) would be due in MS1. In either case, the net margin of Bed Bank 1 would be €4.17.

Alternatively, Bed Bank 1 could elect to apply the normal rules which would require it to have a means of paying VAT in MS1. It would then deduct the input tax of €10 in MS1 and pay output tax there of €10.45. Its net margin would be €4.55 and it would be in a position to provide a VAT invoice to Bed Bank 2.

Bed Bank 2 would be subject to the Special Scheme in MS2 unless it opted for the normal rules. Under the scheme, it would have a margin of €5 and net margin as above of €4.17. The VAT would be due in MS2, MS3 or MS1 depending on the place of supply adopted. Under normal VAT, Bed Bank 2 would need

pay VAT to MS1. It would deduct any input tax charged to it and pay output tax on its price of €120 of €10.91.

Given that the MICE operator has elected to apply the normal VAT rules, which may well be a term of its contract with its client, it is quite possible that Bed Bank 2 is obliged to provide a VAT invoice to the MICE operator. Bed Bank 2 could find itself in a position of being required to issue a VAT invoice for €109.09 plus VAT of €10.91. If Bed Bank 1 has also opted for normal VAT, that leaves Bed Bank 2 with a positive margin but if Bed Bank 1 is either within the Special Scheme or not VAT-registered in MS1, then Bed Bank 2 faces a loss on the transaction as the purchase price is greater than the net selling price.

In such a supply chain it might therefore be expected that commercial pressure would require third country Bed Banks to elect for normal VAT and to comply with the resulting obligations. It is accepted, however, that such commercial pressures would probably be smaller where a supply chain leads ultimately to a B2C supply.

6.14.6 The Special Scheme opt-out

We believe consideration should be given in respect of B2B supplies in each of the TMC, MICE and DMC sectors for the flexibility to adopt the Special Scheme or normal rules on place of supply, valuation and input tax deduction.

Such flexibility might be achieved by an option by which travel agents can elect not to apply the Special Scheme and instead to account for VAT under the normal rules. If an option is to be allowed, we prefer this opt-out approach to one in which all B2B supplies are excluded from the Special Scheme and the travel agent must elect to use the scheme.

Where an option is to be proceeded with, we believe that this “opt-out” approach would give Member States greater control over the process and greater assurance that VAT is paid. If the default position is that the Special Scheme applies, then VAT is due on the margin unless the travel agent has elected to use the normal rules and could demonstrate that he is in a position to pay the VAT due under the normal rules in the Member State of supply. If the means of declaring the VAT due in other Member States is MOSS, the tax authorities in the Member State of the travel agent’s establishment would have the means to verify that the VAT had been declared via the MOSS return. If there was no MOSS declaration, then VAT due under the Special Scheme could be enforced by the tax authorities (assuming that the place of supply is the Member State of establishment which would be so if the current place of supply is retained and would normally be the case if the place of supply became the customer’s place of residence/establishment).

However, if the default position was taxation under the normal rules, it could be more difficult for the tax authorities in the travel agent’s home Member State to enforce any liability where the travel agent had not opted for the Special Scheme but had not declared any VAT under the normal rules.

Where a travel agent exercises the option, this is primarily a matter between the agent and the tax administration of the country where they are identified.

Where the B2B customer is in another Member State, some administrative arrangements may be required.

A consequence of exercising the opt-out is the right to deduct input tax. In many cases, it is considered likely that the travel agent would be required to pay output tax in the Member State in which the input tax is incurred and, in such circumstances, the recovery of the input tax would be achieved by an offset against the output tax. It should be recognised, however, that there may be circumstances in which the travel agent has no liability to pay output tax in the Member State in which the input tax has been paid. In order for the right to recover the input tax to remain, the option taken in one Member State would need to be recognised by all other Member States.

The detailed operation of any opt out, including the ways in which the positions of Member States could be protected and abuse of the provision avoided, would need careful consideration.

6.15 Equality of treatment of EU and third country travel agents

Various options are considered above for the reform of the Special Scheme and these are assessed in terms of their compatibility with the need to promote simplicity, with the destination principle and with the other identified objectives as summarised in section 6.4. We have included some brief comments in the foregoing analysis on the effect of the measures for third country suppliers and we now consider these points in more detail.

We have concluded that differences in the VAT treatment of EU and third country travel agents are a material issue (see section 6.6). Due to technological advances, this is considered to be a considerably more significant issue now than it was when the Special Scheme rules were designed. As we discuss in section 6.17, digital technology will evolve further and become more influential in the distribution of travel. If the current differences continue, it seems very likely that the materiality of this issue will increase.

One of the factors against which each reform option must be assessed is the desire to approximate the obligations of EU and third country travel agents to promote equality of competition. We interpret this to mean that the obligations in terms of registering for VAT and charging VAT need not necessarily be the same as between EU established and third country travel agents but that the effect in terms of total VAT generated and the Member State(s) to which VAT accrues should, in material terms, be the same whether or not a third country travel agent is involved. A non-taxable person or taxable person unable to deduct all input tax should not be able to achieve a better position as a result of purchasing services from a third country travel agent.

We also believe it to be consistent with the nature of VAT that internationally traded services and intangibles should be taxed in the jurisdiction of consumption and that the so-called “on the spot” services should be taxed where the service is physically performed. It is

recognised that this rule might apply to B2B as well as to B2C supplies.

The distribution of EU travel is a global business. Many businesses involved in the distribution of travel are established outside the EU. We have seen that some of these have relocated from the EU for VAT reasons (at least as a part of the decision-making process) whilst others have always been established in a third country, in which circumstances the non-payment of EU VAT may have contributed to the growth of the business and may have helped the business to develop a position of competitive advantage when compared to EU travel agents.

The non-taxation of third country travel agents also contributes to the VAT gap.

Given the complexity of both travel distribution and the VAT rules in this area, identifying ways in which equality can be achieved is not easy but we believe that the measures proposed in this study can give rise to equality of treatment in the ways discussed below.

The place of supply within the current Special Scheme is the Member State of establishment of the travel agent or otherwise the Member State in which the agent has a fixed establishment. This has led to a situation in which third country travel agents are considered not to be covered by the Special Scheme.²⁴⁷ It is a moot point whether that means that third country travel agents are outside the scope of EU VAT altogether but it is clear, even if the third country travel agents are thought to be liable to EU VAT outside of the Special Scheme, and as result of the normal place of supply rules, that they are not taxed on the same basis as EU travel agents and equality therefore does not exist. Neither is the outcome the same in terms of VAT revenue generated when comparing an EU travel agent accounting for VAT under the Special Scheme with a third country competitor applying the normal rules on place of supply valuation and input tax deduction.

If equality of treatment is to exist, a change must therefore be made and indeed it seems that this was the Commission's intention in the 2002 Proposal. We have identified that the current Special Scheme place of supply rule promotes simplicity but is not consistent with the destination principle. Nevertheless, if the current rules were to be maintained, then we foresee that a scheme for third country travel agents might be introduced in which they choose a Member State of registration and make a Special Scheme declaration in that Member State. Naturally, the third country travel agent would often choose the Member State with the lowest standard rate of VAT (or otherwise the Member State which permits the lowest overall VAT payment) and therefore there would still be a competition imbalance with travel agents in a Member State with a higher rate.

We also foresee a requirement for the distribution of the revenue arising to the other Member States. This might be done by requiring detailed record-keeping by the travel agent so that VAT revenue could be

allocated accurately but that would impose serious compliance on the travel agent and would not promote compliance with the need to pay VAT. Alternatively, the VAT might be allocated by reference to general EU tourism statistics. Whichever way it is looked at, however, this approach is not ideal.

We considered two options for the reform of the taxation of the margin. If the travel agent is considered to supply a separate supply then taxing the margin in the customer's Member State might be appropriate whilst taxing the travel agents in the Member State of consumption of the travel facilities themselves might be the way forward if the travel agent is thought to supply the travel facilities themselves.

Either can be said to create equality between EU travel agents and their third country counterparts. In the former case, all travel agents are supplying services in the Member State in which customers, both business and non-business, are established or resident as the case may be. The obligation to register and pay VAT in the Member State in which a client is established/resident would apply regardless of the location of the supplier. Furthermore, the rate of VAT is that applied by the Member State of establishment/residence and therefore the same rate would apply to all travel agents. There would be no need for any redistribution of VAT collected.

In the latter case, all travel agents would supply services in the Member State in which the travel facilities are consumed and again there would be no distinction between EU and third country travel agents. The rate(s) would again be those stipulated by the Member State of supply.

The first approach (taxation in the Member State of the client's establishment/residence) would limit the collection of VAT to supplies made to EU clients. Supplies to non-EU persons would not be subject to VAT (on the margin – the services of the principal suppliers would still be subject to VAT) both when supplied by EU and non-EU travel agents. As noted,²⁴⁸ we believe an exemption can be justified when selling non-EU travel to EU established/resident clients. The effect is that the margin would only be subject to VAT when selling EU travel to EU customers. This applies equally to EU and third country travel agents. It may be concluded that it is desirable to tax third country travel agents only when they sell to EU customers. Those third country travel agents selling only to non-EU clients would remain outside the scope of the EU VAT system.

In the second model, however – taxation in the Member State of the consumption of the travel facilities – there is, we believe,²⁴⁹ difficulty in not taxing the margin made on all travel consumed within a Member State. Therefore, third country travel agents (as well as those in the EU) would need to pay VAT in more circumstances – i.e. sales to non-EU individuals and businesses visiting the EU would be subject to VAT on the margin. This would raise more revenue but may be difficult to justify.

²⁴⁷ See section 5.5

²⁴⁸ See section 6.12

²⁴⁹ See section 6.13

Next, we need to consider how the normal place of supply, valuation and input tax deduction rules would apply to third country travel agents if the Special Scheme ceased to exist.

We have identified that the supply of stand-alone services, outside of the Special Scheme, would take place in the Member State of consumption.²⁵⁰ Third country travel agents would, therefore, in principle have to register in each Member State in which they supplied such services. This would be the same requirement as faced by EU travel agents. In principle, the same VAT should be collected regardless of the location of the supplier.

Where a travel package is supplied, we again have the issue of determining the proper treatment of the package. If the package is considered to be either a multiple supply or a single supply taxable on the basis of its predominant element, the outcome should be the same whether the supplier is an EU person or not as the location of the supplier makes no difference to the place of supply. However, if the general rule is appropriate, when supplied to a non-taxable person the place of supply would be the place of establishment of the supplier.²⁵¹ Where the supplier is a non-EU business, the supply would then, in principle, be outside the scope of EU VAT (and it would appear that the input tax, in principle, should be deductible). It is likely that Member States may therefore invoke the use and enjoyment rules to overcome this.

A question arises whether an opt-out from the Special Scheme, would be given to third country travel agents. If an opt-out was available for EU travel agents, it would need to be considered whether this would be made available also for third country suppliers to ensure equality of treatment.

6.15.1 Reverse charge

We have considered how the reverse charge mechanism may be used to simplify the requirements of third country travel agents. Unfortunately, where the Special Scheme applies we do not envisage a role for the reverse charge as a means to declare the margin VAT as it would involve disclosure of the margin value to the client.

6.16 The use of MOSS for travel services

We describe the existing Mini One Stop Shop (“MOSS”) arrangements in section 6.9 and now consider how the MOSS might assist in the compliance obligations of travel agents under the reform options considered in this section 6.

As have discussed, one of the aims of the Special Scheme is simplification. This is achieved by the taxation of the margin in the Member State in which the travel agent is established. The travel agent therefore only pays VAT on the margin in his home Member State and a need to pay VAT in other Member States does not arise within the Special Scheme itself. We should recognise, however, that the wider rules for the taxation of travel services do create obligations to pay

VAT in other Member States. This can be the case when a travel agent supplies in-house services, B2B supplies which are interpreted by certain Member States to fall outside the scheme and intermediary services in the B2C sector. A form of MOSS or other similar simplification may however only help travel agents in the B2C sector to comply with existing obligations.

As described in section 6.9, the MOSS used in the TBE sector allows taxable persons to make a single declaration of VAT due on B2C supplies of TBE services as an alternative to registration in and the separate payment of VAT to multiple Member States. The same simplification could be used, again on an optional basis, by travel agents whose activities require payment of VAT in two or more Member States. This could be the case whether the VAT is due under a revised version of the Special Scheme or under the normal rules. We suggest that consideration should be given, as a means to assist Member States in their control of VAT, to separate declarations of the VAT due under the Special Scheme and that payable under the normal rules.

