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**COMMISSION STAFF WORKING DOCUMENT**  
**EVALUATION**

**Special Scheme for travel agents**

*of the*

**Council Directive 2006/112/EC on the common system of value added tax**

{SWD(2021) 33 final}

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## Glossary

Bed Bank	Online intermediaries specialised in distribution/aggregation of products (e.g. hotel rooms)
Bn	Billion
B2B	Business-to-Business
B2C	Business-to-Customer
CJEU	Court of Justice of the European Union
COM	European Commission
DG TAXUD	Directorate General for Taxation and Customs Union
DMC	Destination Management Companies
EU	European Union
EUR	Euro
FIT	Fully Independent Traveller
GDP	Gross Domestic Product
ICT	Information Communication Technology
MICE	Meeting, Incentives, Conference and Events
OECD	Organisation for Economic Co-operation and Development
OSS	One Stop Shop
OTA	Online Travel Agency
Principal supplier	Providers such as hotels, airlines, attractions and car rental companies supplying their own services both directly to travellers and to other operators
SME	Small and Medium-sized Enterprise
TBE	Telecommunications, broadcasting and electronically supplied services
TMC	Travel Management Companies
TTL TVC	Tourism Tax and Law Travel VAT Conference
Travel agents	If not otherwise specified, the whole category of travel agents and tour operators to which the special scheme is applicable
UNWTO	United Nations World Tourism Organization
VAT	Value Added Tax
VAT Directive	Directive 2006/112/EC
WEF	World Economic Forum

## 1. INTRODUCTION

The special VAT scheme for travel agents<sup>1</sup> (the “special scheme” or the “travel agent scheme”) was put in place by the Sixth VAT Directive<sup>2</sup> in 1977 as a simplification measure derogating from the normal VAT rules on the place of supply, taxable amount and deduction of input tax. This scheme, currently set out in Articles 306 to 310 of the VAT Directive<sup>3</sup>, has remained unchanged since the adoption of the common VAT system in the EU.

Since then, however, divergence in application of the travel agent scheme has arisen between Member States, leading, over the years, to numerous judgments of the Court of Justice of the European Union (CJEU).

As a result, in 2002 the Commission adopted a proposal<sup>4</sup>, amended in 2003<sup>5</sup> (“the 2002/2003 proposal”), to reform the travel agent scheme. No agreement could however be reached in the Council and the 2002/2003 proposal was finally withdrawn in 2014<sup>6</sup>, because it had become obsolete after a series of other rulings of the CJEU.

In compliance with its commitment of periodically and regularly review of the provisions of the VAT Directive, in 2017 the Commission contracted a study<sup>7</sup> (“the study”) in order to evaluate the current state of the play of the special scheme, together with possible options for its review.

This evaluation fits into the priorities set by the Tax Action Plan<sup>8</sup>, in particular those aiming at simplifying EU tax rules for more competitiveness in the Single Market, especially in light of the current Covid-19 crisis.

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<sup>1</sup> According to Article 306 of the VAT Directive, the scheme is also applicable to tour operators. Throughout the text, if not otherwise specified, the term “travel agent” will stand for the whole category of travel agents and tour operators to which the special scheme is applicable.

<sup>2</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value-added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

<sup>3</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A131057>

<sup>4</sup> Proposal for a Council Directive amending Directive 77/388/EEC as regards the special scheme for travel agents (COM(2002) 64 final of 8.2.2002).

<sup>5</sup> Amended proposal for a Council Directive amending Directive 77/388/EEC as regards the special scheme for travel agents and Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding supplies of travel services (COM(2003) 78 final of 24.3.2003).

<sup>6</sup> OJ C 153, 21.5.2014, p. 3.

<sup>7</sup> [Study](#) on the review of the VAT Special Scheme for travel agents and options for reform (Final report of December 2017, TAXUD/2016/AO-05). The report was prepared by KPMG.

<sup>8</sup> Communication from the Commission to the European Parliament and the Council - An action plan for fair and simple taxation supporting the recovery strategy (COM(2020) 312 final of 15 July 2020).

In this context, this Staff Working Document presents the outcome of the evaluation process carried out on the travel agent scheme.

### **1.1. Purpose and scope**

As set out in the Roadmap<sup>9</sup> published on 4 February 2020, the purpose of this evaluation is twofold. Firstly, it seeks to establish whether the special scheme still meets its original objectives, namely simplifying the application of VAT rules for travel agents and ensuring that VAT revenue goes to the Member States of consumption. Secondly, it sets out to assess whether new concerns and challenges have arisen since its adoption, which cannot be addressed by the scheme in its present form.

In particular, the evaluation looks at the implementation of the different provisions of the travel agent scheme, and assesses its application by Member States. In this regard, particular attention is given to the relevant case law of the CJEU. It also assesses possible distortions of competition that may affect the functioning of the internal market as well as possible side effects that might be due to the application of the scheme.

Developments in the travel industry, including its different business models and the digitalisation of the sector, are important aspects that are given consideration.

The evaluation also takes into account developments in the regulatory framework, like the introduction of the “One Stop Shop” in 2021 (a solution enabling all businesses that deal with final consumers to avoid multiple registrations and declarations) and the shift to destination-based taxation (in the current VAT Directive and in a definitive VAT system).

The performance of the special scheme is assessed against the five evaluation criteria: i) relevance, ii) effectiveness, iii) efficiency, iv) coherence and v) the EU added value<sup>10</sup> as defined in the Better Regulation Guidelines<sup>11</sup>.

The time period covered stretches from the creation of the special scheme in 1977 until the availability of the latest reported data (e.g. data from the open public consultation ended in September 2020). In terms of geographical coverage, the evaluation covers all EU Member States and the United Kingdom. With the view to assess whether the special scheme ensures a level playing field, the evaluation also covers economic operators located in third countries. This evaluation will help determine whether any subsequent policy action is needed in order to address any identified shortcomings. It could be then

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[https://ec.europa.eu/taxation\\_customs/general-information-taxation/eu-tax-policy-strategy/package-fair-and-simple-taxation\\_en1](https://ec.europa.eu/taxation_customs/general-information-taxation/eu-tax-policy-strategy/package-fair-and-simple-taxation_en1)

<sup>9</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11883-Evaluation-of-the-special-VAT-scheme-for-travel-agents>

<sup>10</sup> As regards the last one, it has to be recalled that the travel agent scheme is a particular feature of the VAT system, which is harmonised at EU level. Any intervention in this field can therefore only pass through an amendment of the VAT Directive.

<sup>11</sup> <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>



followed by an impact assessment of possible options for reform and eventually result in a legal initiative of the Commission.

## **2. BACKGROUND TO THE INTERVENTION**

### **2.1. Description of the intervention and its objectives**

When the Sixth VAT Directive was adopted in 1977, a special scheme was introduced for travel agencies and tour operators. This special scheme, now set out in Articles 306 to 310 of the VAT Directive, was brought in due to the special nature of the industry.

The services offered by travel agents usually consist of a package of services, in particular transport and accommodation obtained from third parties. These packages are then sold by travel agents, acting in their own name, to their customers. Those are circumstances where it is particularly difficult to apply the normal VAT rules on the place of supply, the taxable amount and deduction of input tax due to the complexity and location of the services provided.

The special scheme pursues two main objectives:

- (a) to simplify the application of the normal VAT rules, especially for the supply of travel packages, so that a travel agent avoids having to register for VAT purposes in each of the Member States where the services acquired by the travel agent are performed.

To be kept in mind that the normal activity of travel agents consists of purchasing services for the direct benefit of a traveller from service providers, mainly established in other Member States or outside the EU, and reselling them in their own name to the traveller. Under Article 28 of the VAT Directive, taxable persons (travel agents) acting in their own name but on behalf of another (the traveller) would be considered to have received and supplied those services themselves. Application of the normal VAT rules would therefore result in the travel agent having to register in each of the Member States in which the relevant services are supplied. For example, the provision of hotel accommodation is deemed to take place where the hotel is located<sup>12</sup> and admission to cultural, artistic, entertainment and similar events is deemed to take place where those services are physically carried out<sup>13</sup>. By introducing the “single service” concept, under which all transactions in respect of a journey are regarded as a single supply taxable in the Member State where the travel agent is established, the special scheme does away with the requirement of multiple VAT registrations.

- (b) to ensure that VAT revenue goes to the Member State in which final consumption of each individual component of the single supply takes place.

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<sup>12</sup> Article 47 of the VAT Directive.

<sup>13</sup> Article 53 of the VAT Directive.

Under the special scheme, travel agents are not taxed on their turnover, but on their margin. VAT incurred by the travel agent in respect of supplies made for the direct benefit of the traveller is therefore not eligible for deduction or refund in any Member State. The effect of taxation on the margin is that VAT revenue on services enjoyed in the course of the journey, such as hotel accommodation, restaurant services or transport, will go to the Member State in which the traveller receives the service, whereas VAT on the travel agent's margin returns to the Member State in which the agent is established so that, in principle, a fair distribution of VAT revenues between Member States is guaranteed: in the end, each element of the travel package will bear VAT in the country of consumption.

In addition, without an arrangement such as taxation on the margin, travel agents putting together a holiday or travel package within the European Union would have to recover the VAT charged to them, often in other Member States, for supplies such as accommodation, meals, transport, guided tours, cruises or organised leisure activities to be provided in those Member States. Not only would that result in significant administrative complexity but, as a result, such services would be subject to VAT not in the Member State in which they were in fact provided and consumed but in the Member State in which the package was purchased. Significant VAT revenue might thus be diverted from Member States providing tourist destinations to those providing the tourists.

Since its introduction in 1977, nevertheless, the travel agent scheme has not been applied uniformly by Member States, possibly leading to double taxation, distortions of competition and unfair distribution of VAT receipts among Member States.

For that reason, in 2002 the Commission adopted a proposal with a view to amend the travel agent scheme<sup>14</sup>. That proposal had as its objective:

- to allow travel agents to apply VAT to their profit margin for services sold to other travel agents as well as to private individuals,
- to 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,
- to entitle travel agents to opt for application of the normal VAT system,
- to authorise travel agents to calculate a single profit margin for package tours provided over a certain period.

The European Parliament proposed two amendments<sup>15</sup> to this proposal, one of which was accepted by the Commission, namely the introduction of the “one stop shop” principle.

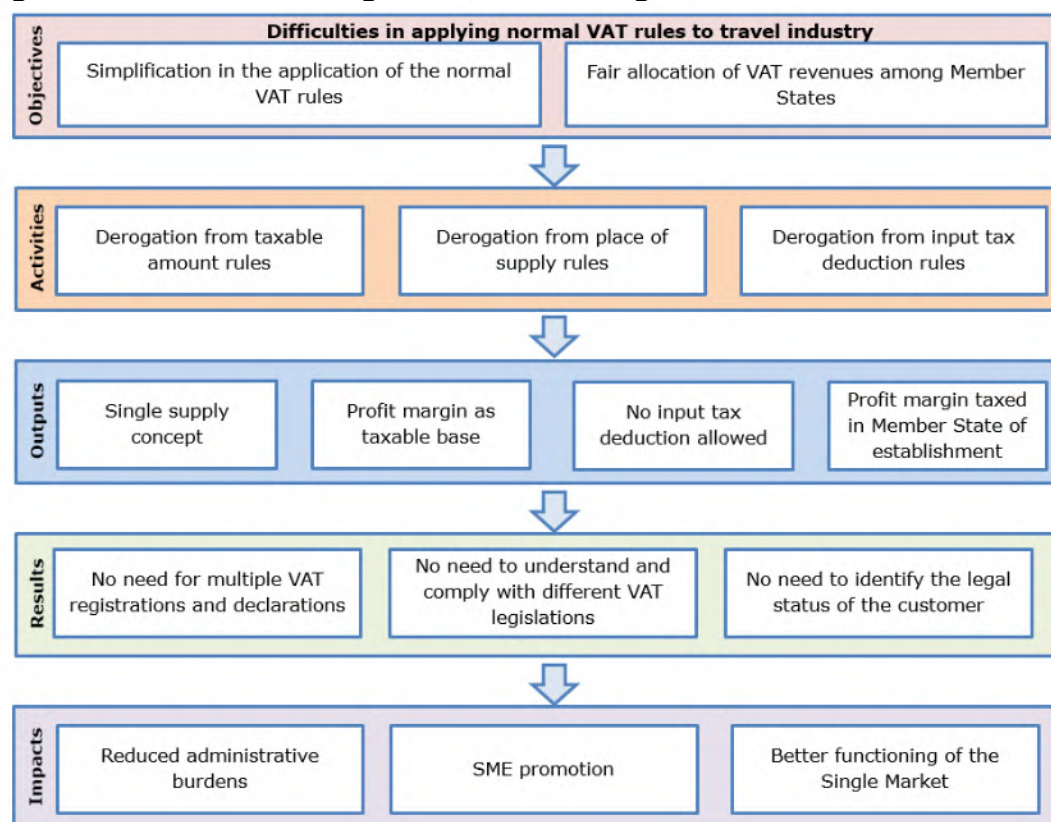
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<sup>14</sup> Cf. *supra* note 4.

<sup>15</sup> Report on the Proposal for a Council Directive amending Directive 77/388/EEC as regards the special scheme for travel agents (COM(2002) 64 – C5-0112/2002 – 2002/0041(CNS)), PE 307.532, A50274/2002.

