Travel agents to pay VAT on receipt of prepayment (2/5/19)

On 19 December 2018 the Court of Justice of the European Union (CJEU) announced its ruling on case C-422/17 to determine the date for charging VAT where a travel agent covered by the special scheme for travel agents (SSTA) receives a prepayment towards the fee payable for the service he supplies to the traveller. This article explores the CJEU findings and their practical application.

The main proceedings and preliminary questions

A Polish travel company covered by the SSTA asked the minister to issue a statement explaining when VAT becomes chargeable where the travel agent receives a prepayment towards travel service fees. The company said the Polish VAT Act fails to specify when VAT becomes chargeable on such prepayments, and VAT on his services is not, therefore, chargeable until he is able to measure his final profit.

The minister replied, however, that VAT is chargeable on the date of prepayment. To arrive at his profit constituting the taxable amount, the travel agent may deduct any estimated costs to be incurred towards his service from his gross profit and make any necessary adjustment as soon as he is able to calculate his actual costs.

The Polish Supreme Administrative Court asked the CJEU to answer the following preliminary questions:

- Should the provisions of the VAT directive be interpreted so that VAT is chargeable when an SSTA travel service provider receives a prepayment?
- If the first answer is affirmative, the Polish court would like a statement of how VAT should be charged on the prepayment received by the travel agent.

CJEU findings

As for supplies the travel agent makes under the SSTA, the EU lawmaker has inserted in articles 307–310 of the VAT directive some special provisions relating to the place where VAT is chargeable, ways of calculating the taxable amount, and the right to deduct input tax.

Since the SSTA is not an independent or exhaustive tax scheme but includes only derogations from certain general VAT provisions, all the other provisions apply to the travel agent’s taxable supplies. Supplies covered by the SSTA may be governed by all the general VAT provisions, except for those which determine the place where VAT is chargeable, ways of calculating the taxable amount, and the right to deduct input tax.

Supplies covered by the SSTA are still governed by the provisions for charging VAT on supplies of goods and services. This means that where an SSTA travel agent receives a prepayment towards the fee payable for the travel service he is to supply, VAT becomes chargeable as soon as that prepayment is received if the travel service is accurately specified at that time.

As for the way the travel agent should measure the taxable amount, the CJEU gives the following interpretation. If the prepayment matches the total price of the travel service (or a substantial portion of it)

and the travel agent has not yet incurred any actual costs or has incurred only a limited part of his total costs, or if the actual costs of the trip incurred by the travel agent cannot be measured on the date of the prepayment, the profit calculation may be based on total estimated costs he will eventually incur. When making such estimates, the travel agent should take account of the actual costs he incurred before receiving the prepayment. In arriving at the profit, the total estimated costs and VAT chargeable on receipt of the prepayment should be deducted from the total trip price. The taxable amount should be calculated by multiplying the prepayment and a percentage of the total trip price matching the expected profit so determined.

Latvian VAT rules

The VAT Act provides that a travel agent should charge VAT when he has completed his service to the traveller and received invoices from suppliers for the actual value of the service, but no later than the next tax period after the service was supplied to the traveller. So the lawmaker has clearly determined the timing of VAT payable by SSTA travel agents. Latvian tour operators and travel agents should now wait to see how the Ministry of Finance (MOF) as the originator of proposals for amending the VAT Act and the State Revenue Service (SRS) as the administrator of VAT will react to this CJEU ruling. To mitigate the risk of a VAT assessment, you may need to apply to the MOF and/or the SRS for a statement or ruling.