A feature of the existing MOSS is that it only facilitates the declaration of VAT payable; there is no means by which input tax may be deducted. A supplier of TBE services declaring VAT due via the MOSS which incurs input tax in the Member State involved must make a separate claim for recovery of that input tax. The same approach is valid where the VAT due is payable under the Special Scheme as it would remain a feature of the Special Scheme as envisaged in this report that input tax on the purchase of travel facilities would remain non-deductible. Travel agents using the MOSS for the declaration of Special Scheme output tax could submit an Electronic VAT Refund claim (EU travel agents) or a claim under the 13th Directive (third country travel agents) for deduction of VAT incurred on overhead costs.

However, a key feature of the application of normal VAT to the activities of a travel agent would be payment of VAT on the full value of supplies made and the deduction of related input tax. This input tax would normally be incurred in the same Member State as that in which the output tax is payable. This distinguishes the travel agent accounting under normal VAT principles from one within the Special Scheme and indeed from those operating within the TBE sector, who, it is thought, typically incur little, if any, input tax in the Member State(s) in which the output tax is due. If a travel agent was required to pay output tax due but then suffer a delay in the recovery of the associated input tax this may impose cashflow costs. We believe that a way should be found to allow for the deduction of input tax on the MOSS declaration which does not jeopardise Member States' ability to control and audit taxpayers' declarations.

6.17 Future developments in the travel sector

We now consider briefly how the travel market will develop. In section 2.5 we summarised some of the

²⁵⁰ See section 6.11

²⁵¹ Article 45 of the VAT Directive

recent changes which have impacted upon the travel sector. This section considers how the sector may change further and assesses each of the options against the anticipated changes.

Section 2.5 discusses recent technological developments and describes their impact on travel. Technology will continue to develop and will continue to influence the distribution of travel. It seems inevitable that digital technology will continue to become even more influential. This will facilitate ever easier targeting of EU consumers from third country locations, thereby increasing the importance of deciding how the sale of EU consumed travel made by travel agents established outside the EU should be achieved.

If left unaddressed, the current inequality in treatment of EU and third country travel agents is likely to become an even more significant issue.

Technology is also likely to assist in the continued growth of DIY travel, i.e. the purchase of separate travel components from a number of suppliers rather than the purchase of a packaged product from a single supplier. Effective taxation of such suppliers of single components when selling services consumed within the EU will thereby become even more important.

Technological developments have also led to greater complexity in the wholesale distribution of travel with the evolution of businesses such as Bed Banks who depend on high volume low margin sales. Travel businesses now depend on such intermediaries to a much greater extent and sourcing services direct from primary suppliers such as hotels and airlines is now less common than it once was. Much of the value earned from travel distribution is earned by such intermediaries. If Member States are to derive revenue from the full value of the distribution chain then a way of taxing each party in the chain needs to be found.

The anticipated further growth of the DIY market is likely to see even greater prominence of the sharing economy. Finding a way to tax services distributed via sharing economy intermediaries will become ever more important if Member States are to receive VAT revenue on the full value of travel services enjoyed in the EU. We have seen recently how Italy intends to ensure income tax is paid on income earned by persons operating within the sharing economy.²⁵²

Tourism is expected to grow significantly. As discussed in section 2.5, international tourist arrivals in 2016 were 1.2bn; by 2030 this is forecast to reach 1.8bn.²⁵³ Much of this growth is expected to originate in Africa, the Middle East and Asia-Pacific. As we also saw in section 2.5, however, the anticipated growth of European tourism is much lower than the global forecast. The fastest growing destinations are expected to be outside Europe and include India and China. This all tells us that the EU is likely to represent a smaller part of total global tourism, that Europeans will spend a larger part of their travel budget to visit

third countries and that a larger proportion of those enjoying travel within Europe will be residents of third countries. Reaching a conclusion on the desirability or otherwise of taxing EU residents travelling to a third country destination and third country residents visiting the EU will become ever more important.

We will now look at the options considered above against these anticipated developments.

The first point to make is that the continuation of the current Special Scheme rules would not help in the context of the likely developments. The current place of supply rule would not assist in the taxation of travel agents established in third countries. Also, given the inconsistent approach in the treatment of wholesale suppliers, much of the revenue which might be paid by intermediate suppliers, both established within and outside the EU, would not be collected. The margin on travel sold to EU residents travelling to third country destinations would not be subject to VAT and the margin on EU travel sold to third country residents also would not be subject to VAT, unless the supplier was an EU established travel agent or the travel agent was registered for VAT in the Member State(s) in which the travel was consumed.

A switch to a place of supply test based either on the consumer's place of establishment/residence or the place of consumption of the travel facilities would bring travel sold by third country agents within the scope of EU VAT and would therefore help to protect revenue if third country agents take a larger share of the EU travel market. Also, as discussed in section 6.14, the model based on the customer's place of establishment/residence could incorporate taxation when the customer buys travel to a third country (although as discussed we believe that exemption of such services can continue to be justified).

Wide use of the Special Scheme appears to be an appropriate way in many circumstances to ensure all participants in a supply chain are subject to VAT, particularly when combined with a change in the place of supply. However, for the reasons discussed in this study, we believe that there should be an option to exclude travel facilities from the Special Scheme when supplied on a B2B basis and particularly where the final customer is a business. Where a travel agent opts to apply the normal rules, VAT will be paid in the Member State of destination (assuming that the appropriate place of supply rule is consistent with the destination principle) and uniform application of the rules would ensure that travel facilities supplied within the EU at all stages of the supply chain would be taxed, but we appreciate that achieving such a level of compliance may be a daunting task.

6.18 Findings

In Section 5, we identified two distortions of competition arising from:

payment from the guest, to withhold the 21% from the property owners and pay it directly to the tax authorities on behalf of the accommodation provider

²⁵³ World Economic Forum: The Travel & Tourism Competitiveness Report 2017

²⁵² Italy adopted new legislation on the taxation of short-term rentals which came into effect as from 1 June 2017. According to this legislation, private individuals renting real estate for under 30 days have to pay a flat 21% tax instead of the normal income tax that starts at 23%. The legislation obliges all intermediaries supplying short-term accommodation rentals in Italy, including on-line sites that collect

- The application of VAT to wholesale supplies; and
- The differing interpretations placed on the term “travel facilities”.

We also identified two material issues arising from the Special Scheme rules and their application, namely;

- The application of VAT to EU third country travel agents; and
- The need for a transaction by transaction calculation of VAT due.

We also highlighted a significant drawback inherent in the scheme in the form of the inability to deduct input tax on costs to be supplied to a business client. These are all summarised in section 5.2. In addition, there are numerous other aspects of the current Scheme (described throughout section 5) which, whilst not considered to be material overall, do nevertheless represent problems for many travel agents and contribute to the lack of harmonisation in the VAT obligations of travel agents.

A key objective of our analysis of options for reform has been to assess how the options considered would address the distortions of competition, material issues, the drawback in respect of input tax non-deductibility and the other problems we have identified.

In addition, all options have been considered against the identified objectives set out in section 6.4.

6.18.1 Abolition of the Special Scheme

Our analysis includes an assessment of the implications of the abolition of the scheme and the introduction of a regime incorporating the normal rules on place of supply, valuation and input tax deduction. Our main findings in this regard are a likely fall in total VAT revenue from the EU travel sector, a re-allocation of revenue between Member States and a large increase in the compliance burden for travel agents.

As far as revenue is concerned, abolition of the current Special Scheme would remove the input tax block. Travel agents would be entitled in principle to a deduction of the input tax incurred on the cost components of supplies to be taxed under the normal rules. The estimated circa €5.6bn currently irrecoverable input tax (across all Member States) would no longer be irrecoverable. In addition, the VAT due under the scheme on the margin achieved, estimated as circa €1.9bn would also no longer be due. The aggregate of these two amounts is €7.5bn. This is the estimated existing revenue generated by the Special Scheme for the Member States.

These amounts would be replaced by output tax on the full value of supplies made in the Member State of supply and at the rate(s) stipulated by that Member State. In aggregate, the revenue arising from B2C supplies under normal rules would be likely to be less than that generated by the current scheme, i.e. the aggregate of blocked input tax and margin output tax as the value added (i.e. the margin) would often be taxed at the reduced rate. There would also be a re-allocation of revenue between Member States, as illustrated below.

Under normal rules, on the assumption that the output tax revenue for B2B supplies to taxable businesses would be negligible, the indicatively estimated circa €1.15bn irrecoverable input tax on direct costs of B2B supplies and €0.29bn irrecoverable Special Scheme output tax declared on B2B supplies would be significantly reduced.

From a quantitative perspective, there is insufficient data available to break down the circa €5.6bn Special Scheme irrecoverable VAT estimate by Member State of destination, and a much more extensive exercise would therefore be required to fully quantify the impact of the potential revenue shift impact of removing the input tax block.

As an indication, per the illustrative calculation outlined at Annex 3, the VAT generated for Spain in 2015 from the inability of UK travel agents to recover input tax can be estimated at circa €102m. By a similar method revenue collected in the UK on these supplies could be estimated at between circa €34m and €56m.

Broadly equivalent figures for travel from Germany to Greece would indicate the VAT generated for Greece in 2015 from the inability of German travel agents to recover input tax can be estimated at circa €33m whilst revenue collected in Germany on these supplies could be estimated at circa €12m.

The following paragraphs focus on the UK to Spain example, as an illustration of a pairing of Member States with a significant magnitude of intra-EU travel and therefore a significant potential for shift in VAT revenue.

Abolition of the Special Scheme would see the UK lose the e.g. circa €34m – €56m scheme VAT and Spain would no longer benefit from the circa €102m irrecoverable input tax. However, Spain would gain output tax on the full value of the Spanish services. As the rate to be paid (at least following the multiple supply approach) by the travel agent would (normally) mirror that charged by the suppliers of services to the agent, and because the agent would normally enjoy a mark up on the services, it could be expected that the output tax collected in Spain would be greater than the currently irrecoverable input tax. Spain would gain from such a change.

The UK of course would enjoy no output tax on travel facilities enjoyed in Spain and therefore a change to the normal rules would see the UK lose the estimated circa €34m-€56m currently collected on the margin of UK travel agents selling travel to Spain.

We do not have data for how much inbound intra-EU travel to the UK comprised Spanish citizens visiting the UK, so we cannot look at the respective effects on Spanish and UK revenue of Spanish travel to the UK under the normal rules. However, it seems clear that the UK would gain less new revenue if the Special Scheme was abolished than it would lose. Spain on the other hand, as noted above, would gain. This is to be expected. Net exporters of intra-EU travel services, for example Spain, should gain (all else being equal) from the introduction of the normal VAT rules whilst net importers, such as the UK, could be expected to lose.

Our example in section 6.11 shows a similar outcome.

We should also point out that application of the normal VAT rules would result in the loss of much of the indicatively estimated €1.15bn irrecoverable input tax on direct costs of B2B supplies and €0.29bn irrecoverable Special Scheme output tax declared on B2B supplies.

Our conclusion on the probable overall loss of VAT revenue if the normal VAT rules were to replace the Special Scheme is based on a comparison of VAT payable now and under the normal rules by EU established suppliers. As discussed elsewhere, application of the normal rules would also involve, in principle, an obligation on travel agents in third countries to pay EU VAT on travel consumed within the EU and this would generate considerable extra revenue which may outweigh the loss suffered overall by the Member States on revenue generated by the activities of EU travel agents. As discussed elsewhere, however, we perceive difficulties in justifying to third country agents a need to pay EU VAT on their own services supplied to residents of their own country.

Mainly due to the considerable extra complexity and the effects on third country agents, we do not think that the compulsory application of normal VAT rules is desirable, but we have recognised that the optional use of the normal rules might be introduced in the B2B sector in order to allow for input tax deduction.

6.18.2 The operation of a future Special Scheme

We have then considered the merits of a scheme based on taxation of the margin as a means to simplify the obligations of travel agents and to achieve an agreed allocation of revenue. We have concluded that there are good grounds to retain such a scheme.

However, it is appropriate to consider how the Special Scheme may be reformed. Our analysis takes as its base line the current scheme as interpreted by the CJEU. One aspect of the current scheme is the need to calculate the margin and VAT due on a transaction by transaction basis. We have concluded that such a basis of the calculation is unduly complex and places a heavy burden on travel agents. It also increases the difficulties faced by Member States in their review of travel agents' declared liabilities. A change so that the margin and VAT due are calculated on all supplies within the scheme made over a period (the length of which can be left to the discretion of Member States) has merit and furthermore should not have a material impact on total Member State revenues.

We believe that this one change to the current Scheme should be made, even if other reform measures are not pursued.

We have considered the options available for the place of taxation of the margin. We believe there are three key options:

- 1 Continue with the current approach, i.e. taxation in the Member State in which the travel agent is established;

- 2 Change the place of taxation to the place of residence of the customer;
- 3 Change the place of taxation to the place at which the travel facility provided is consumed.

We have considered all three in the context of the objectives of the Special Scheme and the need to respect the destination principle and the wider aims of the EU VAT system.