The introduction of an exemption for supplies to third-country established clients was however not accepted, as it would have been contrary to one of the basic principles of the EU VAT system whereby supplies of goods and services are taxed where the consumption takes place regardless the place of establishment of the client. To this end, in 2003 the Commission amended its proposal<sup>16</sup> (“the 2002/2003 proposal”) aiming at extending the simplified mechanism just adopted for services provided electronically by suppliers not established in the European Union to customers established in the EU<sup>17</sup> so that it would also cover supplies made under the travel agent scheme. No agreement could however be reached in the Council and the 2002/2003 proposal was finally withdrawn in 2014, because it had become obsolete after a series of rulings of the CJEU.

**Figure 1: Intervention Logic of the Travel Agent scheme**



## 2.2. Baseline and points of comparison

### 2.2.1. Common EU rules

The travel agent scheme is set out in Articles 306 to 310 of the VAT Directive and is mandatory for both Member States and businesses.

According to Article 306, the special scheme applies to operations carried out by the travel agents (including tour operators) who deal with customers in their own name and

<sup>16</sup> Cf. *supra* note 5.

<sup>17</sup> Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (OJ L 128, 15.5.2002, p. 41).

use the supplies of goods or services of other taxable persons in the provision of travel facilities. When travel agents act as intermediaries, i.e. act in the name of another person, the special scheme does not apply and the supplies of travel facilities are instead treated according to the normal VAT rules.

Under Article 307 of the VAT Directive, transactions performed, in accordance with the conditions laid down in Article 306, by a travel agent in respect of a journey are regarded as a single supply.

The place of taxation for the travel agent's supply is where he has established his business or has a fixed establishment from which the service is provided or, failing this, the place where he has his permanent address or usually resides.

According to Article 308 of the VAT Directive, the taxable amount is the profit margin realised by the travel agent on the supply of single service, 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 (inclusive of VAT), where those transactions are for the direct benefit of the traveller.

Hence, the travel agent is not entitled to deduct input VAT: tax charged to a travel agent by other taxable persons on transactions that directly benefit a traveller is not eligible for deduction or refund in any Member State. However, Article 310 of the VAT Directive leaves the right for the travel agent to deduct input tax incurred on transactions other than those directly benefiting a traveller, such as VAT on overhead costs (advertising, office expenses, etc.).

Finally, as for transactions entrusted by a travel agent to other taxable persons performed by such persons outside the European Union, the exemption with right of deduction applies based on Article 309 of the VAT Directive, read in conjunction with Articles 153 and 169. When the transactions entrusted by a travel agent to other taxable persons are performed both inside and outside the EU, only the part of the service relating to the transactions outside the European Union is exempted with right of deduction.

### **2.2.2. Interpretation of the common EU rules by the CJEU**

Differences in interpretation by Member States of the above rules have led to a multitude of judgments rendered by the CJEU over the years. These have served to clarify the EU common rules and to complement them as a baseline for the special scheme.

The crucial interpretative role played by the CJEU over the last years has also been underlined by Advocate General Sharpston in her opinion in case C- 189/11 et al. *Commission v Spain*: “It is hard to avoid the impression that the Court is being 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.”.

The CJEU confirmed that the special scheme derogates only in terms of place of supply, taxable amount and deduction of input tax and that in any other case, the normal VAT rules must be applied:

- The supply of travel services is not included in Annex III of the VAT Directive and can therefore not benefit from a reduced rate of VAT (C-74/91 *Commission v Germany*<sup>18</sup> and C-552/17 *Alpenchalets*<sup>19</sup>).
- The value of the margin must be considered in a manner consistent with normal valuation provisions (C-149/01 *First Choice Holidays*<sup>20</sup>).
- VAT payable must be calculated separately for each supply. Using a global or aggregated basis is not permitted (C-189/11 et al. *Commission v Spain*<sup>21</sup> and C-380/16 *Commission v Germany*<sup>22</sup>).
- When a travel agent, subject to the special scheme, receives a payment on account, VAT is chargeable, in accordance with Article 65, on receipt of that payment on account (C-422/17 *Skarpa Travel*<sup>23</sup>).
- The turnover of a travel agent (and not his margin) must be taken into account, when the travel agent wants to benefit from exemption as a small business (C-388/18 *B (Chiffre d'affaires du revendeur de véhicules d'occasion)*<sup>24</sup>).

The CJEU clarified that, as the special scheme is an exception to the normal VAT rules, it must be applied only to the extent required to achieve its objectives:

- Services supplied by the travel agent himself cannot fall within the special scheme (C-557/11 *Kozak*<sup>25</sup>).
- Bought-in services should not be included in the special scheme when merely ancillary to in-house services (C-308/96 and C-94/97 *Madgett and Baldwin*<sup>26</sup>).
- In-house services (when supplied together with bought-in services) must be valued by reference to their market value whenever this market value can be established. A

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<sup>18</sup> CJEU, judgment of 27 October 1992, *Commission v Germany*, C-74/91, EU:C:1992:409.

<sup>19</sup> CJEU, judgment of 19 December 2018, *Alpenchalets Resorts*, C-552/17, EU:C:2018:1032.

<sup>20</sup> CJEU, judgment of 19 June 2003, *First Choice Holidays*, C-149/01, EU:C:2003:358.

<sup>21</sup> CJEU, judgment of 26 September 2013, *Commission v Spain*, C-189/11, EU:C:2013:587.

<sup>22</sup> CJEU, judgment of 18 February 2018, *Commission v Germany*, C-380/16, EU:C:2018:76. In this case, the CJEU highlighted that the fact that the calculation of the margin, as provided for in this Article 308, for sales in the B2C area may give rise to difficulties, as claimed by Germany and the Netherlands, is not an exclusion criterion for this interpretation. Member States must also apply the VAT Directive, even if they deem it to be improved (see, to that effect, judgment of 6 October 2005, *Commission v Spain*, C-204/03, EU:C:2005:588, paragraph 28), until the Union legislature decides, where appropriate, to amend the content of the special scheme.

<sup>23</sup> CJEU, judgment of 19 December 2018, *Skarpa Travel*, C-422/17, EU:C:2018:1029.

<sup>24</sup> CJEU, judgment of 29 July 2019, *B (Chiffre d'affaires du revendeur de véhicules d'occasion)*, C-388/18, EU:C:2019:642.

<sup>25</sup> CJEU, judgment of 25 October 2012, *Kozak*, C-557/11, EU:C:2012:672.

<sup>26</sup> CJEU, judgment of 22 October 1998, *Madgett and Baldwin*, C-308/96 and C-94/97, EU:C:1998:496.

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 (C-291/03 *MyTravel*<sup>27</sup>).

- A supply in isolation, which does not relate to a journey, is to be taxed under the normal VAT rules (C-31/10 *Minerva Kulturreisen*<sup>28</sup>).

The CJEU emphasised that the special scheme must be applied in a consistent manner in order to achieve its objectives:

- The special scheme is not limited to travel agents and tour operators but must apply equally to any person supplying travels under the circumstances envisaged (C-308/96 and C-94/97 *Madgett and Baldwin*<sup>29</sup>, C-200/04 *iSt*<sup>30</sup> and C-220/11 *Star Coaches*<sup>31</sup>).
- The status of the customer is not relevant in determining whether the special scheme applies. B2B and B2C supplies are therefore treated equally (C-189/11 *et al. Commission v Spain* and C-380/16 *Commission v Germany*). In particular, in case C-380/16 *Commission v Germany*, the CJEU made clear that it is important to ensure that the interpretation that best matches the objectives of the special scheme, which is that B2B supplies are also covered, must be applied in a uniform manner by the Member States. The CJEU also repeated that the two objectives of the special scheme, namely simplification of the VAT rules for travel agents and the balanced distribution of revenue from the collection of VAT between Member States, are better achieved with the customer principle.
- The special scheme applies both to single items and packages (C-163/91 *Van Ginkel*<sup>32</sup> and C-552/17 *Alpenchalets*<sup>33</sup>).

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<sup>27</sup> CJEU, judgment of 6 October 2005, *MyTravel*, C-291/03 EU:C:2005:591.

<sup>28</sup> CJEU, judgment of 9 December 2010, *Minerva Kulturreisen*, C-31/10, EU:C:2010:762.

<sup>29</sup> Cf. *supra* note 25.

<sup>30</sup> CJEU, judgment of 13 October 2005, *iSt*, C-200/04, EU:C:2005:608.

<sup>31</sup> CJEU, order of 1 March 2012, *Star Coaches*, C-220/11, EU:C:2012:120. This order shows, by contrast, that absent the “circumstances envisaged” the special scheme does not apply.

<sup>32</sup> CJEU, judgment of 12 November 1992, *Van Ginkel Waddinxveen*, C-163/91, EU:C:1992:435.

<sup>33</sup> In *Alpenchalets*, the CJEU stated that the exclusion from the field of application of Article 306 of the VAT Directive of services supplied by a travel agent on the sole ground that they cover accommodation only would lead to a complicated tax system in which the VAT rules applicable would depend upon the constituents of the services offered to each traveller. Such a tax system would fail to comply with the aims of the special scheme.

The mere supply of holiday accommodation by the travel agent is sufficient for the special scheme under Articles 306 to 310 of the VAT Directive to apply and the importance of other supplies of goods or services, which may be combined with the supply of accommodation, cannot have a bearing on the legal classification of the situation at issue.

It was particularly important for the CJEU to clarify that the outcome in *Star Coaches* does not allow reaching a different conclusion.

### 3. IMPLEMENTATION / STATE OF PLAY

#### 3.1. The travel-tourism industry

##### 3.1.1. Importance of the industry in the EU

The travel and tourism are mainstays of the EU economy. The European tourism ecosystem, covering a range of activities such as travel, transport, accommodation, food, recreation, directly and indirectly contributes close to 10% to EU GDP and has made the EU the world's leading tourism destination, with 563 million international arrivals and 30% of global receipts in 2018 according to World Tourism Organization (UNWTO)<sup>34</sup>. For countries such as Spain and Italy, the contribution of tourism to their GDP is even higher than the global average, 14.3% and 13.0% of their GDP in 2019, respectively.

The crucial importance of tourism in the EU is demonstrated by the fact that it is the fourth largest EU export category and brings spill-over benefits to the European economy as a whole: EUR 1 of value added generated by tourism results in additional 56 cent of value added in indirect effect on other industries<sup>35</sup>.

The travel ecosystem is made up by different players, comprising operators of varying description (tour operators, travel agents etc.) and numerous principal suppliers<sup>36</sup> providing services both directly to travellers and to other operators (for example hotels, airlines, attractions and car rental companies).

The EU travel market comprises approximately 210 000 tour operators and travel agents<sup>37</sup>. The total annual turnover derived from EU travel services, including the organisation of conventions and trade shows, in 2018 was circa **EUR 213 billion**<sup>38</sup>.

The industry is increasingly driven by technology which has disrupted the traditional business models and the roles of players within the ecosystem. The rise of the digital consumer and a surge in demand for travel are also driving disruption and transformation in this sector.

##### 3.1.2. Impact of the Covid-19 crisis

Worldwide travel and tourism have been the worst affected of all major economic sectors by the Covid-19 pandemic and measures introduced to contain its spread. It has resulted in travel restrictions being put in place in virtually all countries around the world, with conferences and events being cancelled, hotels closed and aircraft left on the ground.

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<sup>34</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Tourism and transport in 2020 and beyond" (COM(2020) 550 final of 13.5.2020).

<sup>35</sup> Communication "Tourism and transport in 2020 and beyond".

<sup>36</sup> Principal suppliers are providers such as hotels, airlines, attractions and car rental companies supplying their own services both directly to travellers and to other operators.

<sup>37</sup> Eurostat structural business 2018 statistics EU-28.

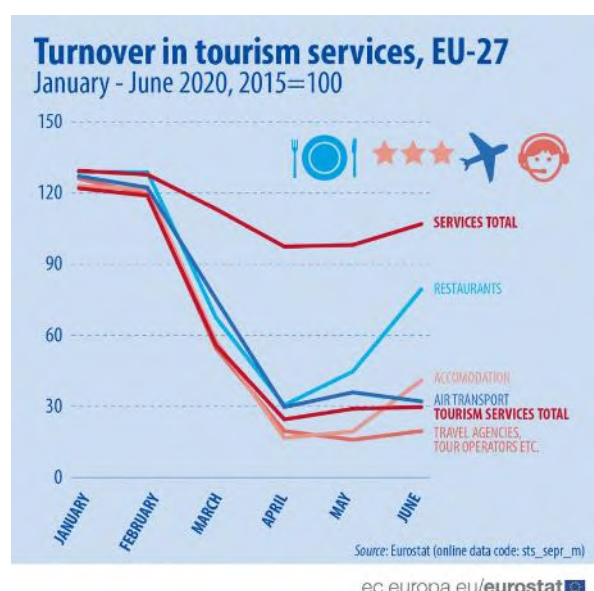
<sup>38</sup> The overall EU turnover of travel industry estimated in 2015 by KPMG for the study was EUR 187 billion. EUROSTAT data.

Depending on the duration of the crisis and the speed with which travel and tourism rebounds, revised scenarios by the Organisation for Economic Co-operation and Development (OECD)<sup>39</sup> indicate that the potential shock could range between a 60-80% decline in the international tourism economy in 2020. The impact is particularly felt in countries, cities and regions where tourism is an important part of the economy.

OECD analysis also indicates that a high share of jobs are at risk in European destinations such as the Ionian islands in Greece, Balearic and Canary Islands in Spain, and the Algarve region in Portugal, given the importance of tourism in the local economy.

Between February and June 2020, the turnover for services related to tourism (air transport, hotels, restaurants, tour operators etc.) dropped by 75% as during two months of Covid-19 measures (March and April) many hotels and restaurants had been closed and air travel was massively reduced. Among the detailed sectors within the tourism sector, turnover of travel agencies and tour operators fell the most (-83.6%), followed by air transport (-73.8%), accommodation (-66.4%) and restaurants (-38.4%)<sup>40</sup>.

