

VAT for Non-EU Tour operators - Croatian Taxation -

Supporting presentation for the ETOA Webinar held on May 17, 2023

Introduction

- Travel agencies based in EU member states are required to apply a special taxation procedure (TOMS) when selling third-party travel-related services, such as accommodation or transportation.
- However, agencies whose headquarters or permanent business unit providing the service is not located within the European Union cannot apply this special taxation procedure (TOMS) in Croatia.
- Consequently, agencies based in non-EU countries, when selling travel-related services, such as accommodation or transport, food and beverage services, short-term vehicle rentals and similar services taxed based on the place of consumption, are liable to pay VAT on the total service when the consumption takes place in the Republic of Croatia.
- This presentation will delve deeply into the special taxation procedure as stipulated by Croatian tax regulations, effective from January 2021. We will specifically focus on its implications and application for travel agencies based outside the European Union.

Tax status of Tour operators based in Non-EU countries

- Council Directive 2006/112/EC outlines special VAT provisions for travel agencies, as specified in Article 306, that member states are required to follow. These provisions particularly apply when travel agents operate in their own name, using the goods or services provided by other taxable entities in the organization of travel.
- Article 307 of the Directive posits that any transactions conducted by a travel agency in relation to a trip are considered a single service delivered to the traveler.
- This single service is taxed in the **member state** where the travel agency has its business headquarters or where it has a permanent business unit from which the travel agency provides services.
- The logic behind the amendments made to the Croatian VAT Regulations in January 2021 is clear: The special taxation procedure (TOMS) can only be applied by agencies that have a headquarters or business unit registered in one of the member states.
- Travel agencies based in non-EU countries do not apply the special procedure (TOMS). In this regard, Article 187 of the Croatian Ordinance on the VAT was amended, and these changes have been in effect since January 5, 2021.

Tax status of Tour operators based in Non-EU countries

- According to **paragraph 6, Article 187** of the VAT Ordinance*, the special travel agent taxation scheme (TOMS) shall not apply if the headquarters or a permanent establishment of the taxpayer from which the service is provided is not in the territory of the European Union.

**the VAT Ordinance is an implementing act of the Croatian VAT Act. This means that the VAT Ordinance provides more detailed regulation for the application of the Croatian VAT Act, and its provisions are binding for all taxpayers, as well as for the Tax Administration. Therefore, the amendment to the VAT Ordinance stated above has been officially incorporated into Croatian legislation and has been in force since January 5, 2021.*

- According to the viewpoint of the Croatian Tax Administration, this aligns with Article 307 of the Directive, which dictates that the single service is taxed in the member state where the travel agency has its headquarters. VAT is calculated based on the special VAT procedure - on the margin earned by the travel agency in the sale of a single service.
- The amended provision of the VAT Regulations has raised numerous doubts about the tax obligations of travel agencies based in non-EU countries.
- To shed light on these ambiguities, the Central Office of the Croatian Tax Administration provided an interpretation through a public opinion in June 2022. This has brought some clarity to the practical application of this amended provision. However, despite this interpretation, many open questions from practice remain unresolved, indicating a need for further clarification.

VAT Calculation Depending on the Business Model of Travel Agencies Based in Non-EU Countries

- In the following sections, we will provide examples of business operations conducted by travel agencies based in non-EU countries selling travel-related services considered to be performed in Croatia.
- These operations carry the obligation to pay VAT according to the Croatian VAT Law, based on the guidelines provided by the Central Office of the Tax Administration.

The Croatian VAT calculation in the operations of travel agencies is generally regulated by the provisions of:

- Articles 91 to 94 of the (Croatian) VAT Act;
- Article 187 of the (Croatian) VAT Ordinance;
- Articles 306 - 310 of the Directive 2006/112/EC;
- Council Implementing Regulation (EU) No. 282/2011, and
- Decisions of the European Court of Justice (ECJ) which refer to the related issues.

VAT Calculation Depending on the Business Model of Travel Agencies Based in Non-EU Countries

Travel agents can do business in a variety of ways:

- **In-house services:** The agent performs services in their own name, on their own behalf, using their own goods and services (e.g. sells the service of transport by their own bus).
- **Commission-based Model:** This is another variant where the agency operates in its own name but on behalf of others. In this commission-based model, the agency issues invoices to customers in its own name and receives invoices from actual service providers, reduced by the agency discount or commission. This discount or commission represents the agency's share in the selling price.
- **Intermediary services:** The agent performs services in another's name and on behalf of another while acting as an intermediary and calculate VAT only on their own commission. This could involve activities such as arranging bookings or facilitating transactions between the customer and the actual service provider.
- **Reselling Third-Party Services:** The agent perform services in their own name, using supplies of goods and services obtained from other taxpayers (like accommodation, transport, restaurant services, etc.)