We believe that all of these options are consistent with the destination principle in terms of the non-deductibility of input tax on costs. We have considered their compatibility with this principle as regards the taxation of the margin and the wider requirements of the reform objectives.

As far as taxation of the margin is concerned, we believe option 3 is consistent with the destination principle but would introduce undue complexity to the VAT accounting of travel agents. Under this approach, it could be seen as consistent to adopt a rate of VAT on the margin equal to the rate applied to the equivalent services when supplied outside of the scheme. Whilst this would remove a complaint often made by travel agents, it would introduce considerable further complexity and undermine one of the objectives of the scheme, namely simplification for taxpayers. The quantitative impact of a rate change would require a detailed breakdown of Special Scheme package income between component elements, which would require a more detailed exercise beyond the questionnaire outlined at Annex 3.

Option 3 would also create a re-distribution of revenue from those Member States with a net tourism outflow to other Member States to those with a net inflow.

From a quantitative perspective, there is insufficient data available to break down the circa €1.9bn Special Scheme margin VAT estimate by Member State of customer residence or of consumption, and a much more extensive exercise would be required to fully quantify the impact of these options. The place of residence of the customer in many cases is considered likely also to be the place of establishment of the travel agent, such that a shift to option 2 is unlikely to have as quantitatively significant an impact as a shift to option 3.

Regarding option 3, as an indication, per the illustrative calculation outlined in Annex 3, the net decrease to UK Special Scheme income under option 3 could be estimated to be in the order of circa €0.14bn.²⁵⁴ Other Member States would stand to benefit from this shift, whilst many other Member States would suffer a proportionally similar decrease in revenues. Data was not available to allow this impact to be quantified more widely. It can be expected though that those Member States which are net exporters of intra-EU travel would benefit from the change whilst net importers would lose revenue. We draw attention to the expectation that an implication of a place of supply approach based on the location of consumption of travel facilities supplied,

²⁵⁴ This is an indicative figure only, notably relying on the assumption that all Member States involved are equivalent to the "average"

Member State covered by the questionnaire respondent, and ignoring variations in local VAT rates.

would be the re-allocation of revenues which would need to be agreed between Member States.

Option 2, i.e. treating the customer's place of establishment or residence as the place of supply, can also be interpreted, we believe, as being consistent with the destination principle. This is dependent on a view that a travel agent supplies its own service separate to the provision of the travel facilities themselves. We have considered this point further above. We believe that in respect of Option 2, it is appropriate to view the travel agent as supplying such a separate service and that the place where this service is consumed (i.e. the place of destination) is the place where the customer normally resides or, where the customer is a taxable person, where the customer is established (or has a fixed establishment to which the supply is made). We believe that option 2, therefore, is also compatible with the destination principle and that it is more faithful to the objective of simplification than Option 3. It is recognised, however, that there are circumstances in which travel agents would find Option 2 difficult to administer and that it would be appropriate to identify a set of criteria to be applied in determining the place of supply which would be compatible with the destination principle and also with the need to avoid complexity (see section 6.13).

It is thought that most travel agents make the large majority of their sales to customers (certainly in the B2C sector) resident in the same Member State. In many cases, therefore, option 2 would give the same result as option 1 and accordingly there would not, we believe, be a significant re-allocation of revenue between Member States.

Option 1 is not, we have concluded, compatible with the destination principle in terms of the taxation of the margin but, in common with the other options, is compatible as regards the non-recovery of input tax. As the larger part (estimated at circa €5.6bn) of VAT revenue generated by the scheme arises from the non-deduction of input tax and because it is thought most customers are located in the Member State in which the travel agent is established, it can be concluded that option 1 broadly achieves a result in line with that required with the destination principle.

Given the simplicity associated with Option 1, it might be concluded that it is appropriate to continue with this model.

A drawback with option 1 is the difficulty of its application to third country travel agents. Both of options 2 and 3 have the effect of achieving equality of treatment, at least in principle, between EU and third country travel agents. Option 1 would perpetuate the current exclusion of third country travel agents from the scheme and an alternative means would be needed to achieve the equality desired. This is looked at in section 6.15.

We have also considered other ways in which the rules of the Special Scheme might be changed to ensure

greater certainty, harmonisation and achievement of the objectives of the scheme. These include a definition of the travel facilities covered by the scheme and clarification that the supply of a single travel service falls within the scheme.

The treatment of supplies to business clients is a key consideration. One of the main disadvantages of the current Scheme is the inability of travel agents to deduct input tax on costs within the scheme, requiring them to pass on VAT-inclusive costs to business clients. An indicatively estimated €1.15bn of the €5.6bn estimated irrecoverable Special Scheme VAT pertains to B2B supplies. This limits the ability of a business client to deduct VAT on costs used in the course of its taxable activities. The VAT paid on the margin is normally also non-deductible. This is estimated at €0.29bn in respect of B2B supplies and would be greater if it were not for the intermediary structures adopted by many in the B2B sectors. In many circumstances, the travel agent is placed at a competitive disadvantage – the combined effect of irrecoverable input tax and irrecoverable Special Scheme output tax is indicatively estimated at circa €1.44bn across the EU.

We have concluded that a significant drawback of the Special Scheme is the travel agent's inability to reclaim input tax on costs and therefore, it would be desirable from the travel agent's perspective to have a means by which the right to deduct input tax can be protected. This could be achieved by the use of the "normal" VAT rules. However, we have also concluded the Special Scheme offers certain simplification benefits. We believe detailed consideration should be given to the introduction of an option. This could be done by making the normal rules the default position but with an "opt-in" into the Special Scheme or by making the Special Scheme the default position but with an "opt-out". Where an option is introduced, we explain our preference for an "opt-out" (which we consider preferable to the exclusion of B2B supplies from the scheme (in 6.14.6).

We believe the "opt-out" approach would facilitate the business of operators within the TMC and MICE sectors.

The position in the DMC/wholesale sector is however more nuanced. A difficulty particularly in this sector is the status of a package of services when the Special Scheme is not applied. We believe there is little consistency on this point at the moment and that an agreed approach is needed if harmonisation is to be achieved. To identify the best approach, we believe it is first necessary to agree on the policy to be applied to the taxation in this sector. Whilst insufficient data is available to reliably estimate the impact on this specific sector, we have illustrated effects of varying approaches in this area in section 6.14.5.3, which can have a significant impact on certain affected businesses.

Annex 1

Questionnaire 1



Annex 1

Questionnaire 1 (current Special Scheme rules as applied by Member States)

i Are the following income streams included in your Member State's Special Scheme margin calculation?

	Income received from charges/fees made for payment by credit card	Income received relating to supplies made as "disclosed agent" when packaged with Special Scheme supplies for which the commission is not readily identifiable	Income received for Air Passenger Duty (APD) payable by the customer	Income (or cost reductions) in the form of discounts, "overrides" or commissions received from suppliers, (including such receipts received retrospectively)	Income received from the traveller in respect of insurance/travel cover/other guarantees or other protection	Income that is received from a traveller and paid to a specific (e.g. government) fund (e.g. special fund for damages occurring during travelling)
DK	Yes	No	Yes	Yes	No	Yes
SK	No	No	No	No	No	No
LT	No	No	Yes	Yes	No	No
PT	No	No	No	No	No	No
LU	Yes	No	Yes	Yes	Yes	Yes
BG	Yes	No	Yes	Yes	Yes	Yes
CY	Yes	Yes	Yes	Yes	Yes	No
ES	Yes	No	Yes	No	No	No
BE	Yes	Yes	Yes	Yes	Yes	Yes
SI	No	No	No	No	No	No
EL	Yes	Yes	Yes	Yes	Yes	No
LV	No	No	No	No	No	No
PL	No	No	No	No	No	No
EE	No	Yes	No	Yes	No	No
IT	No	No	No	No	No	No
IE	Yes	No	Yes	Yes	Yes	No
HR	Yes	Yes	Yes	Yes	Yes	Yes
SE	Yes	No	Yes	Yes	No	No
CZ	Yes	Yes	Yes	Yes	No	No
RO	Yes	No	Yes	Yes	Yes	No
AT	Yes	No	Yes	Yes	No	No
MT	No	No	Yes	Yes	No	No
NL	Yes	No	No	Yes	No	Yes
FR	Yes	No	Yes	Yes	Yes	No
FI	Yes	Yes	No	Yes	No	No
DE	Yes	Yes	Yes	Yes	No	Yes
HU	Yes	Yes	Yes	Yes	No	Yes
UK	Yes	Yes	Yes	Yes	Yes	No
Total yes	19	10	19	21	10	8
Total no	9	18	9	7	18	20

ii Are the following expenditure streams included in your Member State's Special Scheme margin calculation as cost of sales?

	Costs of refunds paid to travellers/customers for unsatisfactory service	Costs of discounts given to travellers/customer and funded by the taxpayer	Costs of bad debts suffered in respect of the supply of travel facilities	Costs of brochures	Costs of advertising	Costs of inspection trips made to research resorts, facilities etc.	Costs of office expenses (telephone, IT equipment, office stationery, rent etc.)	Costs of professional advisory services (e.g. accountancy, legal and other similar fees)	Costs of the hiring or employing representatives at airports or resorts, financial services (including bank, credit card transaction fees and foreign exchange charges)	Costs of HP, leasing and finance charges for the purchase of assets (including those used in making in-house supplies)	Costs of market research	Costs of commission paid to selling agents	Cost of in-house supplies "packaged" with travel facilities subject to the Special Scheme	Costs of insurance relating to Special Scheme packages
DK	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
SK	No	No	No	No	No	No	No	No	No	No	No	No	No	No
LT	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
PT	No	No	No	No	No	No	No	No	No	No	No	No	No	No
LU	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BG	Yes	No	No	No	No	No	No	No	No	No	No	No	No	Yes
CY	No	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes
ES	No	No	No	No	No	No	No	No	No	No	No	No	No	No
BE	No	No	No	No	No	No	No	No	No	No	No	No	No	No
SI	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	Yes
EL	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	Yes
LV	No	No	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
PL	No	No	No	No	No	No	No	No	No	No	No	No	No	No
EE	Yes	Yes	No	Yes	No	No	No	No	No	No	No	No	No	Yes
IT	No	No	No	No	No	No	No	No	No	No	No	No	No	No
IE	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	Yes
HR	No	No	No	No	No	No	No	No	No	No	No	No	No	No
SE	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
CZ	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
RO	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	Yes	Yes
AT	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes
MT	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No
NL	Yes	Yes	No	No	No	No	No	No	Yes	No	No	No	No	Yes
FR	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	No	Yes
FI	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No
DE	Yes	Yes	Yes	No	No	No	No	No	Yes	No	No	No	No	No
HU	No	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes
UK	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes
Total yes	18	19	10	3	2	2	2	2	3	2	2	6	7	14
Total no	10	9	18	25	26	26	26	26	25	26	26	22	21	14

- iii **Article 306 of the Principal Directive applies a special VAT scheme to transactions undertaken by travel agents as principal to customers / travellers in the provision of "travel facilities". We would like to understand what your Member State accepts as "travel facilities". In your Member State, please confirm which services are considered to be the provision of "travel facilities" within the scope of the Special Scheme as a margin scheme supply. In particular, when bought in and re-sold as principal, are the following supplies subject to the Special Scheme:**

	Accommodation (hotel, guest house or other overnight accommodation)?	Accommodation (meeting room, function room or other event space)?	Passenger transport?	Hire of a means of transport?	Organised sightseeing trips, visits or excursions?	Services of tour guides?	Use of special lounges at airports?	Restaurant meals?	Catering?	Admission tickets (including sports and theatre tickets etc.)?	Sport facilities?
DK	Yes	No	Yes	No	No	No	No	No	No	No	No
SK	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
LT	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No
PT	Yes	Yes	Yes	No	Yes	No	No	No	No	No	No
LU	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BG	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CY	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No
ES	Yes	Yes	Yes	No	No	No	No	No	No	No	No
BE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SI	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
EL	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
LV	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
PL	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
EE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
IT	No	No	No	No	No	No	No	No	No	No	No
IE	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No
HR	Yes	No	Yes	No	No	No	No	No	No	No	No
SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CZ	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
RO	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
AT	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No
MT	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NL	Yes	No	Yes	No	Yes	No	No	No	No	No	No
FR	Yes	No	Yes	Yes	No	No	No	No	No	No	No
FI	Yes	No	Yes	No	Yes	No	No	No	No	No	No
DE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
HU	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UK	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Total Yes	27	12	27	17	23	20	18	14	14	14	12
Total No	1	16	1	11	5	8	10	14	14	14	16

Annex 2

Questionnaire 2



Annex 2

Questionnaire 2 (Business Questionnaire)

2.1 EU businesses

The phrase "Special Scheme" refers to the Special VAT Scheme for Travel Agents, per Article 306 of the EU VAT Directive (also known as TOMS).