**Figure 2: Turnover in tourism services in EU27**



Source: Eurostat (online data code: sts\_sepr\_m)

A report published by the Joint Research Centre (JRC) of the European Commission<sup>41</sup>, provides an analysis of the potential effect of the Covid-19 outbreak on EU employment, as the result of tourism flow slowdown. Based on the results of surveys conducted between April and May 2020, the report predicts a decline in tourist arrivals in EU of

<sup>39</sup> OECD Policy Responses to Coronavirus (COVID-19) “[Rebuilding tourism for the future: Covid-19 policy responses and recovery](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Impact_of_Covid-19_crisis_on_services#Comparison_with_2008)”, 22 October 2020.

<sup>40</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Impact\\_of\\_Covid-19\\_crisis\\_on\\_services#Comparison\\_with\\_2008](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Impact_of_Covid-19_crisis_on_services#Comparison_with_2008).  
<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200904-2>.

<sup>41</sup> “Behavioural changes in tourism in times of COVID-19, Employment scenarios and policy options”, JRC Science for Policy report, 2020.



between 38% and 68% in 2020 and a subsequent potential risk of reduction in working hours or permanent jobs losses in 2020 of between 6.6 and 11.7 million jobs.

### 3.1.3. Digital transformation

Travel and tourism were one of the first sectors to digitalize business processes on a global scale, bringing flight and hotel booking online to become a digital pioneer. As information and communications technology (ICT) became a global phenomenon, the travel and tourism industry was consistently early in adopting digital technologies because of its position as heavily service-oriented ecosystem.

According to the World Economic Forum<sup>42</sup> (WEF), the digital transformation in travel tourism and aviation is expected over the next years to:

- create up to US\$ 305 billion of value for the industry;
- migrate US\$ 100 billion of value from traditional players to new competitors;
- generate benefits valued at US\$ 700 billion for customers and the wider society through in particular cost and time savings for consumers;
- result in a net displacement of current jobs in the industry.

**Digital technologies are changing the way travel is traditionally researched, bought, sold, experienced and shared. In particular, digital platforms such as online travel agencies, meta-search engines and travel service aggregators are taking shape across the industry and are challenging the travel incumbents. Their presence in the market now dominant has aggressively disrupted the value chain of the traditional travel system from end-to-end.**

In particular, Peer-to-Peer (P2P) platforms such as Airbnb have radically altered demand-side dynamics, enabling small entrepreneurs and private individuals to compete with bigger players. According to the World Bank Group, the annual growth rate of P2P platforms providing accommodation services is estimated at 31% between 2013 and 2025, six times the growth rate of traditional bed and breakfasts and hostels<sup>43</sup>.

At the same time, online travel agencies such as Expedia and Booking.com<sup>44</sup> have played a big role in shaping the current state of travel offerings and booking. For instance, by offering instant booking feature to guarantee customers' reservation, online travel agencies have helped alleviate many of the customers' concerns and helped automate what had previously been an incredibly arduous part of the business model of a brick-and-mortar travel agent.

Indeed, on-line booking is one of the major areas of profit migration. WEF indicates that the share of travel booking made through online travel agencies is expected to grow from

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<sup>42</sup> White paper "[Digital transformation initiative – Aviation, Travel and Tourism Industry](#)", January 2017. The WEF analysis covers the period 2016-2025.

<sup>43</sup> "[Tourism and Sharing Economy](#)", World Bank Group, 2018.

<sup>44</sup> With a market capitalisation of approximately US\$ 85.96 billion, Booking.com ranks first among the leading online travel companies worldwide according to 2019 data compiled by GP Bullhound.

40% in 2016 to 60% in 2025 while the shift from traditional to online channels is expected to cause US\$ 220 billion in additional revenues in 2025.

As more and more devices get connected to the Internet of Things (IoT), access to customers' data and ability to provide hyper-personalised services are key for a travel operator to staying relevant. In the transformed travel ecosystem, power has then shifted to travellers and platforms that own data.

These changes in the industry make collaboration between other players within and outside the travel ecosystem extremely important. Greater integration allows companies to access more data and use it to optimize customer relationships.

Collaboration may not be straightforward, with some companies potentially losing customers to others in the value chain. It also raises the possibility that partner organisations may become competitors. This could result from the vertical and horizontal integration that is likely to take place as industry players expand their activities. An example would be an airline acquiring hotels and, in so doing, entering another part of the value chain.

Digital transformation in the travel industry raises two main concerns:

- Since new business models become viable and companies at the edge or outside the travel ecosystem are drawn in, it is hard to foresee the shape of the industry in a decade. **Traditional industry roles blur and become less relevant. The distinction between acting as intermediary, being principal supplier or operating as undisclosed agent also becomes less and less clear.** On the other hand, the trend of convergence and networking within the ecosystem will bring new type of services and diversification of activities.
- **Core operational processes of a travel operator can be entirely automated, digitalised or handled remotely. The growing use of asset-free models such as platforms means that a physical business presence is no longer necessary.** This renders the principle of taxation at the place where the travel operator is established inadequate and does not ensure a level playing field as major online players are based outside the EU.

#### 3.1.4. Business models

The evaluation takes into account six key business models that are in use in the industry. In general, travel businesses can operate via two or more of them.

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

Tour operators: these businesses range from large international tour operators to small independent niche operators (mainly business to consumer, B2C). Tour operators organise and provide package holidays, contracting with hoteliers, airlines, ground transport companies and other suppliers such as Destination Management Companies (DMCs – see below), and advertising the holidays that they have assembled online or in printed brochures. Most tour operators focus on leisure tourism. Historically, tour operators relied upon traditional “brick & mortar” sales channels but this is gradually changing as businesses adopt an online presence so that the online business is now a sales channel in its own right. Continued improvements in internet connectivity and increasing access to digital devices have resulted in more customers seeking to book travel online. The trend towards using online operators and agents has allowed customers to access providers operating outside their own territory.

TMC: Travel management companies serve primarily corporate customers (business to business, B2B). Travel management companies 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.

Travel agents: these businesses operate mainly in the leisure market (i.e. business to consumer, B2C) either as “brick & mortar” enterprises or as “online” agents or both. 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 and car rental companies. Large travel agencies are often part of an international integrated group that also organises packaged tours and owns accommodation and other facilities. Independent travel agents can also join up 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.).

DMC: Destination management companies operate mainly in the inbound segment (non-residents travelling to a country). Destination management companies and wholesale tour operators differ from the tour operators as they usually do not deal directly with end-clients, but sell to agents (mostly tour operators). They cater services for both tour operators focusing on leisure tourism and for MICE organisers, and sometimes for travel management companies. These services can include transportation, hotel accommodation, activities, excursions, conference venues, themed events, etc. Destination management companies/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).

MICE: Meeting, Incentives, Conference and Events organisers are often specialised in the specific segment of Meeting, Incentives, Conference and Events, although travel management companies can have their own in-house MICE department as well. These operators combine features of travel agents, destination management and travel

management companies, generally focused around a specific event or collection of events catering to a particular purpose or special interest group.

Online Travel Platforms: digital infrastructures that facilitate the interaction between travel service providers (e.g. hotels, airlines, car rental companies) and customers. These platforms are today essential to operate in the travel sector as they collect and share up-to-date information about travellers' needs and more importantly generate insights to optimize the customer experience. The platforms' technology indeed allows customers to explore offerings, make personalised travel packages, book and pay for the service. The operators that use this model are, in particular, online travel agencies but also travel aggregators and metasearch engines that can scrape for information across multiple sources and websites to get up-to-date availability and pricing of travel facilities. Fare aggregators then redirect the customer to an online travel agency, airline, hotel website or car rental website for the final purchase. These platform models are not only relevant in the B2C context but also and increasingly for business users and other players in the travel industry. Services carried out by Online Travel Platforms mainly qualify as intermediation but it is also possible that these would fall within the scope of the special scheme.

### **3.2. Implementation of the scheme by Member States**

This section explains how the main provisions of the special scheme are applied by Member States and identifies deviations from the baseline: the VAT Directive and CJEU case-law. Deviations arise either by differing interpretation of the common rules which lack sufficient clarity or by the fact that Member States do not all to comply with the common rules as interpreted by the CJEU.

#### **3.2.1. Scope of the special scheme**

The scope of the special scheme is not clearly defined in the VAT Directive. This leads to differences in treatment between similar supplies in different Member States.

- Single travel services

Some Member States consider that the special scheme only applies to “packages” and that a “package” must by its very definition consist of more than one item. Therefore, such Member States consider that the sale of, for example, just a hotel room without a flight cannot be considered as falling within the special scheme. Although the CJEU in *Van Ginkel* and *Star Coaches* has given some guidance on this point, the application by Member States does not appear to be consistent.

Based on the questionnaire and desk research used for the study<sup>45</sup>, thirteen Member States and the United Kingdom apply the special scheme to a single travel service in conformity with the CJEU case law, while nine Member States apply the special scheme

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<sup>45</sup> [Study](#) on the review of the VAT Special Scheme for travel agents and options for reform (Final report of December 2017, TAXUD/2016/AO-05). The report was prepared by KPMG.

only where some additional “booking service” is provided. Nevertheless, in *Van Ginkel*, the CJEU ruled that the application of the special scheme is not conditional on these additional services being provided. As such, the special scheme continues to apply also to a supply of a single service (e.g. hotel accommodation).

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 the normal VAT 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. 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.

**Figure 3: Single travel services – Application of the scheme by Member States and United Kingdom**

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  
■ Appears slightly different to legislation/case law  
■ Can opt-out of special scheme if there is a single supply  
■ No guidance/guidance not clear

*Source: Study (section 5.5.11.1, p. 73)*

#### - Meaning of travel facilities

The lack of a common definition of travel for the purpose of applying the special scheme (i.e. a precise list of what are travel facilities) leads to many inconsistencies and difficulties for taxable persons who operate in multiple Member States.

According to the study, eleven Member States apply the special scheme only to a prescribed list of travel facilities. Meanwhile, in the remaining sixteen Member States and the United Kingdom 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. For twenty five of the Member States and in the United Kingdom, 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) are taxed outside of the special scheme, subject to normal VAT rules.

It should be borne in mind, however, that the major differences in interpretation of scope 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.

**Figure 4: Meaning of travel facilities – Application of the scheme by Member States and United Kingdom**

	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
<b>Total Yes</b>	<b>27</b>	<b>12</b>	<b>27</b>	<b>17</b>	<b>23</b>	<b>20</b>	<b>18</b>	<b>14</b>	<b>14</b>	<b>14</b>	<b>12</b>
<b>Total No</b>	<b>1</b>	<b>16</b>	<b>1</b>	<b>11</b>	<b>5</b>	<b>8</b>	<b>10</b>	<b>14</b>	<b>14</b>	<b>14</b>	<b>16</b>

Source: Study (Annex 1, p. 123)

### 3.2.2. Wholesale supplies

Practice is divided when it comes to the treatment of “wholesale supplies” whereby a travel service is supplied to a business customer for onward supply to a traveller. Three approaches exist at the moment as to the taxation of wholesale supplies: (i) Application of the special scheme; (ii) Exclusion from the special scheme and application of the normal VAT rules; (iii) Optional application of the special scheme left at the discretion of the taxpayer.

In respect of wholesale supplies of travel facilities, six Member States and the United Kingdom consider such supplies to be outside the scope of the special scheme and taxed under the normal VAT rules. In the United Kingdom, however, businesses may choose to include them in the scheme<sup>46</sup>. Fifteen Member States consider such wholesale supplies to fall under the special scheme. Meanwhile, treating wholesale supplies as subject to the special scheme in six Member States is currently optional left at the discretion of the taxpayer.

**Figure 5: Wholesale supplies - Application of the scheme by Member States and United Kingdom**

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)

*Source: Study (section 5.5.7.1, p. 61), updated by Commission services*

Destination management companies are those most affected by the diversified treatment as they usually act as wholesalers, not dealing directly with end-clients.

Destination management companies 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.

#### Implications from the application of normal VAT rules

For wholesale supplies of single items, normal VAT rules implies the payment of VAT in the Member State in which the service takes place (for most tourism related services). For example, a supply of accommodation should be subject to VAT in the Member State in which the accommodation is situated whilst passenger transport falls within the scope

<sup>46</sup> <https://www.gov.uk/guidance/tour-operators-margin-scheme-for-vat-notice-7095#Sect-3>.

of VAT in the Member State in which the transport takes place<sup>47</sup>. The supply would then be subject to VAT at the rate stipulated by the Member State of supply.

As regards packages of services, more complexities may arise from the taxation under the normal VAT rules as different approaches could be applied and different Member States may be involved:

- The “multiple supply” approach, i.e. identify all the component parts of the package, attribute a value to each part and tax each part accordingly at the appropriate VAT rate (i.e. following the appropriate place of supply, valuation and liability rules for each supply identified).
- The “predominant supply” approach, i.e. identify the main item within the package and apply the treatment 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 business client is established – using the reverse charge mechanism)<sup>48</sup>.

As a result, potential distortions in the wholesale package market may arise as some Member States may require the use of the special scheme while others may exclude such supplies from the scheme or even allow taxpayers to choose to opt for normal VAT rules. These distortions are then even worsened by the different interpretations of which normal VAT rules should be applied. These mismatches in VAT treatment are a significant barrier to the efficient application of VAT to the wholesale sector and may lead to non-taxation or double taxation of the margin.