Changes in TOMS Application for Non-EU Operators in Croatia as of January 2021

For non-EU tour operators/travel agents, if they are selling Croatian tourist packages, **by the 5th of January 2021**, TOMS should have been applied to the following business model:

- The agent perform services in their own name, using supplies of goods and services obtained from other taxpayers (like accommodation, transport, restaurant services, etc.).
- From the 5th of January 2021, non-EU tour operators/travel agents cannot apply TOMS in Croatia if they do not have a headquarters or permanent establishment from which the service is provided within the European Union.
- In accordance with the interpretation of the aforementioned opinion by the Croatian Central Tax Office, for actions that are compliant with the Croatian VAT Law and VAT Ordinance, it is necessary to consider several important facts.

We will explain these in detail in the following slides

VAT Treatment for Composite Services: Croatian VAT Act and EU Court of Justice Perspective

- Each transaction should generally be considered different and independent. However, a transaction that is economically a single service should not be artificially separated as this would affect the functionality of the VAT system.
- A transaction is considered a single service when two or more elements provided by the taxpayer to a customer are so closely linked that they objectively form an inseparable economic service.
- When one or more elements are the main service, the other elements are considered ancillary and follow the tax treatment of the main service. An ancillary service is a means to better use the provider's main service and not an objective in itself for clients.
- For a taxpayer without a headquarters or permanent establishment in the EU, it is necessary to determine whether they perform individual services or a single service made up of several elements. For each service, the place of supply and the appropriate tax rate must be determined.
- If a taxpayer without a headquarters or permanent establishment in the EU performs a single travel service consisting of several elements, the remaining services are considered ancillary and share the tax treatment of the main service. The main element of the service determines the place of supply and tax rate.
- If two elements of a single service are equivalent and subject to different tax rates, the higher VAT tax rate applies.

Key Taxable Tourism-Related Services in Croatia and VAT Payment Considerations

The most significant tourism-related services taxable in Croatia include:

- Real estate-related services (e.g., accommodation services in hotels located in Croatia),
- Passenger transportation services (e.g., bus transportation of passengers throughout Croatia),
- Services related to access to cultural, artistic, sports, scientific, educational, entertainment, and similar events located in Croatia (e.g., concert tickets or tickets to cultural and religious sites),
- Food preparation services and services of supplying prepared food and beverages provided in Croatia (e.g., restaurant services or wine tasting tours),
- Short-term rental services of means of transport (e.g., short-term rental of a vehicle made available in Croatia).

The VAT payment depends on the tax status of the service recipient and whether the service provider is registered for VAT in the Republic of Croatia.

B2B Relationships:

VAT Responsibilities for Non-EU Travel Agents and Croatian VAT-registered Recipients

- In the first step, it is crucial to determine **the tax status of the recipient of the service** and whether the service provider (Non-EU travel agent) is registered for VAT purposes in Croatia, or not.



- Assuming it's a B2B relationship where the service provider (Non-EU travel agent) is not registered for VAT in Croatia, but the service recipient is taxpayer registered for VAT in Croatia, in this case, **the tax liability is transferred to the service recipient**. This complies with the provision of Article 75, Paragraph 2 of the Croatian VAT Law.
- On the other hand, in a B2B relationship where the service recipient is a tax liable person registered for VAT in Croatia, and the service provider (Non-EU Travel Agent) is also registered for VAT in Croatia, in this case, **the service provider must charge Croatian VAT for their services**.

B2B Service Example:

VAT Implications for Non-EU Travel Company and VAT-registered Service Recipient in Croatia

- A Croatian company “FINVERS d.o.o.” ordered accommodation in a hotel in Opatija (Croatia) through a travel agent based in Switzerland.
- The Swiss agent is not registered in Croatia for VAT purposes and does not have a Croatian VAT identification number.
- As accommodation services are provided in Croatia, the place of taxation according to Art. 19 of the Croatian VAT Act is according to the place where the hotel is located, so the user of the service Company “FINVERS d.o.o.” is liable to calculate VAT according to Art. 75, paragraph 2 of the VAT Act applying the VAT rate of 13%.
- The Swiss agent, given that it is not registered for VAT purposes in Croatia because it does not sell its services to persons who are not taxpayers, has the right to the refund of the VAT charged by the hotel through a request for a refund in accordance with Article 67 of the Croatian VAT Act.