The intent of this questionnaire is to gather as much information as possible, and therefore if you are able to complete multiple questionnaires for the different parts of your business in different countries, as explained below, this would be very useful. For example, a Tour Operator business and Travel Management Company with establishments in France, Germany and Norway could complete up to six questionnaires, in respect of the Tour Operator and Travel Management businesses respectively in each country. However, if this is onerous, please simply complete questionnaires only for the countries and business models which you consider to be most significant.

To the extent possible, please complete one survey in respect of each country in which your business is established for VAT purposes, in respect of any transactions made by that establishment.

Survey

- 1) Please confirm the country to which these questionnaire responses relate.

Answer

- 2) Please refer to the attached explanations of five key business models:

- Tour Operator
- Travel Agent
- Travel Management Company
- Destination Management Company
- Meetings, Incentives, Conferences and Events business.

Many travel businesses will operate in two or more of these business models.

To the extent possible, please complete separate questionnaires for each business model operated by your business. Where your management accounting information does not allow you to access separate figures, please select from the drop-down list the business model which best describes the business model to which your figures relate

Answer

- 3) Please confirm the name of your business (or the division of your business) to which your responses relate.

Answer

This information will be treated as strictly confidential and will not be shared with the European Commission or any other party.

- 4) Please confirm the total annual turnover of the business/division named at question (3). Please note the currency.

Answer

- 5) Please confirm the date of the year-end to which these figures relate.

Answer

- 6) Please confirm what % of the turnover at question (4) relates to travel to an EU destination.

Answer

- 7) Please indicate your average gross margin %.

Answer

8) Please confirm what % of the turnover at question (4) (if any) is received as "intermediary".

Answer

9) Please confirm what % of the turnover at question (4) is subject to the Special Scheme.*

*Please note that your answer to this question should include all turnover which forms part of the workings for a Special Scheme calculation in the Member State referred to at question 1.

Answer

10) Of the turnover subject to the Special Scheme (at question (9)), please confirm:

a) What % relates to travel with a destination inside the EU?

Answer

b) What % relates to sales made to consumers residing outside the EU?

Answer

c) What % relates to sales made to businesses belonging outside the EU?

Answer

d) What % relates to each respective EU Member State of destination?

Answer	Member State	%	Member State	%
	Austria	<input type="text"/>	Ireland	<input type="text"/>
	Belgium			
	Bulgaria			
	Croatia			
	Cyprus			
	Czech Republic			
	Denmark			
	Poland			
Member State	%	Member State	%	
	Estonia	Portugal	<input type="text"/>	
	Finland	Romania		
	France	Slovakia		
	Germany	Slovenia		
	Greece	Spain		
	Hungary	Sweden		
	Italy	UK		

e) What % is generated from business-to-business sales to other businesses?

Answer

f) What % is generated from business-to-consumer sales to individual travellers?

Answer

11) Please confirm the value of Special Scheme output VAT declared on the profit margin made on the turnover at question (9).

Answer

12) Please confirm or estimate the value of irrecoverable VAT incurred on direct costs of Special Scheme supplies.

Answer

13) Please confirm the value of recoverable VAT incurred on direct costs of sale in relation to turnover from Special Scheme supplies.

Answer

14) Please confirm the value of output VAT accounted for under "normal rules" (i.e. outside of the Special Scheme) in relation to the turnover at question (4).

Answer

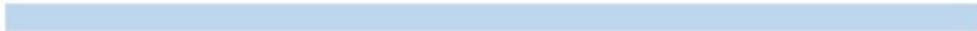
15) Please explain any issues from your experience of the Special Scheme that you would like to be considered in the course of the EU Commission's study.

Answer



16) (Optional) Please confirm the value of EU travel facilities purchased from non-VAT registered suppliers.

Answer



17) (Optional) To the extent that your business has any entities which supply travel services but are not VAT registered owing to turnover below the VAT registration threshold, please confirm the total value of this turnover.

Answer



Thank you!

2.2 Non-EU businesses

The EU Special VAT Scheme for Travel Agents (the "Special Scheme") affects travel businesses operating in the EU.

We understand that your business has no establishment within the EU and as such is not subject to the Special Scheme.

The intent of this questionnaire is to gather as much information as possible, and therefore if you are able to complete multiple questionnaires for the different parts of your business in different countries, as explained below, this would be very useful. For example, a Tour Operator business and Travel Management Company with establishments in US, Turkey and Norway could complete six questionnaires, in respect of the Tour Operator and Travel Management businesses respectively in each country. However, if this is onerous, please simply complete questionnaires only for the countries and business models which you consider to be most significant.

To the extent possible, please complete one survey in respect of each country in which your business is established in respect of any transactions made by that establishment.

Survey

- 1) Please confirm the country to which these questionnaire responses relate.

Answer

- 2) Please refer to the attached explanations of five key business models:

- Tour Operator
- Travel Agent
- Travel Management Company
- Destination Management Company
- Meetings, Incentives, Conferences and Events business.

Many travel businesses will operate in two or more of these business models.

To the extent possible, please complete separate questionnaires for each business model operated by your business. Where your management accounting information does not allow you to access separate figures, please select from the drop-down list the business model which best describes the business model to which your figures relate

Answer

- 3) Please confirm the name of your business (or the division of your business) to which your responses relate.

Answer

This information will be treated as strictly confidential and will not be shared with the European Commission or any other party.

- 4) Please confirm the total annual turnover of the business/division named at question (3). Please note the currency.

Answer

- 5) Please confirm the date of the year-end to which these figures relate.

Answer

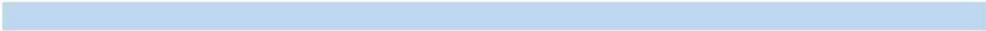
- 6) Please confirm what % of the turnover at question (4) relates to travel to an EU destination.

Answer

- 7) Please indicate your average gross margin %.

Answer

8) Please confirm what % of the turnover at question (4) (if any) is received as "intermediary".

Answer 

9) Please explain any issues from your experience of the Special Scheme that you would like to be considered in the course of the EU Commission's study.

Answer 

10) (Optional) Please confirm the value of EU travel facilities purchased from non-VAT registered suppliers.

Answer 

11) (Optional) To the extent that your business has any entities which supply travel services but are not VAT registered owing to turnover below the VAT registration threshold, please confirm the total value of this turnover.

Answer 

Thank you!

Annex 3

Quantitative Analysis



Annex 3 Quantitative analysis

Section 1 of this Annex explains the analysis used to compile macroeconomic data in the form of indicative European turnover figures pertaining to the Special Scheme, as per section 6 of this report.

Section 2 of this Annex explains how these macroeconomic figures were augmented by the business questionnaire sent to travel businesses within each of the business models identified in section 4 to make indicative calculations of VAT figures.

3.1 Section 1: Turnover – Europe

The source data for Europe has been obtained from EUROSTAT. A review of NACE codes identified four categories of detailed statistics for services which captured data for the five business areas as follows:

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=sbs_na_1a_se_r2&lang=en

3.1.1 N79 – Travel Agencies

<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

This class includes activities of agencies primarily engaged in selling travel, tour, transportation and accommodation services to the general public and commercial clients.

3.1.2 N79.1.2 – Tour operators

<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

This class includes arranging and assembling tours that are sold through travel agencies or directly by tour operators. The tours may include transportation, accommodation, food, and/or visits to museums, historical or cultural sites, theatrical, musical or sporting events.

3.1.3 N79.9.9 - Other

<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

This class includes:

- Provision of other travel-related reservation services
- Reservations for transportation, hotels, restaurants, car rentals, entertainment and sport etc.
- Provision of time-share exchange services
- Ticket sales activities for theatrical, sports and other amusement and entertainment events
- Provision of visitor assistance services:
- Provision of travel information to visitors
- Activities of tourist guides
- Tourism promotion activities.

This class excludes:

- Activities of travel agencies and tour operators (see 7911, 7912)
- Organisation and management of events such as meetings, conventions and conferences, (see 8230).

3.1.4 N82.3.0 – Organisation of conventions and trade shows

<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

This class includes organisation, promotion and/or management of events, such as business and trade shows, conventions, conferences and meetings, whether or not including the management and provision of the staff to operate the facilities in which these events take place.

<https://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lq=1&Co=8230https://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lq=1&Co=8230>

The data could also be obtained for **N79 Travel agency, tour operator, reservation service and related activities** <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>. This provided the total data for N79.1.1, N79.1.2 and N79.9.9 detailed above. It is duplicate data but has proved useful for filling in data gaps within individual NACE code information as detailed below.

3.2 Turnover - North America

The source data for the US has been obtained from the US Census Bureau (<https://www.census.gov/services/index.html> Table 2: Estimated Revenue by Tax Status for Employer Firms: 2007 through 2015).

The source data for Canada has been obtained from Statistics Canada (<http://www5.statcan.gc.ca/cansim/pick-choisir?lang=eng&p2=33&id=1800003>)

Both of these data sources use NAICS codes. A review of NAICS codes identified 4 categories of detailed statistics for services which captured data for the five business areas as follows:

3.2.1 561510 Travel Agencies

This industry comprises establishments primarily engaged in acting as agents in selling travel, tour, and accommodation services to the general public and commercial clients.

3.2.2 561520 Tour Operators

This industry comprises establishments primarily engaged in arranging and assembling tours. The tours are sold through travel agencies or tour operators. Travel or wholesale tour operators are included in this industry.

3.2.3 561591 Convention and Visitors Bureaus

This US industry comprises establishments primarily engaged in marketing and promoting communities and facilities to businesses and leisure travellers through a range of activities, such as assisting organisations in locating meeting and convention sites; providing travel information on area attractions, lodging accommodations, restaurants; providing maps; and organizing group tours of local historical, recreational, and cultural attractions.

3.2.4 561599 All Other Travel Arrangement and Reservation Services

This US industry comprises establishments (except travel agencies, tour operators, and convention and visitors bureaus) primarily engaged in providing travel arrangement and reservation services.

Illustrative Examples:

- Condominium time-share exchange services
- Ticket (e.g. airline, bus, cruise ship, sports, theatrical) offices
- Road and travel services automobile clubs
- Reservation (e.g. airline, car rental, hotel, restaurant) services
- Ticket (e.g. amusement, sports, theatrical) agencies

3.2.5 WTTC – Economic Impact Analysis

Information about the splits between business and leisure GDP and between foreign and domestic spend on travel and tourism in each country has been obtained from page 6 of the Economic Analysis Reports published by the World Travel and Tourism Council.

<https://www.wttc.org/research/economic-research/economic-impact-analysis/country-reports/>

3.3 Methodology – Europe

The Economic Indicator of “Turnover or gross premiums written” was selected in turn for each of the five NACE codes detailed above and the raw data was downloaded. The figures are in € ‘000,000s.