Destination management companies specialised in inbound supplies<sup>49</sup> would however not suffer the same complexities as they would not have to comply with the VAT rules and interpretations given by different Member States.

### **3.2.3. B2B supplies**

Practice 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.

Austria, which considers services supplied to all taxable persons, no matter what the use of the service, to be excluded from the scheme, is expected to amend its legislation from

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<sup>47</sup> Under Articles 47 and 48 of the VAT Directive.

<sup>48</sup> In the case of supplies to non-taxable persons, Article 45 applies and the place of supply would be in 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.

<sup>49</sup> Non-residents travelling to a country where the DMC is established and where the travel facilities are provided.



2022<sup>50</sup>. Germany, which also used to apply the special scheme only to B2C transactions, amended its legislation with effect from 2020, while Slovakia did so from 2018. These changes were triggered by case C-380/16, *Commission v Germany* in which the CJEU made clear that it is important to ensure that the interpretation that best matches the objectives of the special scheme, which is for B2B supplies also to be covered, be applied in a uniform manner by the Member States. The CJEU also repeated that the two objectives of the special scheme, namely simplification of the VAT rules for travel agents and the balanced distribution of revenue from the collection of VAT between Member States, are better achieved with the customer principle. An opt-out option may therefore hamper the uniform application of the common rules resulting in the objectives of the special scheme no longer being achieved.

Spain and Sweden, on the other hand, still allow a generalised opt-out option for B2B supplies, while other Member States, such as Romania, provide for a more limited opt-out option (to domestic B2B transactions).

**Figure 6: B2B supplies - Application of the scheme by Member States and United Kingdom**

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)

*Source: Study (section 5.5.8.1, p. 71), updated by Commission services*

### 3.2.4. Mixed packages

The VAT treatment of the B2B supply of mixed packages made up by in-house and special scheme items raises some issues in terms of the approach taken as regards invoicing and valuation.

The *MyTravel* case-law outlines 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

<sup>50</sup> The Commission decided on 6 June 2019 to open an infringement procedure against Austria for not having implemented duly the margin regime. Changes in the legislation are expected as of 1 January 2022. On 27 January 2021, the CJEU gave its decision in *European Commission v Republic of Austria* (Case C-787/19) and held that Austria failed to comply with the VAT Directive: (i) by excluding from the special travel agent scheme services that are provided to taxable persons who use those services for their business, and (ii) by allowing travel agents, in so far as they are subject to that scheme, to determine the taxable amount for value added tax on a flat-rate basis for groups of services or for all services provided during a taxable period.

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 respectively.

According to the study, in twenty-four<sup>51</sup> Member States an invoice must be issued when a B2B supply falls within the special scheme (Austria does not apply the scheme to B2B supplies and Cyprus does not require the invoice to be issued). In twenty of them<sup>52</sup>, the invoice must itemise the in-house and special scheme supplies separately. In Czechia the itemization is optional, while in Italy separate invoices must be issued for each element of the package<sup>53</sup>.

The majority of Member States do not allow for output VAT to be shown with reference to the special scheme supplies but just for the in-house supplies. In four Member States it is optional to display the VAT attributable to the special scheme element of the supply, whereas in other four Member States separate amount of output VAT must be shown for each element of the invoice (special scheme supplies included). Austria considers the full value of a supply of a mixed package as falling outside the scope of the special scheme.

**Figure 7: Mixed packages (VAT on in-house element) – Application of the scheme by Member States and United Kingdom**

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

*Source: Study (section 5.5.12.3, p. 76), updated by Commission services*

Concerning a package supplied to a business customer for consumption/own use comprising a mixture of special scheme supplies and in-house services, in twenty one 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 the normal VAT rules. In Hungary, a package containing in-house services and special scheme supplies is considered a single supply, all of which is subject to the special scheme. In Spain and

<sup>51</sup> Twenty-five if including Germany which now applies the special scheme also to B2B supplies.

<sup>52</sup> Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Netherlands, Portugal, Poland, Slovakia, Slovenia, Spain and Sweden.

<sup>53</sup> No information was provided by the study on Romania and Luxembourg.

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.

**Figure 8: Mixed packages (margin apportionment) – Application of the scheme by Member States and United Kingdom**

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

*Source: Study (section 5.5.12.4, p. 76), updated by Commission services*

As for the valuation of the margin to be apportioned for a B2B supply of a package containing a mixture of in-house services and special scheme supplies, a variety of methods are applied. Croatia, Bulgaria, Ireland, Malta and Slovenia apply either a market value or cost-based method. Denmark, Netherlands, Spain and Sweden apply the market value method, unless no such market value can be found in which case a cost-based method should be used. Cyprus, Poland, Romania and Lithuania apply a cost based method. Therefore, none of these countries would appear to apply the CJEU decision in *MyTravel*. In Belgium, Czechia, Estonia, Finland, Greece, Hungary, Italy, Latvia, Portugal and Slovakia no clear guidance was available according to the study, although Finland appears to apply in practice a market value method.

As for the MICE conferences and their packages, there is inconsistency over the treatment of facilities (venue, accommodation, travel, entertainment) bought in for the onward B2B provision of a conference or similar event. Although such a conference presumably equates to a mixed package comprising “in-house” and special scheme elements, in practice the VAT treatment varies. Six Member States (Croatia, Czechia, Finland, France, Italy, Greece) consider the full value of the conference under the special scheme. In Denmark, Hungary, Poland, Romania, Slovenia and Spain, a conference would not be subject to the special scheme. However, Spain does not disregard the possibility that such a supply would be subject to the special scheme, (for a B2B supply it is possible to opt out such that the general B2B rules would apply) and that MICE organisers would split a single supply so that just the provision of accommodation services is subject to the special scheme. In Sweden, although the full value would fall within the special scheme, in the MICE sector the supplier usually treats the travel facility separately from the remaining conference elements – and there the travel agent may also apply the general rule for B2B transactions. In Cyprus, Malta and Ireland, 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 VAT rules. For Belgium, Luxembourg, Bulgaria, Latvia, Lithuania, Portugal, Sweden, Slovakia and Estonia, no specific guidance is available in respect of conferences. As noted above, in Austria the special scheme does not currently apply to B2B transactions. However, a B2B supply would fall within the special scheme if it is for the benefit of a “non-entrepreneurial” traveller<sup>54</sup>.

**Figure 9: Mixed packages (MICE) – Application of the scheme by Member States and United Kingdom**

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

*Source: Study (section 5.5.15, p. 78), updated by Commission services*

### 3.2.5. The margin calculation

The special scheme requires output tax to be declared not on the sale value of the travel facilities, but on the margin. This requires the margin to be calculated, but each Member State has its own rules under which this calculation is undertaken. However, according to the judgment in C-189/11 *Commission v Spain*, 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 of allowing travel agents to make an overall determination of the taxable amount in aggregate on all special scheme supplies made over a period could not be permitted. Therefore, the offsetting of losses is not allowed as the margin should be looked at on a transaction-by-transaction basis.

The main difficulty in abiding by the case-law of the CJEU is the effect it has on calculating VAT due. This requires identification of the margin every time a service is provided by the travel agent. It could mean calculating VAT payable numerous times for just a single provision of travel facilities. Furthermore, the travel agent’s cost of a single service may change several times after the service has been performed requiring him to adjust the VAT payable on more than one occasion.

<sup>54</sup> Cf. *supra* note 37.

Currently, in terms of methodology Member States in their margin calculation fall into the following two broad<sup>55</sup> categories:

- An “overall” or “global” margin calculation that allows losses made on one transaction to offset profits made on another transaction carried out during 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 carried out during the same period.

**Figure 10: The margin calculation – Application of the scheme by Member States and United Kingdom**

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

- Confirms with legislation/case law
- Not in conformity with legislation/case law
- No guidance/guidance not clear

*Source: Study (section 5.5.16, p. 79), updated by Commission services*

According to the study, twelve Member States calculate the special scheme liability in a way that does not allow for the offsetting of losses, whereas thirteen Member States do allow losses to be offset (fourteen if including Austria whose changes in legislation are expected for 2022). This indicates that currently at least fourteen Member States do not comply with the full requirements of CJEU case-law. It is understood that Member States have considered it appropriate to require (or at least to allow) an aggregated basis of calculation recognition that the alternative (i.e. to calculate VAT as set out by the CJEU) would be very difficult.

Sweden allows a choice of either the transaction basis or a simplified procedure, which is not compliant with a strict interpretation of the *Commission v Spain* judgment. 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. According to the study, there is no legislative guidance on the appropriate method to use in Luxembourg.

<sup>55</sup> As there is also inconsistency across Member States on the very definition of a “transaction-by-transaction” basis compared to a “global” margin calculation.

Regardless of whether a transactional or global margin approach is applied, Member States also diverge in the ways the margin is actually computed.

According to the study, five Member States (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 computed at the time of the transaction. Cyprus and Estonia calculate an estimate of the special scheme liability for 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 entail 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 require the special scheme liability being calculated for 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.

The majority of Member States requires 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, which is instead compulsory in Belgium (different fixed rates are applicable dependent upon the underlying nature of the supply). Under a procedure laid down in the Sixth VAT Directive, Belgium was allowed to apply a simplification measure derogating from the rules laid down in the Sixth Directive by using fixed lump-sum margins that must be applied even where the actual margin realised by the travel agent is lower<sup>56</sup>.

### **3.2.6. Third country operators**

The place-of-supply rule within the special scheme is an origin-based rule as a travel agent’s margin 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. Therefore, under the current rules, a travel service is taxed under the special scheme only when it is supplied by an EU-based operator but it is not subject to tax on the margin when it is supplied by an operator established in a third country. With the expanding use of the Internet, however, travel agents established in countries outside the EU have become increasingly involved in the supply of travel services to EU consumers.

This has led to unequal treatment to detriment of EU businesses which caused reactions by some Member States. A national ruling in France determined that a travel agent established in Switzerland must be taxed under the special scheme in France if supplying French travel to French citizens for reasons of equal treatment<sup>57</sup>. The German tax authorities also launched audits of travel agents located outside the EU and supplying EU travel to German customers. In Portugal, non-established travel agents must use a certified computer invoicing software as of 2021.

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<sup>56</sup> Derogation granted on 19 December 1978 based on Article 27(1) of the Sixth VAT Directive.

<sup>57</sup> CAA Versailles – n° 18VE01240 – Privilège Events et Communications - 5 Nov. 2019.

In the meantime, EU-based operators must need to register in Switzerland if their total worldwide turnover exceeds CHF 100 000, even if they only sell one overnight stay in Switzerland. However, since 1 January 2020, only Swiss sales must be declared. It is no longer necessary to declare the worldwide turnover<sup>58</sup>. Additionally, since 1 January 2021 the United Kingdom have taxed the margin of travel agents supplying EU travel to EU citizens at zero rate, as any supply enjoyed outside the United Kingdom, increasing the distortion of competition vis-à-vis those remaining businesses in the EU<sup>59</sup>.

The competitive position of EU businesses is also affected by the great variety of approaches currently applied by Member States in respect of the VAT treatment of travel agents, also in relation to the sector they belong to, as described above. When the special scheme is applied, third country operators benefit from a competitive advantage, not being subject to it. When, instead, the special scheme is not applied (e.g. by a Member State allowing the opt-out for B2B transactions), the normal VAT rules on the place of supply apply, putting EU travel agents at a level playing field with third country operators. Nevertheless, the latter seem to be less likely to be aware of these rules and to comply with them (e.g. by registering in the EU).

## **4. METHOD**

### **4.1. Short description of methodology**

The evaluation is supported by an external study<sup>60</sup>, a consultation of Member States in the context of the Group on the Future of VAT, a Roadmap and a public consultation. The evaluation is based on a set of evaluation questions, connected to the five evaluation criteria defined by the Commission Better Regulation Guidelines, namely (i) relevance; (ii) effectiveness; (iii) efficiency; (iv) coherence; and (v) EU added value.

### **4.2. Data collection activities and legal mapping exercise**

A number of data collection activities took place to support and underpin the evaluation. The full range of information regarding the different activities can be found in Annex 2.

#### **4.2.1. The study – legal mapping and business survey**

In 2017, a study analysed the functioning of the special scheme and reviewed all relevant judgments by the CJEU. The study evaluated national VAT laws and in that regard found that on a number of aspects, the vast majority of Member States were not complying with the common EU rules.

With regard to the geographical scope of the study, countries addressed in the report comprised the 27 EU Member States and the former EU Member State United Kingdom

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<sup>58</sup> TTL Travel VAT Conference 2020.

<https://www.estv.admin.ch/estv/en/home/mehrwertsteuer/fachinformationen/steuerpflicht/leistungen-durch-auslaendische-unternehmen.html#479276818>.

<sup>59</sup> <https://www.legislation.gov.uk/ukxi/2019/73/made>

<sup>60</sup> Cf. *supra* note 49.

as well as certain key non-EU jurisdictions, i.e. Turkey, Switzerland, Norway, the US and Canada.

The business models of the travel industry covered in the report comprised:

- 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 (mainly 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 primarily operating in the inbound segment (mainly B2B);
- MICE (Meetings, Incentives, Conferences and Events) organisers – which are primarily operating in the corporate segment (mainly B2B).

The study, in particular, assessed the functioning of the current VAT rules provided for under the travel agent scheme, notably taking into account a digital environment and a VAT regime based on the destination principle, identifying and quantifying potential distortions of competition. It also identified, assessed and compared options for reform both under the current place-of-supply rules and under place-of-supply rules based on the destination principle.

The study conducted a survey through a questionnaire that collected 98 responses from businesses located in 18 Member States.

