Deloitte.

URL: http://www.deloitte-tax-news.de/german-tax-legal-news/european-commission-refers-germany-to-cjeu-regarding-implementation-of-toms-rules.html

25.05.2016

German Tax and Legal News

European Commission refers Germany to CJEU regarding implementation of TOMS rules

German tour operator margin scheme not in line with EU VAT law?

On April 28, 2016 the European Commission referred Germany to the Court of Justice of the European Union (CJEU) regarding its application of the special Tour Operators Margin Scheme (TOMS).

According to the EU VAT directive, travel packages provided by tour operators are considered a single travel service subject to the TOMS, with a place of supply being in the member state of the tour operator. The taxable base of such a travel service is deemed to be the tour operator's margin, i.e. the difference between the price (exclusive of VAT) of the travel package and the VAT-inclusive cost of the supplies and services forming part of the package.

In September 2013, the CJEU ruled in another case that supplies to private travelers, as well as supplies made on a business-to-business (B2B) basis, fall within the scope of the TOMS regime and that VAT due on the margin should be determined on a transaction-by-transaction basis.

Although other EU member states have implemented the CJEU decision into their domestic legislation, Germany still applies the TOMS only on travel services supplied to private individuals, with B2B supplies still falling within the scope of the general VAT provisions. In addition, the German provisions still provide the possibility to calculate a group margin or total margin per tax period.

The European Commission issued a reasoned opinion in September 2015 requesting that Germany amend its rules to implement the application of the TOMS on B2B supplies and to limit the calculation of the margin to a transaction-by-transaction basis. Since Germany failed to respond to the Commission's request, it has referred the issue to the CJEU.

Tour operators should be aware of potential changes to the German TOMS legislation in the near future.