3.3.1 N79 – All – Travel agency, tour operation reservation services and related activities

GEO/TIME	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Estimated 2015
Austria	4,051.30	4,098.50	4,383.90	4,077.40	4,060.70	4,667.50	4,861.30	4,876.60	4,979.00	4,918.70	
Belgium	5,847.00	5,358.20	5,979.90	5,366.60	6,046.50	5,090.00	5,601.40	5,512.10	5,485.70	5,564.00	
Bulgaria	217.80	301.50	325.70	322.50	369.30	407.10	419.10	461.70	495.00	513.60	
Croatia			527.50	461.50	498.90	507.60	513.90	550.90	575.50	620.80	
Cyprus	110.20	116.40	124.00	93.20	99.00	89.60	88.90	68.40	69.40	74.80	
Czech Republic	1,435.50	1,651.50	2,024.00	1,690.70		1,811.70	1,845.80	1,950.00	1,830.40	1,963.50	
Denmark	3,033.30	3,274.80	3,302.80	2,722.70	2,718.50	2,864.60	3,095.00	2,915.30	2,728.80	2,831.40	
Estonia	147.00	177.80	184.20	129.90	157.80	171.80	187.80	188.30	222.80	232.10	
Finland	1,394.50	1,536.10	1,664.00	1,518.10	1,494.20	1,652.40	1,655.00	1,616.90	1,548.60	1,471.30	
France	12,791.70	13,234.40	15,384.40	13,766.50	13,512.00	13,950.50	13,713.40	13,673.10	13,155.80	13,128.50	
Germany	20,397.40	20,348.80	21,965.60	21,200.50	23,034.00	24,993.70	26,446.20	27,932.10	28,338.90	28,586.50	
Greece	1,586.00	1,613.10	1,849.20	2,074.10	1,895.70	1,656.30	1,452.40	1,592.90	1,910.50	1,782.10	
Hungary	811.30	889.00	1,072.90	759.90	774.70	821.10	799.70	781.70	832.00	882.70	
Ireland	1,999.20	1,848.40	1,907.50	1,564.50	1,340.90	1,338.80	1,426.80		2,294.30		2,354.26
Italy	10,713.60	13,774.10	12,797.70	11,874.40	12,572.80	12,279.90	11,431.20	10,588.40	11,089.60	11,427.40	
Latvia	234.40	255.10	304.70	180.50	196.20	212.90	268.00	296.60	301.60	288.60	
Lithuania	185.20	254.60	295.10	198.00	196.00	224.20	244.20	286.30	304.00	327.00	
Luxembourg											
Malta			199.60	188.20	301.90	254.30	186.20	320.60	291.80	313.10	
Netherlands	5,716.90	6,287.40	6,614.70	6,563.30	7,239.10	7,859.70	8,305.10	8,264.00			8,807.23
Norway	3,594.10	3,880.00	4,107.10	3,637.00	4,192.40	4,535.80	5,252.90	5,193.80	4,834.50	4,436.10	
Poland	1,452.20	2,064.90	2,554.30	1,792.00	2,095.50	2,227.40	2,270.80	2,189.10	2,645.10	2,910.00	
Portugal	2,229.60	2,370.40	2,439.20	2,023.90	2,107.10	1,988.40	1,888.30	1,928.90	2,058.90	2,095.40	
Romania	487.30	681.70	880.90	594.90	606.10	696.40	791.80	813.40	868.20	946.60	
Slovakia	298.30	488.60	351.80	333.50	460.20	482.20	471.50	568.50	594.80	488.80	
Slovenia	332.80	416.40	467.90	410.10	417.00	416.80	404.50	401.00	408.60	416.70	
Spain	17,859.60	18,827.90	19,995.80	17,868.20	17,573.20	17,692.80	18,057.20	16,840.50	17,284.80	18,493.10	
Sweden	6,680.20	6,853.70	5,842.50	4,975.60	5,821.80	6,515.40	6,993.80	7,077.60	6,718.10	6,549.00	
Switzerland				4,141.40	4,943.70	6,016.90	6,561.60	6,078.20	5,899.10	5,695.30	
Turkey				4,386.40							5,397.88
United Kingdom	52,230.20	53,315.00	44,481.10	38,209.40	38,521.20	39,870.60	44,892.20	47,543.00	53,035.70	55,446.40	
Total	155,836.60	163,918.30	162,028.00	153,124.90	153,246.40	161,418.50	170,234.50	170,626.10	170,922.30	173,034.90	16,559.37

- No data was available for Luxembourg.
- For all other countries, 2015 source data was used if available.
- For Ireland, the 2014 source data was multiplied by the average growth rate from 2014 to 2015.
- For the Netherlands, the 2013 source data was multiplied by the average growth rate from 2013 to 2015.
- For Turkey, the 2009 source data was multiplied by the average growth rate from 2009 to 2015.

3.3.2 N79.1.1 – Travel agencies

GEO/TIME	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 - estimated
Austria	:	:	3,425.30	3,120.60	3,147.20	3,584.90	3,731.80	3,736.30	3,815.00	3,768.80
Belgium	:	:	:	3,682.20	4,517.50	3,546.20	3,425.20	3,285.90	3,477.60	3,527.24
Bulgaria	:	:	38.60	54.30	58.20	61.30	48.50	50.90	63.30	65.68
Croatia	:	:	508.60	416.50	443.10	444.90	440.70	419.60	437.80	472.26
Cyprus	:	:	119.70	89.20	90.70	83.30	84.10	63.80	64.40	69.41
Czech Republic	:	:	:	:	:	:	:	:	:	:
Denmark	:	:	1,060.40	885.90	954.60	849.10	1,108.60	1,127.00	1,044.20	1,083.46
Estonia	:	:	110.30	:	:	88.20	:	53.00	:	65.33
Finland	:	:	553.60	478.80	506.30	585.40	587.00	544.00	429.10	407.68
France	:	:	:	6,124.00	6,424.40	7,052.00	3,004.00	3,698.40	4,715.40	4,705.61
Germany	:	:	4,003.70	3,502.30	4,402.00	4,564.00	4,354.20	4,486.60	4,563.00	4,602.87
Greece	:	:	1,340.80	1,463.10	1,377.70	1,146.30	1,054.30	1,030.90	1,393.30	1,299.66
Hungary	:	:	144.30	96.60	88.00	80.00	86.80	84.50	100.60	106.73
Ireland	:	:	:	:	:	:	:	:	:	:
Italy	:	:	4,949.70	3,357.70	3,912.60	3,325.20	3,681.10	3,242.20	3,324.20	3,425.46
Latvia	:	:	161.80	101.70	121.00	118.80	151.00	165.80	173.20	165.73
Lithuania	:	:	276.10	184.10	180.80	159.40	165.20	197.50	192.20	206.74
Luxembourg	:	:	:	:	227.10	147.10	189.80	191.70	189.50	201.96
Malta	:	:	147.80	122.90	232.10	:	:	:	:	240.71
Netherlands	:	:	2,107.70	2,392.60	2,809.00	3,349.70	3,918.90	4,536.90	:	4,835.13
Norway	:	:	2,549.30	2,212.70	2,630.50	2,780.70	3,284.70	3,188.10	3,012.80	2,764.52
Poland	:	:	375.00	302.30	352.60	448.20	385.80	390.10	482.20	530.49
Portugal	:	:	2,120.30	1,778.90	1,824.90	1,726.00	1,649.60	1,640.80	1,744.70	1,775.63
Romania	:	:	614.70	336.20	331.70	339.50	358.10	351.40	375.20	409.08
Slovakia	:	:	60.20	68.10	115.00	163.80	106.70	130.00	148.40	121.95
Slovenia	:	:	174.10	140.00	142.10	144.10	142.80	136.70	136.30	139.00
Spain	:	:	14,556.40	13,566.70	13,304.90	13,487.20	14,225.10	13,504.20	13,544.50	14,491.33
Sweden	:	:	2,225.60	1,798.20	2,067.50	2,210.20	2,373.20	2,352.90	2,312.30	2,254.10
Switzerland	:	:	:	:	:	:	:	:	:	:
Turkey	:	:	:	4,051.10	:	:	:	:	:	4,985.27
United Kingdom	:	:	30,471.80	24,597.30	25,783.60	28,539.70	31,592.80	30,919.30	35,275.70	36,879.13

- No data was available for the Czech Republic, Ireland and Switzerland.
- For all other countries, 2014 source data was used if available and multiplied by the growth rate of N79 in each country from 2014 to 2015 to get estimated 2015 figures.
- For Estonia and the Netherlands, the 2013 source data was multiplied by the average growth rate of N79 for Estonia and the Netherlands respectively from 2013 to 2015.
- For Malta, the 2010 source data was multiplied by the average growth rate of N79 for Malta from 2010 to 2015.
- For Turkey, the 2009 source data was multiplied by the average growth rate of N79 for Turkey from 2009 to 2015.

3.3.3 N79.1.2 – Tour operators

GEO/TIME	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 - estimated
Austria	:	:	816.80	819.70	790.70	918.70	960.80	960.60	958.20	946.60
Belgium	:	:	:	:	1,297.40	:	2,002.60	2,034.50	1,772.00	1,797.29
Bulgaria	:	:	277.90	258.80	300.80	331.90	357.70	395.00	415.20	430.80
Croatia	:	:	16.40	36.00	46.20	50.60	58.20	110.60	101.90	109.92
Cyprus	:	:	2.50	2.20	6.40	4.40	3.20	3.10	3.50	3.77
Czech Republic	:	:	:	:	:	:	:	:	:	:
Denmark	:	:	1,969.70	1,637.20	1,568.20	1,819.00	1,709.80	1,526.30	1,464.00	1,519.04
Estonia	:	:	66.70	:	:	:	:	:	:	84.04
Finland	:	:	787.60	775.30	715.50	774.70	759.50	767.10	826.10	784.86
France	:	:	:	5,352.70	5,084.80	4,846.80	8,691.50	8,102.00	6,872.80	6,858.54
Germany	:	:	17,037.50	16,900.30	17,885.30	19,390.10	20,810.30	21,972.80	22,263.70	22,458.22
Greece	:	:	507.70	606.90	518.00	502.40	379.80	547.40	502.30	468.54
Hungary	:	:	865.80	618.50	627.60	676.90	644.00	633.20	644.50	683.77
Ireland	:	:	:	:	:	:	:	:	:	:
Italy	:	:	7,451.70	8,098.10	7,937.40	8,473.20	7,320.70	6,917.50	7,167.10	7,385.42
Latvia	:	:	85.30	70.60	66.20	73.60	98.20	102.90	102.10	97.70
Lithuania	:	:	10.50	8.20	8.90	55.90	65.80	73.80	83.70	90.03
Luxembourg	:	:	:	:	7.90	8.10	7.80	9.50	11.40	12.15
Malta	:	:	45.80	46.90	53.00	:	:	:	:	54.97
Netherlands	:	:	3,931.80	3,743.30	3,899.90	4,162.30	4,103.90	3,388.70	3,223.30	3,611.45
Norway	:	:	1,347.10	1,229.70	1,325.50	1,474.50	1,643.10	1,680.40	1,476.00	1,354.37
Poland	:	:	1,463.60	979.20	1,269.10	1,403.00	1,451.60	1,426.30	1,714.10	1,885.76
Portugal	:	:	246.60	180.30	219.90	200.30	173.10	217.50	231.80	235.91
Romania	:	:	254.60	241.10	260.00	333.30	410.00	433.40	465.40	507.43
Slovakia	:	:	279.80	252.60	332.30	301.50	350.60	398.80	:	342.89
Slovenia	:	:	259.70	236.50	242.50	242.10	238.70	239.20	245.20	250.06
Spain	:	:	5,295.70	4,119.50	3,930.60	3,848.50	3,489.60	2,871.70	2,968.80	3,176.34
Sweden	:	:	3,460.90	3,043.60	3,603.70	4,119.20	4,389.30	4,478.20	4,171.60	4,066.60
Switzerland	:	:	:	:	:	:	:	:	:	:
Turkey	:	:	:	256.80	:	:	:	:	:	316.02
United Kingdom	:	:	12,698.70	12,509.40	11,572.50	10,220.60	12,007.40	15,658.20	16,166.30	16,901.13

- No data was available for the Czech Republic, Ireland and Switzerland.
- For all other countries, 2014 source data was used if available and multiplied by the growth rate of N79 in each country from 2014 to 2015 to get estimated 2015 figures.
- For Estonia, the 2008 source data was multiplied by the growth rate of N79 for Estonia from 2008 to 2015.
- For Malta, the 2010 source data was multiplied by the growth rate of N79 for Malta from 2010 to 2015.
- For Slovakia, the 2013 source data was multiplied by the growth rate of N79 for Slovakia from 2013 to 2015.
- For Turkey, the 2009 source data was multiplied by the growth rate of N79 for Turkey from 2009 to 2015.