The study did not provide sufficient quantitative analysis with regard to compliance costs savings resulting from the application of the special scheme and on impacts of possible reform options.

The lack of quantifications is mostly due to limited available data. Tax data is confidential and the tourism statistics published by Eurostat<sup>61</sup> are incomplete when it comes to travel agents. To compensate for the absence of data, the study relied on data provided directly by businesses. The answers to the questionnaire allowed for rough estimates of VAT liabilities of businesses, but they could not deliver any insight as regards the distribution of VAT revenues between Member States (see Annex 3).

More details about the business survey conducted as part of the study can be found in Annex 2.

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<sup>61</sup> That is data on tourism industries and trips of EU residents based on Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism and repealing Council Directive 95/57/EC (OJ L 192, 22.7.2011, p. 17).



#### **4.2.2. Consultation of Member States – data collection**

Following the results of the study and the evolving case-law, Germany, in collaboration with the Commission services, organised a FISCALIS 2020 workshop in Berlin in October 2018. This was an opportunity to discuss the study with Member States and to consult them on the functioning of the special scheme and possible reform options. All Member States and three candidate countries took part in the workshop.

On 11 November 2019, the Group on the Future of VAT met in order to collect Member States' views on the interpretation of the common EU rules given by the CJEU, the conclusions reached at the FISCALIS 2020 workshop, the findings of the study, the evaluation questions and reform options for the special scheme. Member States were also invited to provide their feedbacks in writing within one month following the meeting.

In the context of the feedbacks received, Member States underlined the lack of available data as either travel agents could be taxed both under the special scheme and under the normal VAT rules or there are no specific obligations for disclosure imposed on travel agents upon them filling their tax return. For example, some Member States suggested that part of the travel industry, namely big tour operators, had left the EU, while others had received complaints from the industry on the competitive advantage of travel agents located outside the EU and on the absence of a level playing field. However, little evidence was available for Member States to share.

More details about the targeted consultation of Member States can be found in Annex 2.

#### **4.2.3. Feedback to the evaluation roadmap – data collection**

Through publication of a Roadmap (4 February 2020 – 3 March 2020), citizens and stakeholders were informed about the Commission's plans for an evaluation and invited to provide feedback on the intended initiative. During these four weeks, 8 stakeholders have submitted contributions, mostly business associations. In these submissions, stakeholders provided their views on the Commission's understanding of the problem and possible solutions. More details about the Roadmap can be found in Annex 2.

#### **4.2.4. The public consultation – data collection**

A public consultation (25 May 2020 – 14 September 2020) was carried out in order to gather the view of citizens and stakeholders on the functioning of the travel agent scheme and the possible need for revisions. A total of 206 valid responses were received from 18 Member States, the United Kingdom, and Liberia. The majority of respondents (201) answered the public consultation in their professional capacity, while 5 private individuals participated in their personal capacity. More details about the public consultation can be found in Annex 2.

### **5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS**

This section provides the assessment and answers to the five evaluation criteria.

## **5.1 Effectiveness**

Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives and whether any unexpected or unintended effects have occurred.

Section 5.1.1 presents the assessment of effectiveness in terms of the extent to which the special scheme has been successful in achieving its two objectives of: i) simplification in the application of EU VAT rules, and ii) allocation of VAT revenues to the Member State in which final consumption of each individual component of the single supply takes place.

### **5.1.1 Simplification in the application of EU VAT rules**

Stakeholder consultations (both targeted and public) as well as the study have confirmed that the special scheme has been effective in providing simplification benefits to travel agents in the form of administrative ease and associated compliance cost savings.

The scheme is indeed designed to simplify the application of VAT rules for businesses (travel agents) providing cross-border travel packages, as it allows taxation on the profit margin in the Member State where they are established.

First of all, by changing the place-of-supply rule, the scheme permits travel agents to operate within the EU without further need for VAT registration or declaration in each of the other Member States where travel services take place. Indeed, VAT registration is only needed in the Member State where the travel agent is located<sup>62</sup>. This avoids the need for travel agents to understand and comply with other Member States' VAT regimes and to interact with other tax authorities in different languages. Costs for external tax advisory are therefore limited.

Another element that brings simplicity is the single service rule: all bought-in services packaged and sold together to the customer are treated as a single service. Thanks to this rule, the travel agent does not have to determine the nature of the package (single or multiple supply) and apply the relevant VAT treatment which per se requires an assessment of the applicable VAT rate(s), the place of taxation and the status of the customer (section 3.2.2).

The special scheme proves to be most beneficial when a travel package contains services located in different Member States. It results from the public consultation that the special scheme simplifies the application of VAT rules for travel agents (79% of respondents). The need for unique VAT registration only, the treatment of a package as a single supply, recourse to simplified margin calculation which avoids the need to recover input VAT and the simplified VAT declaration are some of the aspects of the scheme most appreciated by the respondents. Furthermore, the fact that under the scheme there is no

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<sup>62</sup> In a number of Member States, VAT registration is however only required when the business turnover is above a certain registration threshold.

need to recover input VAT in each Member State where services are purchased is of particular relevance as this *per se* entails a heavy administrative burden relief especially for small businesses.

In the absence of the special scheme, a large increase in the compliance burden for travel agents is expected (see section 5.2.1). For instance, a travel operator located in one Member State, providing accommodation for guests in hotels across the EU, would be required to register for VAT in each country where it supplies hotel accommodation<sup>63</sup>.

As explained above (chapters 2 and 3), the application of normal VAT rules in particular on place of supply, taxable amount and deduction would increase complexity for travel agents operating cross-border. In particular, it would require a full understanding of the rules applied in each Member State where travel services are consumed. In the case of the supply of a mixed package of travel services, the application of normal VAT rules would imply an even higher degree of complexity.

**According to the study, compliance costs savings under the special scheme would amount to approximately EUR 8 000 – 15 000 a year per VAT registered entity and per jurisdiction.**

The objective of simplification is largely achieved as regards the three aspects of the scheme that deviate from the normal rules: place of supply, deduction of input tax and taxable amount.

The special scheme presents also some weaknesses that make the scheme unable to fully address the need of reducing the burden of travel operators related to the application of normal VAT rules. In particular, the scheme, as interpreted by the CJEU, does not provide for a simplified method to determine the profit margin.

### **5.1.2 Allocation of VAT revenues**

The special scheme allows a fair distribution of VAT revenues among Member States through the taxation of travel packages supplied by EU established businesses to EU destinations.

Under the scheme, travel agents are not taxed on their turnover, but on their margin and VAT incurred in respect of supplies for the direct benefit of the traveller is not eligible for deduction or refund in any Member State. The effect of these special rules is that VAT revenues on services enjoyed in the course of a journey, such as hotel accommodation, restaurant meals or transport, go to the Member State in which the traveller receives the service, whereas VAT on the travel agent's margin is collected in the Member State where the agent is established. In other words, all elements of the travel package are taxed in the Member State of destination while only the margin related to the travel agent's supply is taxed in the Member State of origin.

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<sup>63</sup> Under Article 47 of the VAT Directive, the place of taxation of the provision of hotel accommodation is where the hotel is located.

Without an arrangement such as the special scheme, the travel agents would have to collect VAT from their customers for services often consumed in other Member States. Not only would that impose a significant administrative burden on travel agents but, as a result, such services would become subject to VAT not in the Member State in which they were in fact provided and consumed but in the Member State in which the package was purchased. Significant VAT revenue might thus be diverted from Member States providing tourist destinations to those providing the tourists.

The annual value of output VAT indicatively collected via the scheme is estimated in the study at circa **EUR 1.9 billion** while the value of irrecoverable input VAT incurred on costs directly linked to supplies made under the scheme is estimated at circa **EUR 5.6 billion** (of which EUR 1.15 billion is VAT on costs of B2B supplies).

This clearly shows that the majority of VAT collected via the special scheme is allocated in the form of irrecoverable input VAT to the Member States where individual travel services are purchased and consumed. The estimated value of the output VAT due under the special scheme is smaller in totality and is collected in the Member States where the travel agents are established.

**Table 1: VAT collected on travel services**

VAT indicatively collected on travel services in 2016 <sup>64</sup> (€bn)	
Output VAT under the special scheme (1% of the EU turnover)	1.9
Output VAT under the special scheme pertaining to B2B travel supplies	0.29
Irrecoverable input VAT on costs directly linked to travel services under the scheme	5.6
Irrecoverable input VAT on costs directly linked to B2B travel services under the scheme	1.15
Output VAT accounted for under the normal rules (2% of the EU turnover)	3.7

*Source: Study, see Annex 3 (p. 146)*

The fundamental feature of blocked input VAT recovery (no deductions or refunds allowed) under Article 310 of the VAT Directive is relatively consistently applied across the EU and affects all business models subject to the special scheme in a similar manner. It results indeed from the study survey that travel agents in all Member States making supplies of travel facilities within the scheme are unable to recover the VAT incurred on purchases of bought-in services, without any exception.

However differences in the implementation of the scheme between Member States may have an impact on the different supply chains used under the five key business models.

The scheme has then been effective also in achieving its second objective of fair distribution of VAT revenue among Member States. In particular, the broad application

<sup>64</sup> These figures are indicative estimates of potential VAT impacts by KPMG. The underlying data used are approximations or sample-based.

of the scheme as interpreted by the CJEU, namely the fact that, regardless of the status of the customer, B2B supplies fall within the scheme, has contributed to the achievement of that second objective.

### **5.1.3 Unintended effects – Third country operators**

As recalled, the travel agent's margin is subject to VAT in the Member State in which the travel agent is established. This place of taxation rule has, however, the non-intended effect of excluding third country operators which, with the rise of online travel platforms, are nowadays increasingly involved in the supply of travel services to EU customers.

Digital transformation in the travel industry has brought significant changes to both the supply and the demand side. Core operational processes can be entirely automated, digitalised or handled remotely so that a local business establishment is no longer necessary to sell into the EU market. Also, online booking platforms have enlarged consumer choice leading to greater competition across EU borders.

While Europe is a large global travel and tourism destination, undisputed leaders in the online travel booking market are nevertheless based outside the EU. This puts at risk EU competitiveness and EU VAT revenue.

At the time the study was published, it indicated that more than 50% of customers in the EU would have booked their travel online in 2017 and the online travel market would have grown faster than the overall market, enjoying 8% growth throughout 2017. This trend towards using online booking platforms has allowed customers to access providers operating outside their own territory. For example, the study assessed that in 2015 US-based companies dominated the online market with combined revenues of more than US\$ 115 billion.

The place-of-supply rule to be found in the special scheme not only is inadequate for coping with the digital and asset-free environment of the travel sector but also leads to unequal treatment which is detrimental to EU travel agents. To avoid being disadvantaged, an EU-based operator could decide to relocate his activity outside the EU or even circumvent the rules. This would make the EU market even more fragile. While the special scheme does not apply to travel agents established in a third country, it is debatable whether these operators should be considered as outside the scope of EU VAT or instead could be seen as subject to the normal VAT rules on place of supply<sup>65</sup>.

In any case, such travel agents are not taxed on the same basis as EU-established travel agents as:

- i) Either the current scheme facilitates non-taxation of travel agents established in a third country. This is the effect if the VAT Directive is interpreted as applying to

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<sup>65</sup> In guidelines resulting from the 101<sup>st</sup> meeting of the VAT Committee, a large majority of Member States concluded that transactions of third country agents fall outside the special scheme (taxud.c.1(2015)553554 – Working paper No 831).

all travel agents but only imposing a VAT charge on those having their place of business or a fixed establishment within the EU;

- ii) Or the current scheme does not cover travel agents established in a third country with the effect that they should apply the normal VAT rules on place of supply, valuation, liability and input tax deduction. Accordingly, they should register in Member States in which they supply services and would be subject to the rules of the Member State(s) involved. Difficulties would then arise from the enforcement of these obligations.

The lack of a level playing field between established and non-established travel agents is also expected to be exacerbated due to the withdrawal of the United Kingdom from the European Union. As a Member State, the United Kingdom, according to the special scheme, had to tax the margin of travel operators established in its own territory at standard rate of VAT. Now that the United Kingdom has become a non-EU country, the margin of its operators on all travel services enjoyed in the EU will be zero-rated<sup>66</sup>.

From an EU perspective, this means that the distortion of competition with non-established operators will be exacerbated with EU travel agents either tempted to establish in the United Kingdom or suffering from the competitive advantage of United Kingdom travel agents. On the other hand, as United Kingdom businesses will no longer be able to use the simplification for EU travel supplies, it is possible that some Member States will require United Kingdom-based travel agents to register for VAT for supplies of travel services made in their country with a risk for an even higher degree of non-harmonisation in the application of the normal VAT rules among Member States.

## **5.2 Efficiency**

Efficiency analysis considers the costs and benefits of EU interventions indicating areas where there is potential to reduce inefficiencies, in particular unnecessary regulatory costs, and simplify the intervention.

This section presents the analysis of the efficiency of the travel agent scheme from the perspective of the businesses and that of internal market.

### **5.2.1 VAT compliance costs under the normal VAT rules**

To fully understand the benefits of the special scheme, it is essential to consider what the application of normal VAT rules would involve for travel operators.

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<sup>66</sup> Cf. *supra* note 59.

As set out in the 2016 VAT Action Plan<sup>67</sup>, the EU VAT system is highly complex for businesses generally, and particularly for small enterprises which bear on average proportionally higher VAT compliance costs than large enterprises.

Compliance costs related to VAT stem indeed from the complexity of VAT rules (e.g. different rates, different place-of-supply rules, many derogations), the extensive number of VAT obligations and their frequency. In addition, cross-border compliance costs are much more significant due to fragmentation of the VAT system<sup>68</sup>, which represents a significant barrier to the single market.