B2C Relationships:

VAT Responsibilities for Non-EU Travel Agents

- If the service recipient is a VAT non-taxable person, such as a citizen, the service provider (Non-EU travel agent) must calculate VAT in one of the following two ways:



1. **Register for VAT purposes in Croatia and charge Croatian VAT on their services, or**
2. **Register in one of the EU member states** for the application of a special tax procedure for services provided by taxable persons without a headquarters within the EU, according to the provisions of Articles 119 to 125 of the Croatian VAT Law (**applies: One Stop Shop – OSS**).

B2C Service Example (the most comprehensive one):

VAT Implications for Non-EU Travel Company/Tour operator

- A tour operator in the UK sells a travel package consisting of air transport between London and Dubrovnik (Croatia), hotel accommodation in Dubrovnik for 7 days on a half-board basis, and car rental services.
- Given that this tourist package was sold by a UK tour operator to non-taxable person, the UK tour operator has previously registered for VAT in Croatia. (*The registration procedure for VAT purposes in Croatia needs to be completed before commencing service provision*).
- According to the interpretation of the aforementioned opinion by the Central Office of the Croatian Tax Administration, different tax rates apply to these services.
- It is necessary to determine whether a UK tour operator provides individual services (e.g., accommodation, passenger transportation, excursions, meals, tour guide) or a single service comprising multiple elements that should not be artificially separated.

B2C Service Example (the most comprehensive one):

VAT Implications for Non-EU Travel Company/Tour operator

- If individual services are shown on the UK tour operator invoice, the corresponding tax rates or exemptions are applied. *(It is necessary to determine whether these services are individually sold or offered as a travel package – single service).*
- If a single service is shown on the invoice, the tax rate for the main service is applied. In this case, the accommodation service is considered the main service, subject to a reduced VAT rate of 13%, while the remaining services are considered ancillary (secondary) services that share the tax treatment of the main service.
- The package also includes a car rental service, which is considered an ancillary service that shares the tax treatment of the main service, so the reduced VAT rate can be applied, as on the single service.
- However, as according to our example, the package also includes an international air transport service which, when sold individually, is exempt from VAT, the agent as a taxpayer can show the individual values of the services and thus apply the corresponding tax rates or tax exemption.
- As stated in the Tax Administration instruction: *“if two elements of a single service are of equal value, and they are subject to different tax rates, the higher tax rate is applied”*.

Closing Remarks and Outstanding Issues

Despite official guidance provided by the Croatian Tax Administration, there are significant unresolved issues related to this matter when it comes to Croatian travel packages sold by travel agencies based in third countries. Below, we present some of the most significant:

- **Tax Rate for International Air Transport:** Should international air transport, if part of a package that includes hotel accommodation, be subject to a VAT rate of 13% which applies to hotel accommodation (main service)?
- **Services Partially Provided in a Third Country:** What if a service that is part of the package is provided partially in a third country, such as a day trip from Dubrovnik to Montenegro? Should tax exemptions be applied, and is the key to calculation the ratio of costs from supplier invoices incurred in Croatia, compared to those in Montenegro?
- **Role of Local (Croatian) Destination Management Companies (DMC):** The Central Office of the Tax Administration's interpretation has not addressed the crucial fact that Non-EU tour operators/travel agencies often procure services via local Croatian DMCs. When services of accommodation and/or transport are procured through a DMC, the DMC is required to apply the Tour Operators' Margin Scheme (TOMS). This means that the DMC will not show VAT on its invoice to the Non-EU Tour Operator, who is then unable to claim input tax credit but is required to charge Croatian VAT on their services.
- **Main Service and VAT Rate:** Challenges arise in determining the main service in a package arrangement and distinguishing it from ancillary services. As a result, there is a potential tax risk associated with applying the correct VAT rate for the main service, requiring careful documentation and substantiation.

- **VAT Registration and Representation:** If you're a Non-EU Tour operator seeking to register for VAT purposes in Croatia, we can guide you through the process and ensure full compliance with local regulations. We also offer services for the submission of monthly VAT returns and representation in correspondence with Croatian tax authorities.
- **Specialized Tax Advisory Services:** Our team includes advisors specialized in the VAT taxation issues of the tourism sector. We can provide comprehensive accounting and tax advisory services tailored to your specific needs, particularly in these complex areas.
- **Establishing a Company in Croatia:** If you're considering establishing a company in Croatia, we can provide the necessary support and expert advice to make the process smooth and successful.
- **Connection to Established DMCs:** We can assist you in establishing connections with well-established Croatian Destination Management Companies (DMCs), further facilitating your operations in the Croatian market.

Our commitment is to support and guide you in navigating the complexities of Croatian tax regulations, providing optimal solutions for your business.

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