3.3.4 N79.9.9 – Other reservation

GEO/TIME	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Estimated 2015
Austria	:	:	141.80	137.10	122.80	163.90	168.70	179.70	205.70	198.00	
Belgium	:	:	:	:	231.60	:	173.50	191.70	236.00	220.50	
Bulgaria	:	:	9.20	9.50	10.30	13.80	12.90	15.80	16.50	38.00	
Croatia	:	:	2.60	9.00	9.60	12.00	15.00	20.70	35.70	41.40	
Cyprus	:	:	1.80	1.80	1.90	2.00	1.60	1.50	1.50	1.50	
Czech Republic	:	:	55.40	37.90	:	74.50	62.90	57.60	59.90	134.50	
Denmark	:	:	272.80	199.70	195.60	196.40	276.50	262.00	220.60	214.20	
Estonia	:	:	7.20	9.20	8.00	:	18.40	25.00	33.30	42.50	
Finland	:	:	322.80	264.10	272.40	292.20	308.50	305.80	293.30	283.20	
France	:	:	1,879.30	2,289.80	2,002.90	2,021.90	2,017.90	1,872.80	1,567.60	1,394.80	
Germany	:	:	924.40	797.80	746.80	1,039.60	1,281.70	1,472.70	1,512.10	1,695.80	
Greece	:	:	0.70	4.20	-	7.60	18.40	14.50	14.80	14.80	
Hungary	:	:	62.80	44.80	59.10	64.10	68.90	63.90	86.80	89.00	
Ireland	:	:	128.30	159.40	174.40	218.70	210.10	:	1,063.60	:	1,091.40
Italy	:	:	396.20	418.50	722.80	481.50	429.40	428.70	598.30	629.20	
Latvia	:	:	57.50	8.20	9.10	20.50	18.80	27.90	26.30	30.00	
Lithuania	:	:	8.50	5.70	6.30	8.90	13.20	15.00	28.10	39.20	
Luxembourg	:	:	:	:	:	:	:	:	:	:	
Malta	:	:	6.00	18.40	16.80	:	:	:	:	21.40	
Netherlands	:	:	:	:	:	:	:	:	:	:	
Norway	:	:	210.70	194.50	236.50	280.60	325.20	325.30	345.70	342.50	
Poland	:	:	715.60	510.40	473.90	376.20	433.40	372.70	448.90	517.80	
Portugal	:	:	72.20	64.70	62.40	62.10	65.60	70.60	82.40	90.40	
Romania	:	:	11.70	17.60	14.40	23.70	23.80	28.60	27.60	27.20	
Slovakia	:	:	11.70	12.80	12.90	16.90	14.10	39.70	:	31.30	
Slovenia	:	:	34.00	33.60	32.40	30.70	23.00	25.00	27.10	31.80	
Spain	:	:	143.60	181.90	337.70	357.10	342.50	464.60	771.50	790.80	
Sweden	:	:	156.00	133.80	150.60	186.00	231.40	246.60	234.10	238.10	
Switzerland	:	:	:	:	394.30	400.80	444.20	602.80	561.30	606.30	
Turkey	:	:	:	78.50	:	:	:	:	:	:	96.60
United Kingdom	:	:	1,310.60	1,102.80	1,165.20	1,110.30	1,291.90	965.50	1,593.70	2,343.20	

- No data was available for Luxembourg and the Netherlands.
- For all other countries, 2015 source data was used if available.
- For Ireland, the 2014 source data was multiplied by the growth rate of N79 for Ireland from 2014 to 2015.
- For Turkey, the 2009 source data was multiplied by the growth rate of N79 for Turkey from 2009 to 2015.

3.3.5 N82.3.0 – Organisation of conventions and tradeshow

GEO/TIME	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 - estimated
Austria	:	:	331.80	318.50	294.80	312.00	329.30	350.50	356.80	352.48
Belgium	:	:	:	809.80	769.80	860.30	793.80	767.80	811.00	822.58
Bulgaria	:	:	24.90	17.80	12.20	16.10	16.00	17.50	17.60	18.26
Croatia	:	:	:	6.90	11.40	17.30	13.00	13.00	18.70	20.17
Cyprus	:	:	19.80	10.00	10.00	16.50	16.90	8.60	10.20	10.99
Czech Republic	:	:	:	:	:	:	:	:	205.90	220.87
Denmark	:	:	232.60	251.30	208.30	218.00	231.40	240.90	252.70	262.20
Estonia	:	:	26.90	12.40	8.00	15.70	12.90	16.00	17.90	18.65
Finland	:	:	285.80	166.20	161.20	168.00	181.30	178.00	179.70	170.73
France	:	:	2,927.80	2,673.10	2,990.00	3,124.10	3,298.50	3,530.10	3,818.80	3,810.88
Germany	:	:	5,917.30	4,805.20	5,360.90	5,575.50	6,092.60	6,246.10	6,731.80	6,790.62
Greece	:	:	422.40	413.80	339.30	269.10	237.30	223.60	205.30	191.50
Hungary	:	:	235.00	153.90	150.70	164.10	160.30	187.10	209.60	222.37
Ireland	:	:	:	89.60	127.40	105.60	87.60	:	138.80	142.43
Italy	:	:	4,271.20	2,718.10	3,299.90	2,905.40	2,886.80	2,602.20	2,299.80	2,369.85
Latvia	:	:	15.00	9.70	11.10	7.60	8.50	12.60	12.00	11.48
Lithuania	:	:	26.70	13.30	15.30	18.20	21.50	27.50	23.70	25.49
Luxembourg	:	:	:	:	:	:	:	:	:	:
Malta	:	:	:	:	:	:	:	:	:	:
Netherlands	:	:	:	:	:	:	:	:	:	:
Norway	:	:	242.40	217.90	249.70	290.50	302.80	284.80	323.60	296.93
Poland	:	:	263.10	172.50	177.00	225.10	208.40	209.30	216.70	238.40
Portugal	:	:	187.40	176.40	170.20	166.60	158.50	189.30	221.60	225.53
Romania	:	:	45.70	37.90	36.80	46.70	50.30	53.50	63.50	69.23
Slovakia	:	:	91.20	111.60	121.80	138.90	79.20	58.00	68.20	56.05
Slovenia	:	:	37.50	33.40	43.80	42.50	43.50	37.90	37.80	38.55
Spain	:	:	2,054.50	1,662.90	1,472.00	1,483.60	1,233.90	1,366.40	1,382.60	1,479.25
Sweden	:	:	587.30	479.10	583.20	667.00	684.50	612.60	606.60	591.33
Switzerland	:	:	:	:	:	:	:	:	:	:
Turkey	:	:	:	612.40	:	:	:	:	:	753.62
United Kingdom	:	:	2,431.30	2,331.60	2,649.00	2,904.30	3,093.20	2,627.70	3,862.60	4,038.17

- No data was available for Luxembourg, Malta, Netherlands and Switzerland.
- For all other countries, 2014 source data was used if available and multiplied by the growth rate of N79 in each country from 2014 to 2015 to get estimated 2015 figures.
- For Turkey, the 2009 source data was multiplied by the growth rate of N79 for Turkey from 2009 to 2015.

3.3.6 Summary of 2015 data

	Travel Agency	Tour Operator	Other reservation	Conventions and shows	Total	Total N79 +N82.3
Austria	3,768.80	946.60	198.00	352.48	5,265.87	5,271.18
Belgium	3,527.24	1,797.29	220.50	822.58	6,367.61	6,386.58
Bulgaria	65.68	430.80	38.00	18.26	552.74	531.86
Croatia	472.26	109.92	41.40	20.17	643.75	640.97
Cyprus	69.41	3.77	1.50	10.99	85.68	85.79
Czech Republic			134.50	220.87		2,184.37
Denmark	1,083.46	1,519.04	214.20	262.20	3,078.91	3,093.60
Estonia	65.33	84.04	42.50	18.65	210.52	250.75
Finland	407.68	784.86	283.20	170.73	1,646.48	1,642.03
France	4,705.61	6,858.54	1,394.80	3,810.88	16,769.83	16,939.38
Germany	4,602.87	22,458.22	1,695.80	6,790.62	35,547.50	35,377.12
Greece	1,299.66	468.54	14.80	191.50	1,974.50	1,973.60
Hungary	106.73	683.77	89.00	222.37	1,101.88	1,105.07
Ireland			1,091.40	142.43		2,496.69
Italy	3,425.46	7,385.42	629.20	2,369.85	13,809.93	13,797.25
Latvia	165.73	97.70	30.00	11.48	304.92	300.08
Lithuania	206.74	90.03	39.20	25.49	361.47	352.49
Luxembourg	201.96	12.15			214.11	
Malta	240.71	54.97	21.40		317.08	313.10
Netherlands	4,835.13	3,611.45			8,446.59	9,878.43
Norway	2,764.52	1,354.37	342.50	296.93	4,758.32	4,733.03
France	4,705.61	6,858.54	1,394.80	3,810.88	16,769.83	16,939.38
Poland	530.49	1,885.76	517.80	238.40	3,172.46	3,148.40
Portugal	1,775.63	235.91	90.40	225.53	2,327.47	2,320.93
Romania	409.08	507.43	27.20	69.23	1,012.94	1,015.83
Slovakia	121.95	342.89	31.30	56.05	552.19	544.85
Slovenia	139.00	250.06	31.80	38.55	459.41	455.25
Spain	14,491.33	3,176.34	790.80	1,479.25	19,937.72	19,972.35
Sweden	2,254.10	4,066.60	238.10	591.33	7,150.13	7,140.33
Switzerland			606.30			5,695.30
Turkey	4,985.27	316.02	96.60	753.62	6,151.50	6,151.50
United Kingdom	36,879.13	16,901.13	2,343.20	4,038.17	60,161.63	59,484.57
EU Total	85,851.18	74,763.24	10,250.00	22,198.07	191,473.29	196,702.86

- The first table here provides summary data for the separate sources N79.1.1, N79.1.2, N79.9.0 and N82.3.0.
- The second table provides the sum of N79 and N82.3.
- The two totals should be the same.
- The missing data has been estimated by using the average split of the business sectors as a proportion of the total.

	Ratio Split of market			
	Travel Agency	Tour Operator	Other reservation	Conventions and shows
Austria	72%	18%	4%	7%
Belgium	55%	28%	3%	13%
Bulgaria	12%	78%	7%	3%
Croatia	73%	17%	6%	3%
Cyprus	81%	4%	2%	13%
Czech Republic	43%	37%	7%	10%
Denmark	35%	49%	7%	9%
Estonia	31%	40%	20%	9%
Finland	25%	48%	17%	10%
France	28%	41%	8%	23%
Germany	13%	63%	5%	19%
Greece	66%	24%	1%	10%
Hungary	10%	62%	8%	20%
Ireland	27%	23%	44%	6%
Italy	25%	53%	5%	17%
Latvia	54%	32%	10%	4%
Lithuania	57%	25%	11%	7%
Luxembourg	43%	37%	7%	10%
Malta	43%	37%	7%	10%
Netherlands	43%	37%	7%	10%
Norway	58%	28%	7%	6%
Poland	17%	59%	16%	8%
Portugal	76%	10%	4%	10%
Romania	40%	50%	3%	7%
Slovakia	22%	62%	6%	10%
Slovenia	30%	54%	7%	8%
Spain	73%	16%	4%	7%
Sweden	32%	57%	3%	8%
Switzerland	13%	63%	5%	19%
Turkey	81%	5%	2%	12%
United Kingdom	61%	28%	4%	7%
Average	43%	38%	8%	10%

- For the Czech Republic, Luxembourg and Netherlands, the average rates were used to extrapolate the total across the business sectors.
- For Ireland, Malta and Switzerland, the figures known about some business sectors were used to influence the split.

Extrapolations with the figures available produced the following estimated NACE code turnover figures (shown in red).

	Travel Agency	Tour Operator	Other reservation	Conventions and shows	Total
Austria	3,768.80	946.60	198.00	352.48	5,265.87
Belgium	3,527.24	1,797.29	220.50	822.58	6,367.61
Bulgaria	65.68	430.80	38.00	18.26	552.74
Croatia	472.26	109.92	41.40	20.17	643.75
Cyprus	69.41	3.77	1.50	10.99	85.68
Czech Republic	947.23	801.11	134.50	220.87	2,103.71
Denmark	1,083.46	1,519.04	214.20	262.20	3,078.91
Estonia	65.33	84.04	42.50	18.65	210.52
Finland	407.68	784.86	283.20	170.73	1,646.48
France	4,705.61	6,858.54	1,394.80	3,810.88	16,769.83
Germany	4,602.87	22,458.22	1,695.80	6,790.62	35,547.50
Greece	1,299.66	468.54	14.80	191.50	1,974.50
Hungary	106.73	683.77	89.00	222.37	1,101.88
Ireland	684.21	578.66	1,091.40	142.43	2,496.69
Italy	3,425.46	7,385.42	629.20	2,369.85	13,809.93
Latvia	165.73	97.70	30.00	11.48	304.92
Lithuania	206.74	90.03	39.20	25.49	361.47
Luxembourg	201.96	12.15	30.31	44.74	289.16
Malta	240.71	54.97	21.40	46.77	363.84
Netherlands	4,835.13	3,611.45	642.93	1,071.20	10,160.72
Poland	530.49	1,885.76	517.80	238.40	3,172.46
Portugal	1,775.63	235.91	90.40	225.53	2,327.47
Romania	409.08	507.43	27.20	69.23	1,012.94
Slovakia	121.95	342.89	31.30	56.05	552.19
Slovenia	139.00	250.06	31.80	38.55	459.41
Spain	14,491.33	3,176.34	790.80	1,479.25	19,937.72
Sweden	2,254.10	4,066.60	238.10	591.33	7,150.13
United Kingdom	36,879.13	16,901.13	2,343.20	4,038.17	60,161.63
EU Total	87,482.62	76,143.00	10,923.24	23,360.78	197,909.64
<i>Norway</i>	2,764.52	1,354.37	342.50	296.93	4,758.32
<i>Switzerland</i>	1,051.83	5,132.05	606.30	2,427.85	9,218.03
<i>Turkey</i>	4,985.27	316.02	96.60	753.62	6,151.50
Non-EU Total	8,801.61	6,802.43	1,045.40	3,478.40	20,127.85
Grand Total	96,284.23	82,945.44	11,968.64	26,839.18	218,037.49

The definitions of the five business models were then cross referenced with the definitions of the NACE Codes:

3.4 Business Models Definitions:

3.4.1 Tour Operator

These businesses range from large international tour operators to small independent niche operators (mainly B2C). Tour operators organise and provide package holidays, contracting with hoteliers, airlines and ground transport companies, and advertising the holidays that they have assembled online or in printed brochures.