For instance, research shows that on average a firm trading in two Member States would have to deal with 11 differences in VAT-related procedures<sup>69</sup>.

In the B2C sector, the average annual cost for an SME to account for VAT in a Member State in which it is not established is estimated to be EUR 4 100. This compares to the average annual cost of EUR 8 000 for a larger business per Member State, where a simplification measure such as the Mini One Stop Shop (MOSS) is not available<sup>70</sup>.

That cost can cover registration (or the appointment of a fiscal representative), VAT returns, statistical listings, tax advice, dealing with queries from tax administrations etc.

Overall, the study suggests that annual costs savings for a travel operator under the special scheme could approximately range between EUR 8 000 and EUR 15 000 per Member State.

In the EU, the activity carried out by travel agents by its very nature has a cross-border dimension. There is no doubt that the application of normal VAT rules, namely those on place of supply, taxable amount and deduction, would increase considerably the compliance burden on travel agents of all sizes. Such a burden would fall disproportionately on smaller operators who in particular might be discouraged from selling services in a large number of Member States.

However, any intervention in the VAT treatment of the travel services must take into account changes that have occurred so far in the VAT system aimed at simplifying the administration of VAT for taxable persons not established in the Member States where VAT is due.

In particular, the modernisation of VAT as regards the B2C sector could help travel agents to comply with the complex VAT rules in a scenario without a special scheme.

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<sup>67</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148 final of 7.4.1016).

<sup>68</sup> Despite a certain degree of harmonisation, large differences remain between national systems. Since VAT is levied and collected according to the Member States' laws, a business carrying out intra-EU trade has to deal with different national VAT systems and tax administrations.

<sup>69</sup> Institute for Fiscal Studies (IFS) and others, [\*A retrospective evaluation of elements of the EU VAT system\*](#), 2011.

<sup>70</sup> Deloitte Study on “*Modernising VAT for cross-border e-commerce*”, 2016, [Lot 1](#), p. 32 and 44.

The extension of the current MOSS turning it into a One Stop Shop<sup>71</sup> as from 1 July 2021, would make available simplified arrangements to pay and declare VAT in relation to all types of cross-border services supplied to final consumers within the EU. This, however, would not solve the problem of having to abide by the substantive rules in each Member States, would not be applicable to B2B supplies and would not solve the problem of multiple requests for tax refund in different Member States.

### **5.2.2 Cost-benefit analysis for businesses**

Similar to other special schemes<sup>72</sup> foreseen in the VAT Directive, the inherent consequence of not charging VAT on the consideration of output supplies is that a business is not allowed to deduct input VAT. Such a consequence can be seen as the price to be paid by the business in return of the benefits of simplification and compliance costs savings.

As regards in particular the exemption scheme for small enterprises, which is optional for businesses, it has been assessed that the scheme is more beneficial for the taxable person where most of its customers are final consumers or exempted businesses (with no right of deduction) and where the amount of input VAT is relatively lower than VAT that should be charged on sales under the normal VAT rules<sup>73</sup>.

It can be observed that, when the choice is available, depending on the type of activity and business model in use, the taxable person may prefer to apply the normal VAT rules in order to enable their business customers to recover input VAT. On the other hand, despite the cost of non-deductible input VAT, a business that makes both B2B and B2C supplies may find it convenient to opt for a special scheme provided that the business is able to offer lower prices (competitive advantage).

Since the travel agent scheme is mandatory, the impact on a business' VAT liability cannot be minimised by simply choosing the VAT regime that is the most favourable for a certain type of activity.

While the inclusion of B2B supplies in the scope of the travel agent scheme ensures effectiveness, it has drawbacks as regards the efficiency. Compared to the normal VAT rules which ensure VAT neutrality, the taxation of B2B supplies at the margin comes at a cost: non-deductibility of input VAT.

The blocked input tax on direct costs of B2B supplies resulting from the application of the special scheme has been indicatively estimated to amount to circa EUR 1.15 billion

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<sup>71</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7), as amended by Council Directive (EU) 2019/1995 of 21 November 2019 (OJ L 310, 2.12.2019, p. 1).

<sup>72</sup> Special scheme for small enterprises under Articles 281-294 and margin scheme for taxable dealers under Articles 312-325 of the VAT Directive.

<sup>73</sup> Deloitte study "Special scheme for small enterprises under the VAT Directive 2006/112/EC - Options for review" 2017, [Volume 1](#), p. 80-82.



annually across the EU while the irrecoverable output tax declared on B2B supplies made under the special scheme has been indicatively estimated to amount to circa EUR 0.29 billion<sup>74</sup>.

The cost of non-deductible input VAT varies considerably from sector to sector. In the DMC sector, whilst the immediate client in the wholesale transaction will always be a business, the final customer 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 customer. On the contrary, 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 whenever the final customer is a business, the application of the special scheme would deny that final business customer the right to input tax deduction.

This can place the travel agent at a disadvantage when compared to suppliers of similar services not subject to the special scheme (e.g. principal suppliers and providers of in-house services).

To overcome this negative effect, some Member States have excluded B2B transactions from the scope of the special scheme, disregarding the interpretation given by the CJEU. Other Member States have allowed instead business customers to recover VAT in respect of supplies made under that scheme where a VAT amount is shown on the invoice of the travel agent. In these Member States, the practice may differ as regards the invoicing rules. Travel agents using the scheme may display VAT due on the margin on their invoices or could be required to do so.

When the special scheme is applied, travel agents operating in B2B sectors are tempted to adapt their business model and to introduce arrangements whereby they can qualify as intermediary and then apply the normal VAT rules.

This is already the usual outcome in the TMC and MICE sectors, notwithstanding that acting as an intermediary, while allowing input tax deduction, would also impose constraints on the taxable persons involved, notably the difficulty for the intermediary in setting its own price for the intermediation service supplied and in ensuring that the client receives the correct documentation to support input tax deduction. The problem faced in regard to the B2B transactions was confirmed by the open public consultation, in the context of which respondents attributed the highest importance for B2B supplies to benefit from input tax deduction as provided for under the normal VAT rules (165 respondents equal to 80%) over the benefit of simplification provided by the special scheme (only 37 respondents equal to 18%). Therefore, the competitive disadvantages caused by the lack of input tax deduction are not perceived as compensated by the benefit of simplification provided by the special scheme to business clients, such as the

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<sup>74</sup> See p. 47 of the study.

advantage of avoiding input tax refunds, which are subject to different evidential requirements in each Member State.

### **5.2.3 Potential distortions of competition**

Differences in the application of the travel agent scheme by Member States, as outlined in section 3.2, generate two main potential distortions of competition which affect the proper functioning of the single market. The first involves the treatment of wholesale supplies which is of particular concern for those sectors of the industry whose activities are focused on corporate clients. The second relates to varying definitions of what constitute “travel facilities”.

In addition, inconsistencies as regards the rules of the scheme as interpreted by the CJEU may affect the level playing field of travel operators and put businesses within the scheme in a different competitive position compared to those falling outside the scheme.

#### **5.2.3.1. Wholesale supplies**

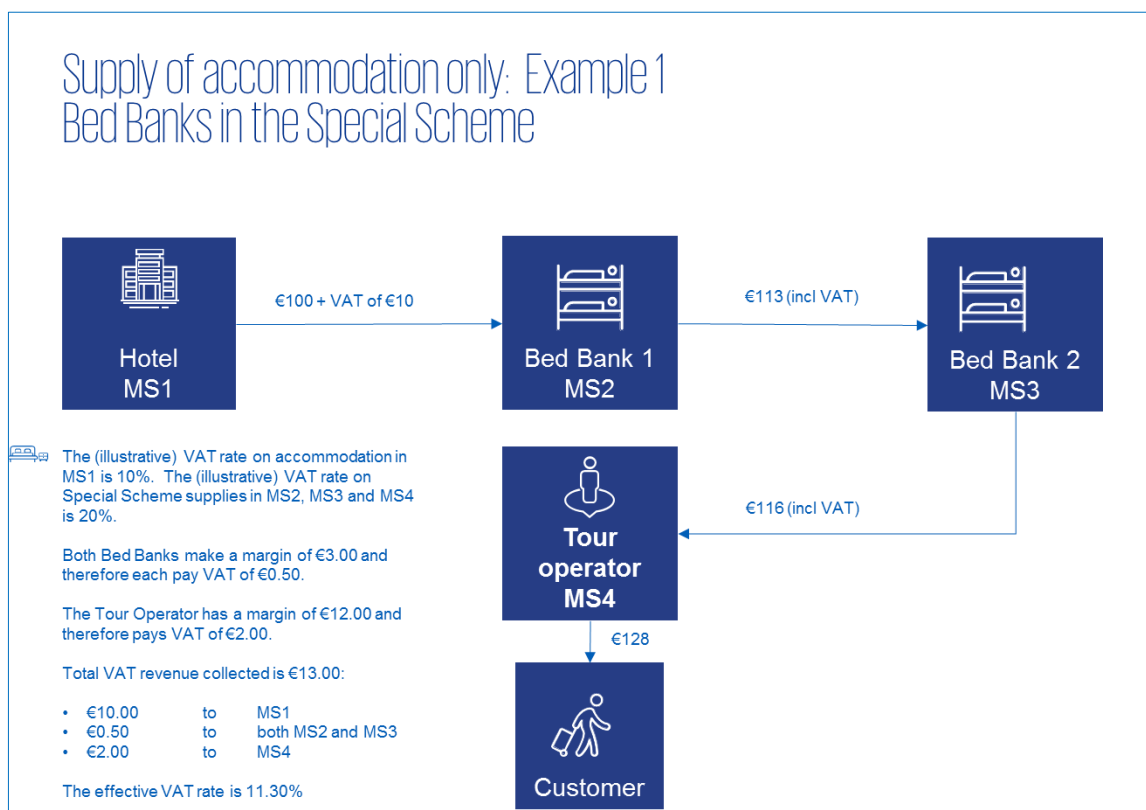
In respect of wholesale supplies of travel facilities, namely supplies made to business customers destined for subsequent resale, a number of Member States consider such supplies to fall within the scheme while others exclude such supplies or provide businesses with an option to exclude them from the scheme and apply the normal VAT rules.

Wholesale supplies may consist of both single items and packages. When these supplies are taxed under the normal VAT rules, the travel agent who acts in his own name is deemed to have received and supplied the services himself under Article 28 of the VAT Directive.

As seen in section 3.2.2, under the normal VAT rules, indeed, a supply of accommodation as a single item would be subject to VAT in the Member State in which the accommodation is situated, whilst passenger transport alone would fall within the scope of VAT in the Member State in which the transport takes place. The supply would then be subject to VAT at the rate (usually a reduced rate) stipulated by the Member State of supply.

The following examples illustrate mismatches in the supply chain of hotel accommodation due to different local treatments of the wholesale supply. In the examples it is assumed that a reduced rate of 10% applies to the hotel accommodation in Member State 1 while the margin is taxed at the standard rate of 20% in all other Member States.

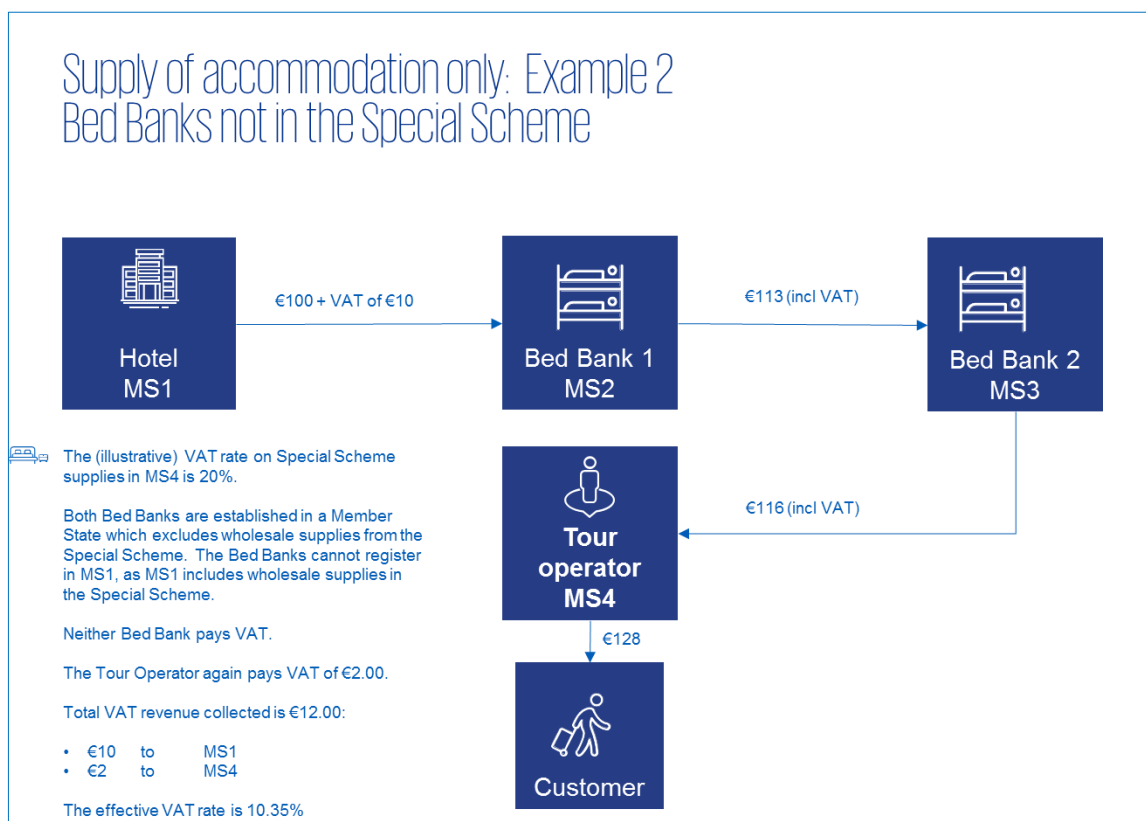
**Figure 11: Supply of accommodation only – example 1**



**Source:** Study on the review of the VAT special scheme for travel agents and options for reform.

In example 1 above, all Member States treat the wholesale supply as falling in the special scheme and the amount of VAT collected is the highest.