Tour operators often operate on an international scale. Examples include companies that mainly focus on intra-European and outbound tourism. Within the industry, large integrated groups offering a wide range of products are found alongside tour operators that focus on very specific niche markets. The niche players typically operate on a much smaller scale. Most tour operators focus on leisure tourism.

3.4.2 Travel Management Companies (TMC)

These businesses mainly focus on business travel arranged as intermediaries, and serve primarily corporate customers (B2B). TMCs are able to compare different itineraries and costs in real-time, allowing users to access fares for air tickets, hotel rooms and rental cars simultaneously and to prepare bespoke travel plans for clients.

3.4.3 Travel agents

These businesses operate mainly in the leisure (i.e. B2C) market as intermediaries. Travel agents can operate as “brick & mortar” enterprises or as “online” agents or both (mainly B2C), whereas the TMCs as referred to above focus on business travel.

Travel agents may provide customers with travel advice, then sell and administer bookings acting for a number of tour operators and other suppliers such as airlines, hoteliers, car rental companies.

Large travel agencies are often part of an international integrated group that also organises packaged tours and owns accommodation, etc. We are aware that a number of independent travel agents have joined forces in consortia or networks. These networks combine the capacity of their members on the purchase side as well as in providing services to the members of the consortium (HR management, taxation consultancy, etc.).

3.4.4 Destination Management Companies (DMC)/Wholesale Tour Operators

These businesses operate mainly in the inbound segment. DMCs differ from tour operators in that DMCs usually do not deal directly with end-clients, but trade through agents (mostly tour operators).

DMCs focus on inbound tourism. They cater services for both tour operators focusing on leisure tourism and TMCs. These services can include transportation, hotel accommodation, activities, excursions, conference venues, themed events, etc. DMCs/wholesale tour operators organise and sell packages but also sell individual components e.g. “room only”. The package business is often referred to as the groups business whilst, as already outlined in this study, the sale of single components is often called Fully Independent Traveller (“FIT”).

3.4.5 MICE organisers, i.e. Meeting, Incentives, Conferences and Events organisers

These businesses operate mainly in the corporate segment (B2B).

Another segment of the industry focusses on MICE (Meeting, Incentives, Conferences and Events). MICE organisers are often specialised in that specific segment, although TMCs have their own in-house MICE department as well. These operators combine features of travel agents, DMC and TMC businesses, generally focused around a specific event or collection of events catering to a particular purpose or special interest group.

3.5 NACE Definitions

3.5.1 Travel Agent

Activities of agencies primarily engaged in selling travel, tour, transportation and accommodation services to the general public and commercial clients.

3.5.2 Tour Operator

Arranging and assembling tours that are sold through travel agencies or directly by tour operators. The tours may include any or all of the following:

- Transportation
- Accommodation
- Food
- Visits to museums, historical or cultural sites, theatrical, musical or sporting events

3.5.3 Other

- Provision of other travel-related reservation services:
- Reservations for transportation, hotels, restaurants, car rentals, entertainment and sport etc.
- Provision of time-share exchange services
- Ticket sales activities for theatrical, sports and other amusement and entertainment events
- Provision of visitor assistance services:
- Provision of travel information to visitors
- Activities of tourist guides
- Tourism promotion activities

3.5.4 Conventions and Shows

Organisation, promotion and/or management of events, such as business and trade shows, conventions, conferences and meetings, whether or not including the management and provision of the staff to operate the facilities in which these events take place.

3.5.5 Treatment of the data

- An assumption has been made that the turnover in the *Other* category is not generated by businesses in our five models. Therefore, this turnover has been excluded from the calculations.
- The *Conventions and Shows* category looks to be a good match to the definition of the MICE business model, so this data has been directly attributed to this sector.
- It has been assumed that the NACE Definition of *Tour Operators* includes both the tour operator business model and the DMC business model. DMC revenue is mainly generated from inbound tourism. The Economic Impact reports from the WTTC provide a breakdown between expenditure from foreign visitors and domestic visitors for each country. It has been assumed that it is reasonable to apportion the EUROSTAT tour operator turnover figures on the same basis as this to determine the split of NACE Code 79.1.2 between the DMC and tour operator business models respectively. This ratio has been applied.
- It has been assumed that the NACE Definition of *Travel Agents* includes both the travel agents business model and the TMC business model. TMC revenue is mainly generated from B2B sales. The Economic Impact reports from the WTTC provide a breakdown between business and leisure expenditure for each country. It has been assumed that it is reasonable to apportion the EUROSTAT travel agent turnover figures on the same basis as this to determine the split of NACE Code 79.1.1 between the TMC and travel agent business models respectively. This ratio has been applied.

3.6 Methodology – North America

For the US, the turnover data in US\$ for 2015 was directly available for all of the NAICS codes listed above in source data. These amounts were converted from US\$ to €, using an average exchange rate for 2015 found on <https://www.ofx.com/en-gb/forex-news/historical-exchange-rates/yearly-average-rates/>

For Canada, only the turnover in CAD for NAICS 56 was available for 2015. Turnovers for the 4 NAICS codes required was derived from this figure by applying the same ratio split found in the US NAICS 56 between codes 561510, 561520, 561591 and 561599. These amounts were converted from CAD to €, using an average exchange rate for 2015 found on <https://www.ofx.com/en-gb/forex-news/historical-exchange-rates/yearly-average-rates/>

	Travel Agencies		Tour Operators		All Other Travel Arrangement and Reservation Services		Convention and Visitors Bureaus		Total
	USD		USD		USD		USD		
USA in US\$	USD	15,052.00	USD	6,084.00	USD	17,640.00	USD	2,010.00	
Canada in CAD	CAD	1,616.22	CAD	653.28	CAD	1,894.11	CAD	215.83	
USA in Euros	€	13,572.37	€	5,485.94	€	15,905.97	€	1,812.41	€ 36,776.70
Canada in Euros	€	1,140.61	€	461.03	€	1,336.72	€	152.31	€ 3,090.68
	€	14,712.98	€	5,946.97	€	17,242.69	€	1,964.73	
		fx US\$1 =	€	0.90					
		fx CAD1=	€	0.71					

As with Europe, the definitions of the business models were compared to the NAICS code definitions.

3.6.1 Business Models Definitions:

3.6.2 Tour Operator

These businesses range from large international tour operators to small independent niche operators (mainly B2C). Tour operators organise and provide package holidays, contracting with hoteliers, airlines and ground transport companies, and advertising the holidays that they have assembled online or in printed brochures.

Tour operators often operate on an international scale. Examples include companies that mainly focus on intra-European and outbound tourism. Within the industry, large integrated groups offering a wide range of products are found alongside tour operators that focus on very specific niche markets. The niche players typically operate on a much smaller scale. Most tour operators focus on leisure tourism.

3.6.3 Travel Management Companies (TMC)

These businesses mainly focus on business travel arranged as intermediaries, and serve primarily corporate customers (B2B). TMCs are able to compare different itineraries and costs in real-time, allowing users to access fares for air tickets, hotel rooms and rental cars simultaneously and to prepare bespoke travel plans for clients.

3.6.4 Travel agents

These businesses operate mainly in the leisure (i.e. B2C) market as intermediaries. Travel agents can operate as “brick & mortar” enterprises or as “online” agents or both (mainly B2C), whereas the TMCs as referred to above focus on business travel.

Travel agents may provide customers with travel advice, then sell and administer bookings acting for a number of tour operators and other suppliers such as airlines, hoteliers, car rental companies.

Large travel agencies are often part of an international integrated group that also organises packaged tours and owns accommodation, etc. We are aware that a number of independent travel agents have joined forces in consortia or networks. These networks combine the capacity of their members on the purchase side as well as in providing services to the members of the consortium (HR management, taxation consultancy, etc.)

3.6.5 Destination Management Companies (DMC)/Wholesale Tour Operators

These businesses operate mainly in the inbound segment. DMCs differ from tour operators in that DMCs usually do not deal directly with end-clients, but trade through agents (mostly tour operators).

DMCs focus on inbound tourism. They cater services for both tour operators focusing on leisure tourism and TMCs. These services can include transportation, hotel accommodation, activities, excursions, conference venues, themed events, etc. DMCs/wholesale tour operators organise and sell packages but also sell individual components e.g. “room only”. The package business is often (at least in the UK) referred to as the groups business whilst the sale of single components is often called Fully Independent Traveller (“FIT”).

3.6.6 MICE organisers, i.e. Meeting, Incentives, Conferences and Events organisers - mainly in the corporate segment (B2B).

Another segment of the industry focusses on MICE (Meeting, Incentives, Conferences and Events). MICE organisers are often specialised in that specific segment, although TMCs have their own in-house MICE department as well. These operators combine features of travel agents, DMC and TMC businesses, generally focused around a specific event or collection of events catering to a particular purpose or special interest group.

3.7 NAICS Definitions

3.7.1 561510 Travel Agencies

This industry comprises establishments primarily engaged in acting as agents in selling travel, tour, and accommodation services to the general public and commercial clients.

3.7.2 561520 Tour Operators

This industry comprises establishments primarily engaged in arranging and assembling tours. The tours are sold through travel agencies or tour operators. Travel or wholesale tour operators are included in this industry.

3.7.3 561591 Convention and Visitors Bureaus

This US industry comprises establishments primarily engaged in marketing and promoting communities and facilities to businesses and leisure travellers through a range of activities, such as assisting organisations in locating meeting and convention sites; providing travel information on area attractions, lodging accommodations, restaurants; providing maps; and organizing group tours of local historical, recreational, and cultural attractions.

3.7.4 561599 All Other Travel Arrangement and Reservation Services

This US industry comprises establishments (except travel agencies, tour operators, and convention and visitors bureaus) primarily engaged in providing travel arrangement and reservation services. Illustrative examples are:

- Condominium time-share exchange services
- Ticket (e.g. airline, bus, cruise ship, sports, theatrical) offices
- Road and travel services automobile clubs
- Reservation (e.g. airline, car rental, hotel, restaurant) services
- Ticket (e.g. amusement, sports, theatrical) agencies

3.8 Treatment of the data

- An assumption has been made that the turnover in the *Other Travel Arrangement and Reservation Services* category is not generated by businesses in our five models. Therefore, this turnover has been excluded from the calculations.
- The *Conventions and Visitors Bureaus* category looks to be a good match to the definition of the MICE business model, so this data has been directly attributed to this sector.
- It has been assumed that the NAICS Definition of *Tour Operators* includes both the tour operator business model and the DMC business model. DMC revenue is mainly generated from inbound tourism. The Economic Impact reports from the WTTC provide a breakdown between expenditure from foreign visitors and domestic visitors for each country. It has been assumed that it is reasonable to apportion the tour operator turnover figures on the same basis as this to determine the split of NAICS Code 561520 between the DMC and tour operator business models respectively. This ratio has been applied.
- It has been assumed that the NAICS Definition of *Travel Agencies* includes both the Travel Agents business model and the TMC business model. TMC revenue is mainly generated from B2B sales. The Economic Impact reports from the WTTC provide a breakdown between business and leisure expenditure for each country. It has been assumed that it is reasonable to apportion the travel agencies turnover figures on the same basis as this to determine the split of NAICS Code 561510 between the TMC and Travel Agent business models respectively. This ratio has been applied.

3.9 VAT extrapolations

3.9.1 VAT throughput

The business questionnaire yielded responses from 105 businesses in 18 Member States, spanning all five business models. Of these responses, information from 98 respondents was utilised in the indicative calculations, according with the adequacy of the information provided. The total turnover of these businesses represents approximately 10% of the estimated EU market (€19bn). No responses were received from non-EU businesses. Meanwhile by turnover, 94% of the utilised respondent businesses were based in only five Member States.

The responses notably included: business turnover; percentage of turnover received from business customers; value of Special Scheme output tax; value of irrecoverable input tax pertaining to Special Scheme supplies; and the value of output tax declared under “normal rules”.

The utilised responses of the 98 businesses were converted to € currency and aggregated together to provide a total for the sample as a whole. This was a straightforward aggregation in that it did not involve weighting for differing VAT rates (it is not known how the VAT figures provided breakdown between different standard and reduced VAT rates).

Similarly whilst respondents provided figures for their latest accounting period end, no adjustments have been made to align time periods – the aggregate may be taken as indicative of a 2016 accounting period.

The aggregate values for the sample as a whole were benchmarked against the total turnover for businesses in the sample, and this ratio was then applied to total EU turnover to give indicative figures at an EU level as follows²⁵⁵.