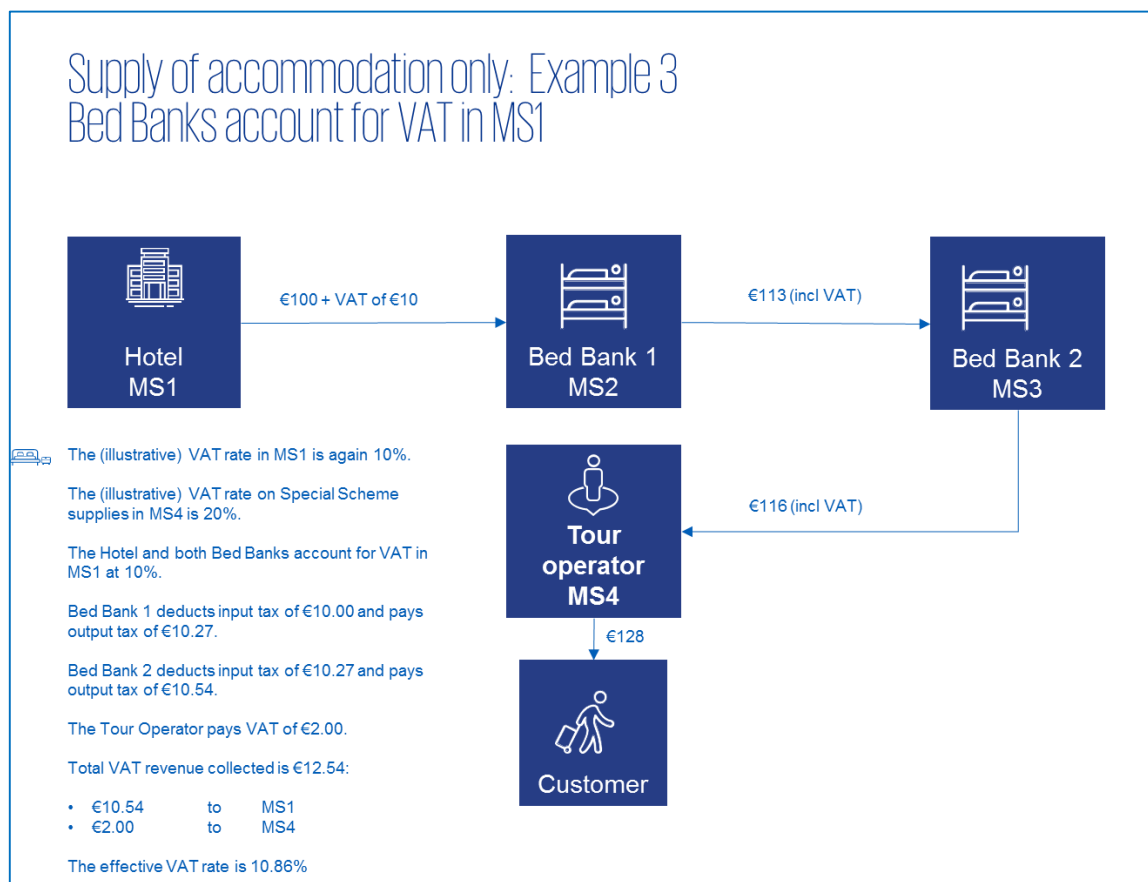
**Figure 12: Supply of accommodation only – example 2**



**Source:** Study on the review of the VAT special scheme for travel agents and options for reform.

In example 2, Member States 2 and 3 treat the wholesale supplies under the normal VAT rules (or an option is given to the taxable person to apply them) and the amount of VAT collected is the lowest. The example illustrates a situation of non taxation due to different local treatments of the same supply. Both Bed Banks take indeed advantage of the fact that in Member State 1 the wholesale supplies fall within the special scheme and do not account for VAT in that Member State.

**Figure 13: Supply of accommodation only – example 3**



*Source: Study on the review of the VAT special scheme for travel agents and options for reform*

In example 3, all Member States treat the wholesale supplies as falling under normal VAT rules. The total VAT revenue is lower than in example 1 as both Bed Banks are entitled to input deduction but both of them have to register and account for VAT in Member State 1.

As seen in section 3.2.2, the treatment of wholesale packages under the normal VAT rules may also involve different approaches applied by Member States with regard to valuation and place of supply (“multiple supply”, “predominant supply” and “general rule” approach).

When the wholesaler is established in a Member State other than that in which the travel facilities are consumed, potential distortions may therefore arise in particular 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 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.

These mismatches in VAT treatment lead to non-taxation or double taxation of the margin: (i) non-taxation where a wholesale supply of accommodation, located in a Member State which considers wholesale supplies to be subject to the special scheme, is made by a supplier established in a Member State in which wholesale supplies fall outside the special scheme<sup>75</sup>, and (ii) double taxation where a wholesale supply of accommodation, located in a Member State which considers that wholesale supplies fall outside the special scheme, is made by a supplier established in a Member State in which wholesale supplies are subject to the special scheme<sup>76</sup>.

Destination management companies are amongst the main providers of wholesale supplies. Different local treatments of such supplies may result in considerable variations in the profits raised by the operators involved and in the revenue collected.

### **5.2.3.2. Definition of travel facilities**

The lack of a precise and harmonised definition of the scope of the special scheme, which does not provide for a precise list of travel facilities covered, leads to many inconsistencies and difficulties for taxable persons who operate in multiple Member States. This hampers the efficiency of the special scheme and can lead to non-taxation or double taxation in certain circumstances.

For instance, a number of Member States do not consider the single supply of car hire per se a travel facility while other Member States may treat such a supply under the special scheme if the conditions are met.

Therefore, it is possible 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 on a short-term basis for which the car is put at the disposal of a customer in that State (Article 56(1) of the VAT Directive). It would follow that the supplier involved should have no liability to pay VAT on hires where the car is put at the disposal of the customer in those Member States which consider the special scheme to apply as those States would expect VAT to be paid under the special scheme in the Member State in which the supplier is established. The same is true of the services of a guide as some Member States consider this to be a travel facility while others do not and this causes uncertainty and can result in non-taxation or double taxation.

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<sup>75</sup> For example where a Bulgarian hotel room is sold as a wholesale supply by a travel business in Austria to a travel business in Bulgaria the Austrian tax authorities would consider this is taxable under normal VAT rules (in Bulgaria using the reverse charge mechanism) whilst the Bulgarian tax authorities would consider this is taxable under the special scheme (in Austria).

<sup>76</sup> For example where a Austrian hotel room is sold as a wholesale supply by a travel business in Croatia to a Austrian travel business, the Austrian tax authorities would consider this is taxable under normal VAT rules (in Austria) whilst the Croatian tax authorities would consider this is taxable under the special scheme (in Croatia).

In the following example, the car rental company is established in Member State 1 and owns the cars to be rented to customers. The car hire broker is established in Member States 2. In both Member States the standard rate is 20%.

Scenario 1: Member State 1 considers car hire to be within the special scheme while Member State 2 follows the normal VAT rules. The short-term car rental is subject to VAT in Member State 1 where the car is put at the disposal of the customer. The broker does not pay any VAT on its supply of car hire. In Member State 2 the special scheme does not apply and according to rules in Member State 1 VAT should be paid on the margin in Member State 2. The broker therefore retains its margin of EUR 12 and incurs non-deductible VAT in Member State 1 of EUR 20.

Scenario 2: Member State 1 considers car hire to fall under the normal VAT rules while Member State 2 considers the supply within the special scheme. The broker now has to pay VAT in Member State 2 on its margin. However, Member State 1 also expects VAT to be paid. If the broker registers and account for VAT in Member State 1 he would pay output tax of EUR 22 and deduct EUR 20.

The two scenarios illustrates how the lack of consistency may create risks of non-taxation and double-taxation.

**Figure 14: Car rental**



*Source: Study on the review of the VAT special scheme for travel agents and options for reform*

The lack of harmonisation is also found on the rule on the place of supply to be adopted whenever the special scheme is not applied. Absent a clear rule, the scope for distortion is much greater. For guide services, for example, when the special scheme is not applied, some Member States believe that the supply should fall within the general place-of-

supply rule<sup>77</sup> whilst others consider it to be taxable where performed when supplied to a non-taxable person<sup>78</sup>.

Additionally, difficulties with non-taxation or double taxation arise due to 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.

With regard to the provision of single travel facilities, notwithstanding the CJEU judgments (*Van Ginkel*<sup>79</sup> and *Star Coaches*<sup>80</sup>), 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, for example, just a hotel room without a flight cannot be considered as falling within the special scheme.

Differing treatment of single travel facilities creates potential for meaningful distortions: in respect of B2B supplies, as input tax might be recoverable absent application of the special scheme<sup>81</sup> and with regard to B2C supplies, as the supply of a single travel facility might be subject to a reduced rate while the margin of a travel agent must be taxed at the standard rate of VAT. The taxation of the supply of a single travel facility, like accommodation only, under the normal VAT rules not only ignores the interpretation of the common rules by the CJEU, but also leads to unequal treatment of similar supplies, because if the travel agent supplies accommodation together with in-house or ancillary supplies, that supply must be taxed under the special scheme.

With regard to the supply of mixed packages, differences in treating the same provision of services give rise to distortion of competition especially affecting operators in the MICE sector.

In this sector, facilities such as venue, accommodation, travel and entertainment are bought in for the onward B2B provision of a conference or similar event.

Divergent interpretations given by Member States lead to differing treatments of MICE operators, not only in the application of the scheme itself but also in terms of the application of normal VAT rules where the special scheme does not apply.

Uncertainty arises as many events contain services which cannot ordinarily be described as travel facilities (e.g. entertainment, the use of sports facilities, food and drink and the provision of conference facilities such as audio visuals, meeting rooms and external

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<sup>77</sup> Article 44 or 45 of the VAT Directive depending on whether the client is a taxable person.

<sup>78</sup> Article 54 of the VAT Directive.

<sup>79</sup> Cf. *supra* note 31.

<sup>80</sup> Cf. *supra* note 30.

<sup>81</sup> According to the study “*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*”.



speakers). Many Member States, therefore, either exclude these facilities from the special scheme by splitting the event package between travel and non travel facilities, or exclude the whole package from the scheme considering the travel facilities within a package as being ancillary and not the main purpose of the event<sup>82</sup>. Hence, absent the application of the special scheme (to whole or part of the package), normal VAT rules must be applied.

The lack of clarity on whether an event considered as single supply can be split and on which place-of-supply rule must be applied leads to a multitude of approaches being taken. Indeed, the place of supply of the services of organisers of activities such as entertainment, education, fairs and exhibitions is defined just for B2C supplies<sup>83</sup> as the place where the activities (i.e. the fair/exhibition etc.) take place. For B2B supplies, most frequent in MICE circumstances, no specific rule is defined leaving uncertainty among Member States which have to ascertain whether a single or a multiple supply has occurred and, within a single supply, whether a predominant approach can be applied. Depending on the chosen approach, different rules for the place of supply apply leading to different tax treatments and to potential distortion of competition<sup>84</sup>.

#### **5.2.4 Lack of level playing field**

The margin of a travel agent must be taxed at the standard rate of VAT regardless of the rate applied to the individual travel facilities when supplied outside the special scheme. The supply of travel services is, indeed, not included in Annex III of the VAT Directive and can therefore not benefit from a reduced rate of VAT.

However, many tourism services such as passenger transport, hotel accommodation, restaurant services and admission to cultural events and facilities are often exempted or subject to reduced rates.

Hence, when dealing with final consumers, travel agents suffer a competitive disadvantage compared to providers whose services can be exempted or subject to reduced rates. These providers can either be i) taxable persons falling outside the scope of the special scheme (e.g. principal suppliers of travel services such as hotel accommodation and intermediaries such as online travel agencies); or ii) other travel agents supplying the same services using their own resources (in-house supplies) which are not subject to the special scheme but to normal VAT rules.

Lack of level playing field is especially found in the airline sector where travel agents owning their own aircraft and airline companies providing travel packages can treat the supply of flight seats as an in-house supply which is therefore not subject to the special scheme. As a result, avoidance practices have developed. Travel agents have been able to reduce their margin (and therefore their VAT payment) by establishing subsidiaries that

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<sup>82</sup> However, these potentially ancillary services are unlikely to form only a small part of the package (event) value, requiring that the special scheme is applicable.

<sup>83</sup> Article 54 of the VAT Directive.

<sup>84</sup> If considered that such services fall within the general rule, for example, then they are supplied where the client is established (Article 44 of the VAT Directive).

purchase airline tickets from airlines and sell them to the travel agent for an artificially high price. This diminishes the profit of the travel agent and, therefore, results in a lower tax base. The subsidiary, in return, generates unusually high profit margins. However, the purchase and sale of international airline tickets is zero rated passenger transport in many Member States. For this reason, the subsidiary has no VAT to declare or pay<sup>85</sup>. Such avoidance practice is, in turn, made possible by the (non-compliant) exclusion of B2B supplies from the application of the scheme which allows the subsidiary to provide travel services to the travel agent under application of the normal VAT rules.