Special Scheme output VAT

On average, Special Scheme output VAT, as indicated by 75 utilised respondents in respect of question 11, was circa €2.1m. The average turnover of the utilised respondent businesses was €194m. This indicates that Special Scheme output tax can be estimated to be in the order of 1% of turnover. Per Fig. 4b in section 4, macroeconomic data analysis indicates total proxy EU Special Scheme turnover of circa €187bn. 1% of this figure gives an indication of €1.9bn.

Irrecoverable Special Scheme output VAT on B2B supplies

The percentage of B2B supplies for each respective business, as indicated by 95 utilised respondents in respect of question 10, was applied to the total identified Special Scheme output VAT from question 11 (for the 75 utilised respondent businesses, but excluding respondents from Belgium, Finland, France, Hungary and Sweden for which per section 5.5.10 recovery of this VAT is allowed and excluding Germany and Slovakia where the Special Scheme does not apply to B2B supplies)²⁵⁶. The data does not allow a distinction between wholesale supplies and supplies for consumption, so no adjustments could be made in this regard²⁵⁷.

This indicated B2B Special Scheme output VAT was on average circa 0.16% of turnover. Per Figure 4b, macroeconomic data analysis indicates total proxy EU Special Scheme turnover of circa €187bn. 0.16% of this figure gives an indication of circa €0.29bn for the EU as a whole.

Irrecoverable input tax on direct Special Scheme costs

The irrecoverable input tax on direct Special Scheme costs, as indicated by 45 utilised respondents in respect of question 12, was calculated for each respondent as a percentage of that respondent’s turnover, giving a rounded average of 3%.

Per Figure 4b, macroeconomic data analysis indicates total proxy EU Special Scheme turnover of circa €187bn. 3% of this figure gives an indication of €5.6bn.

Irrecoverable input tax on direct Special Scheme costs of B2B supplies

The percentage of B2B supplies for each respective business, as indicated by 95 utilised respondents in respect of question 10, was applied to the Special Scheme irrecoverable input VAT indicated by utilised respondents to question 12 (for 88 sampled businesses excluding respondents from Germany and Slovakia, for which the Special Scheme does not apply to B2B supplies)²⁵⁸. The data does not allow a distinction between wholesale supplies and supplies for consumption, so no adjustments could be made in this regard²⁵⁹.

²⁵⁵ These figures should be considered to be only indicative estimates of potential VAT impacts. All the underlying data is necessarily either approximation or sample-based. Some of the approximations would imply that the estimates are more likely to be over-estimates than under-estimates but, overall, we cannot confirm this

²⁵⁶ Austrian responses were not excluded from this exercise. The Special Scheme is set to apply in Austria from May 2019

²⁵⁷ Typically any Special Scheme output tax declared on wholesale supplies would not be identifiable to the recipient as input VAT (see section 5.5.5). Respondents to the business questionnaire were not asked to provide a distinction between wholesale supplies and supplies for consumption in respect of irrecoverable Special Scheme output VAT on B2B supplies or in respect of irrecoverable input tax on direct Special Scheme costs of B2B supplies as this would have required respondents to provide an onerous level of detail

²⁵⁸ Austrian responses were not excluded from this exercise. The Special Scheme is set to apply in Austria from May 2019

²⁵⁹ Both elements were included as they comprise VAT amounts collected by the tax authorities from a supplier (e.g. a hotel) and which typically cannot be recovered. Where a travel business makes wholesale supplies, the margin VAT declared by the first travel business could potentially be “double-counted” as irrecoverable input VAT by the second travel business. However in general, the margin VAT would not be disclosed on the invoice, and so could not be known to the second business in the supply chain

This indicated that irrecoverable input tax on direct Special Scheme costs in respect of B2B supplies was circa 0.62% of turnover, circa €1.15bn for the EU as a whole.

Output tax accounted for under "normal" rules

The value of output VAT declared under "normal" rules, as indicated by 48 utilised respondents in respect of question 14, was calculated for each respondent as a percentage of that respondent's turnover, giving a rounded average of 2%. Per Fig. 4b, macroeconomic data analysis indicates total proxy EU Special Scheme turnover of circa €187bn. 2% of this figure gives an indication of €3.7bn.

	(€bn)
Special Scheme output tax can be indicatively estimated to be in the order of	1.9
Of which, Special Scheme output tax pertaining to B2B supplies can be indicatively estimated to be in the order of	0.29
Irrecoverable input tax on direct Special Scheme costs can be indicatively estimated to be in the order of	5.6
Of which, irrecoverable input tax on direct costs of B2B Special Scheme supplies can be indicatively estimated to be in the order of	1.15
Output tax accounted for under "normal rules" can be indicatively estimated to be in the order of	3.7

Whilst at the outset of the project it was hoped that figures could be scaled by each Member State and by each business model, the relatively small sample size in the majority of Member States is such that specific quantification of any given issue in a particular Member State is not possible. However, as an indication of relative value, the relative sizes by country and by business model of the Figs. 4a and 4b in section 4.3.7 (turnover by Member State and turnover by business model) should be borne in mind.

3.9.2 Wholesale illustration

We have prepared a generic model to help illustrate the effect on EU VAT revenue if the CJEU decision on the treatment of wholesale supplies is adopted by all Member States.

Data is not available to permit a calculation of the effect of such a change across the EU. Therefore, we have focused on the effect on revenue in relation to the wholesale supply of travel enjoyed in two Member States: the UK and a second illustrative Member State ("MS2"). The UK is one of the Member States which does not require wholesale supplies to be included in the Special Scheme.

We have used the value of total inbound travel (the main operation of DMCs) in 2016 for the UK of €25.65bn²⁶⁰. Based on our experience in the UK, we have used 20% of the total inbound value as the estimated turnover of DMCs. In other words, we have estimated that 20% of inbound travel to the UK is organised by a DMC or other wholesaler, with the balance being arranged by travellers themselves directly with primary suppliers such as hotels or via intermediaries such as travel agents and TMCs.

Also based on our experience, we have prepared the model so that 60% of the wholesale value is treated as the value of FIT services (i.e. the provision of single services such as the supply of hotel accommodation only) and 40% is the value of organised packages. Of the FIT value, for this model we have taken 90% to be the supply of accommodation and 10% to be the value of passenger transport. For the package business, we have taken what we consider to be a typical mix of services and used the VAT rates applied in the UK to the services involved. Where more than one rate is possible, we have used a weighted average. The services included are set out in the calculations.

MS2 is intended to represent other Member States which also exclude wholesale supplies from the Special Scheme. We have used a set of illustrative VAT rates for the services purchased and re-supplied by DMCs for inbound travel to MS2. We have used the same value of inbound travel to MS2 as above for the UK so as to allow a straight comparison between the results.

In addition, the assumptions made for both calculations are as follows:

- 80% of the DMC business is conducted by businesses established in MS2 or the UK as the case may be. Of the remaining 20%, half of this (10%) is conducted by a DMC established elsewhere in the EU and the other half by DMCs established in third countries.

²⁶⁰ Taken from "UK Tourism Statistics 2017" published by the Tourism Alliance

- Of the value of wholesale supplies made by DMCs in other Member States, half of this is subject to the Special Scheme and the remaining half is supplied by DMCs established in a Member State which does not apply the Special Scheme to wholesale supplies and no payment of VAT is made (nor any input tax deducted).
- No third country DMC is registered for VAT, pays output tax or deducts input tax either under the current rules or if the CJEU judgments were adopted.
- The margin made by all suppliers involved is 10%.
- The standard VAT rate adopted for all Member States is 20%.
- We treat supplies of guiding services as liable to the standard VAT rate but have treated all purchases of guiding services as VAT-free (so there is no input tax to deduct) on the assumption in this model that the guides are operating small businesses with turnovers below the local registration threshold.

The current payment of VAT is calculated using a multiple supply approach i.e. for packages, the component parts are each considered to be a supply and each supply is taxed in accordance with the nature of the service provided and at the rate applicable. For all services, it is assumed that the place of supply is the Member State in which the service is consumed. The DMC turnover is apportioned to calculate the value of each supply on the basis of the costs of the individual services.

Some of the services in certain Member States, for example Ireland, can be exempt without credit for input tax. If the Special Scheme was applied, this exemption would not apply and it could be expected that the DMCs involved would see improved deduction of input tax on indirect costs. No account is taken of this point in the model.

3.9.3 Illustrative calculations

3.9.3.1 UK to Spain

As an indication, data from the UK industry body ABTA²⁶¹ shows that the value of tourism from the UK to Spain was £6bn or €6.8bn in 2015. The business questionnaire indicated that on average irrecoverable Special Scheme VAT was circa 3% of turnover for the surveyed businesses whilst Special Scheme margin VAT was circa 1% of turnover. (This is an EU average across our 100 sampled business and ignores variation in domestic VAT rates.) If it is assumed that 50% of the travel from the UK to Spain was arranged "direct" and 50% via travel agents we can infer that the VAT generated for Spain in 2015 from the inability of UK travel agents to recover input tax was circa €102m. The statistics presented in ABTA's "Holiday Habits Report 2017" are, in our opinion, consistent with it being reasonable to assume that perhaps around 50% (by value) of the travel from the UK to Spain was organised by a travel agent in such a way that the Special Scheme would have applied.

By a similar method revenue collected in the UK could be estimated at circa €34m. (As a sense-check, based on an assumed average margin achieved by UK agents of circa 10%, revenue collected in the UK can be estimated²⁶² as €56m.)²⁶³

3.9.3.2 Germany to Greece

Similarly, data from the Bank of Greece²⁶⁴ shows that the value of tourism from Germany to Greece was €2.2bn in 2015. Using the same method above it can be inferred that the VAT generated for Greece in 2015 from the inability of German travel agents to recover input tax was circa €33m and that revenue collected in Germany on these supplies could be estimated at circa €12m.

3.9.3.3 UK to EU

The data from ABTA discussed above shows that the value of tourism from the UK to the rest of the EU in 2015 was £19bn (£6bn to Spain, £2.8bn to France, £1.6bn to Italy, £1.3bn to Greece, £1.1bn to Portugal) - and that the value to the UK from the rest of the EU was £6.4bn. The net position is £12.6bn or €14.4bn.

The business questionnaire indicated that on average Special Scheme output tax was circa 1% of turnover for the surveyed businesses. (This is an EU average across our 100 sampled business and ignores variation in domestic VAT rates.) Based on these ABTA figures, the net decrease to UK Special Scheme income from a shift to destination as the place of supply could therefore be estimated to be in the order of circa €0.14bn.²⁶⁵

²⁶¹ ABTA document reference []

²⁶² Ignoring the effect of the transport company arrangements – see section

²⁶³ €6.8bn x 50% x 10% x 1/6

²⁶⁴ <http://www.bankofgreece.gr/Pages/en/Statistics/externalsector/balance/travelling.aspx>

²⁶⁵ This is an indicative figure only, notably relying on the assumption that all Member States involved are equivalent to the "average" Member State covered by the questionnaire respondent, and ignoring variations in local VAT rates.

Annex 4

Articles 306 to 310 of the
VAT Directive



Annex 4

Articles 306 to 310 of the VAT Directive

4.1 Article 306

- a) Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.
- b) This Special Scheme shall not apply to travel agents where they act solely as intermediaries and to whom point (c) of the first paragraph of Article 79 applies for the purposes of calculating the taxable amount.
- c) For the purposes of this Chapter, tour operators shall be regarded as travel agents.

4.2 Article 307

Transactions made, in accordance with the conditions laid down in Article 306, by the travel agent in respect of a journey shall be regarded as a single service supplied by the travel agent to the traveller.

The single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has carried out the supply of services.

4.3 Article 308

The taxable amount and the price exclusive of VAT, within the meaning of point (8) of Article 226, in respect of the single service provided by the travel agent shall be the travel agent's margin, that is to say, the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.

4.4 Article 309

If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the supply of services carried out by the travel agent shall be treated as an intermediary activity exempted pursuant to Article 153.

If the transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

4.5 Article 310

VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in Article 307 and which are for the direct benefit of the traveller shall not be deductible or refundable in any Member State

Annex 5

List of Abbreviations



Annex 5

List of common abbreviations used in this study

B2B	Business-to-Business
B2C	Business-to-Consumer
bn	billion
CJEU	Court of Justice of the European Union
DMC	Destination Management Company
ETOA	European Tour Operators Association
ECTAA	European Travel Agents' and Tour Operators' Associations
EU	European Union
FIT	Fully Independent Traveller
MICE	Meetings, Incentives, Conferences and Events
m	million
OECD	Organisation for Economic Co-operation and Development
TFEU	Treaty of the Functioning of the European Union (TFEU)
TMC	Travel Management Company
tn	trillion
VAT	Value Added Tax
VAT Directive	Council Directive 2006/112/EC

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