Another important source of a lack of level playing field is found when comparing travel agents with intermediaries. As recalled in section 3.1, over the last years new business players have emerged and now compete with travel agents on the same market, but under different rules. Among those players, online travel agencies acting as intermediaries do not fall within the scope of the special scheme and therefore benefit from reduced VAT rates on their fees when providing travel facilities (e.g. airline services).

The magnitude of this competitive disadvantage is however dependent on 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 varies considerably from one Member State to another and also depends 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 the study was not sufficiently granular to allow this to be calculated. The results of the open public consultation, however, clearly showed that the highest importance when it comes to B2C supplies was attributed by respondents to the benefit of simplification (160 respondents equal to 78%) provided by the special scheme rather than application of the reduced rates provided under the normal VAT rules (only 39 respondents equal to 19%).

Indeed, while the application of normal VAT rules would mean that the rate of VAT payable would often be a local reduced rate as opposed to the standard rate currently due on the margin, the travel agent would however need 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 various types of service, in terms of the place of supply of that service, and to identify the appropriate rate of VAT to be applied to each supply made in that Member State. Furthermore, travel agents would need to understand, in the case of packages, whether the supply is considered to be a single supply or a multiple supply as determined by the Member State of supply. As described

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<sup>85</sup> These arrangements have operated in the United Kingdom (where passenger transport is “zero rated”) since 1996 and are commonly known as the “transport company scheme”. A similar scheme was also found in Denmark and could exist in other Member States. Denmark, in order to stop this abusive practice, in accordance with Article 395(2) of the VAT Directive, in February 2020 requested a derogation from Article 308 of the VAT Directive. The purpose of the requested measure (which was not authorised – see COM(2020) 168 final of 6.5.2020) was to lay down a rule determining the cost of passenger transport that has to be taken into account when calculating the travel agent’s profit margin, in case there are parties in the chain of transactions that are closely linked. This cost would then be the payment received by the last company in the chain that is not closely linked to the travel agent.

in section 5.1.1, the simplification of the special scheme would then be replaced by significantly higher complexity under the normal VAT rules.

### **5.2.5 Calculation of profit margin**

According to Article 308 of the VAT Directive, the profit margin has to be determined in respect of each single service provided by the travel agent as the difference between the price of that single service and direct costs incurred<sup>86</sup>.

The method of calculation of the VAT due as it exists constitutes a source of complexity and of administrative costs for the businesses operating in the travel industry as it requires the identification of the margin every time a service is provided. This could mean calculating VAT payable numerous times for just a single provision of travel facilities. For example, the travel agent may receive a deposit, stage payment and final balance and would need to identify the margin inherent in each payment. Furthermore, declaration of the 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 received subsequent to the provision of the travel facility (based on, for example, the level of business placed with a 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 determined at a later date.

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

This method also prevents the travel agent from offsetting negative margins over a period of time.

A calculation based instead on the aggregation of sales and associated costs over a period (a global calculation method) would in contrast provide for simplicity and enable a travel agent to offset negative margins against positive margins on other supplies. Accordingly, a global calculation may result in lower administration costs and potentially a lower VAT cost as compared to a method of separate VAT calculation for each supply made. This was confirmed by the results of the open public consultation where almost all respondents agree that the transaction-by-transaction margin calculation adds complexity to the simplified rules of the special scheme (191 respondents, equal to 93%) and is

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<sup>86</sup> Cf. *supra* notes 20 and 21.

detrimental to the industry, because negative margins cannot be offset against positive margins (188, equal to 91%).

Against this, it has to be acknowledged that, currently, the only possibility allowed for a simplified calculation of a margin can be found in Article 318 of the VAT Directive relating to the supply of goods under the margin scheme for taxable dealers. Nevertheless, such a global calculation is only allowed for simplification purposes rather than to offset losses. Under that scheme, Member States are also 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.

As seen in section 3.2, each Member State has its own rules under which calculation of the margin is undertaken. Nevertheless, differing method of margin calculation applied by Member States can affect the competitive position of travel agents throughout the EU. As a global margin calculation allows for the aggregation of sales and associated costs over a period and enables any negative margins to be offset against positive margins on other supplies, a travel agent established in a Member State which allows this enjoys lower administration costs and potentially lower VAT costs when compared to a travel agent established in a Member State which requires a separate VAT calculation for each supply made.

### **5.3 Relevance**

Europe is the largest global travel and tourism market and a major tourist destination, with five Member States among the world's top ten destinations for holidaymakers, according to UNWTO.

In the last decade, digital technologies have significantly transformed the travel service market. Nowadays travel services are the most popular category of services purchased on-line. Digital transformation is reshaping the whole travel ecosystem. These years have also seen enormous growth in international travel and in mobility of passengers and widespread deregulation (particularly in the airline industry) that have increased competition at global level. All these changes are not reflected in the special rules.

More than half of respondents to the public consultation questioned the ability of the special scheme to respond to the evolved needs of the industry. In particular, with regard to developments in technology, stakeholders stated that the current rules of the special scheme are not fit for purpose in the digital age<sup>87</sup>.

A MOSS system (Mini One Stop Shop) has been in place since 2015 for TBE services (telecommunications, broadcasting and electronically supplied services) provided to non-

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<sup>87</sup> To the question "To what extent do you agree that the current rules of the special VAT scheme for travel agents and tour operators is fit for purpose in the digital age" 90 disagree and 15 strongly disagree, equal to 51% in total.

taxable persons (B2C services) by EU-established and non-EU established suppliers. This system 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. This has responded to the change in the place of supply of these services from the place of establishment of the supplier to that of the customer providing a solution to the tax collection issues associated with the growth of the digital economy.

From July 2021 the scope of this system will be extended, turning it into a One Stop Shop (OSS), to cover B2C supplies of services other than TBE services, intra-EU distance sales of goods, certain domestic supplies of goods facilitated by electronic interfaces, distance sales of goods imported from third countries and third territories in consignments of an intrinsic value of maximum EUR 150. The evaluation has shown that many would see this system either as a substitute for the current special scheme or as a complement to the current special rules (e.g. as limited to B2C supplies). In case this system were to be applied in the travel sector, however, B2B supplies would be excluded from its scope and it would not solve the problem of multiple input tax refunds in different Member States where the supplier is not registered<sup>88</sup>.

Notwithstanding developments in the VAT system, the evaluation clearly shows that travel operators continue to need special VAT rules (90% of respondents to the public consultation believes so). An urgent need to support the sector emerges in view of the heavy hit caused by the pandemic.

The majority of respondents to the public consultation also confirmed that the special scheme simplifies the application of VAT rules for travel agents (79%). The most important aspects of the special scheme are seen to be the unique VAT registration number (85%), the simplified margin calculation which avoids the need to recover input VAT (83%), the access to a simplified VAT declaration (78%) and the treatment of a package as a single supply (76%).

The abolition of the special scheme and its replacement by a system based on the application of the normal VAT rules on place of supply, valuation and input tax deduction would bring about, according to the study, a likely fall in total VAT revenue from the EU travel sector, re-allocation of revenue between Member States and a large increase in the compliance burden for travel agents. In particular, from the perspective of the industry, it would increase considerably the complexity of VAT accounting and compliance burden placed on travel agents of all sizes, especially on smaller ones who might see the resulting compliance burden as a barrier to the sale of travel consumed in other Member States. The increase in complexity could also discourage travel agents from selling services in a large number of Member States and thereby form a barrier to the creation of a single market in the travel sector. Such a system would also impose

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<sup>88</sup> It is not possible to reclaim input tax via the MOSS VAT return. Where a taxable person is entitled to reclaim tax incurred in a Member State in which it is not VAT registered, this would need to be done by way of an Electronic VAT Refund (EVR) claim or a 13th Directive claim.

greater obligations on the Member States and could increase instances of avoidance and fraud.

#### 5.4 Coherence

This section analyses the coherence of the special scheme, with the wider VAT system under constant review and with other EU policies.

“A Europe fit for the digital age” is one of the six top priorities of the Commission. The EU's digital strategy will in particular strengthen the responsibility of online platforms by proposing a Digital Services Act and clarifying rules for online services. It will also foster innovation and competitiveness of the European online environment<sup>89</sup>.

In this respect, in line with the Council conclusions<sup>90</sup>, the VAT system is at the centre of an ongoing in-depth review to adapt its structure to digital and technological developments while ensuring fair and effective taxation.

The VAT treatment of the platform economy will be part of a digital package announced in the Tax Action Plan<sup>91</sup>. For this purpose, a study has been launched to gauge the size of the platform economy in the EU, assess the VAT implications (e.g. nature of the services, parties involved and their obligations) and provide impacts on possible policy options.

The Commission has included in its new fiscal agenda a set of initiatives to support a swift and sustainable economic recovery and ensuring sufficient public revenue in the EU. In particular, the reduction of tax obstacles and unnecessary administrative burdens for businesses in the Single Market is confirmed to be a key objective of EU tax policy.

Tourism has been the worst affected of all major economic sectors by the outbreak of Covid-19. A Commission action in the tax policy area to assist travel businesses and allow them to face the crisis seems therefore necessary and urgent.

**The special scheme has to a large extent been effective in achieving the objective of simplification of VAT rules for travel agents. Maintaining such rules in order to facilitate the supply of travel services is in line with both the new policy goals and the needs of travel operators.**

**However, the assessment of the special scheme as well as the stakeholder consultation clearly show that the scheme as it currently stands does not fit the reality in which the travel industry operates. This would translate into the need to adapt the special rules to the digital and asset-free environment of the travel and tourism sector.**

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<sup>89</sup> Communication: Shaping Europe's digital future, February 2020.

<sup>90</sup> Council conclusions on “[Shaping Europe's Digital Future](#)”, 9 June 2020.

<sup>91</sup> Cf. *supra* note 8.

#### 5.4.1 Shift towards taxation at destination

Over the years, the VAT system has gradually evolved towards the principle of taxation in the Member State of destination. In particular, Directive 2008/8/EC introduced important changes in order to ensure that VAT on services accrues to the Member State of consumption.

In 2016, the Commission proposed<sup>92</sup> to replace the current transitional arrangements for the taxation of B2B supplies between Member States by a definitive system based on the principle of taxation at destination, in line with requests of the European Parliament and the Council<sup>93</sup>.

The proposal for a definitive VAT regime adopted by the Commission<sup>94</sup> sets out the first step of implementation of the new system: taxation of intra-EU supplies of goods together with improved One-Stop-Shop arrangements. The approach taken would only consider the taxation of intra-EU B2B services at a later stage.

The adoption of a definitive VAT system, which rests upon the agreement of Member States, would implement taxation at destination fully into the VAT Directive with very few exceptions remaining, notably the special scheme.

Despite governed by the rule of taxation at origin, most of the VAT collected via the special scheme takes the form of irrecoverable input tax, which is collected in the Member State of consumption (see section 5.1.2). The services purchased by the travel agent are in fact taxed in accordance with the normal place-of-supply rules, i.e. mostly in the Member State where the travel takes place<sup>95</sup>.

**Hence, the special scheme has kept adequate consistency with the destination principle.** The vast majority of respondents (73%) to the public consultation confirmed indeed this trend.

**On the other hand taxation of the margin at origin does not ensure equal treatment between EU and non-EU businesses since EU travel services supplied by travel agents established in third countries are not taxed under the special scheme. These services are merely considered outside the scope of the special scheme because the travel agents are established outside the EU.**

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<sup>92</sup> Action Plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148 final of 7.4.2016).

<sup>93</sup> European Parliament Resolution of 13 October 2011 on the future of VAT; Council conclusions on the future of VAT, 15 May 2012.

<sup>94</sup> Proposals for a Council Directive (COM(2017) 569 final of 4.1.2017 and COM(2018) 329 final of 25.5.2018).

<sup>95</sup> The vast majority of services typically provided by travel agents has its place of supply in the Member State of consumption. The current place of supply rules for services such as accommodation, catering and the hire of a means of transport is the Member State of consumption. In the case of passenger transport, however, the place of supply is within each Member State in which the transport takes place.

**The growing presence of platforms has made this problem even more acute as little physical presence is required to sell into the EU market.**

#### **5.4.2 Regulatory framework**

Travel services are widely regulated at EU level in sector-specific legislation, e.g. in the transport sector, where various regulations safeguard passenger rights depending on the mode of transport. Travel services are also covered by horizontal EU legislation, such as the Consumer Rights Directive<sup>96</sup>, the Services Directive<sup>97</sup> and, when provided online, of the e-Commerce Directive<sup>98</sup>.

Despite its years, the special scheme remains in many respects consistent with some of EU legislation. In particular, the scheme incorporates a key principle of the e-Commerce Directive: the internal market clause, which ensures that providers of online services are subject to the law of the Member State in which they are established and not that of the Member States where their services are accessible. The internal market principle continues to be relevant in the Digital Services Act package proposals<sup>99</sup>. On the other hand, the special rules and their interpretation have not taken into account essential developments in the regulatory framework aimed at improving legal certainty and uniformity of treatment with the regard to the functioning of the travel package market. Directive (EU) 2015/2302<sup>100</sup> on package travel and linked travel arrangements has adapted EU legislation to the online booking models to better protect consumers who are using a combination of services.

The rules as modernised indeed take well into account the fact that travel services are not only combined in the form of traditional pre-arranged packages, but are often combined in a customised way by the traveller. In particular, it is the booking process that will determine whether the traveler has booked a package, a linked travel arrangement or merely a stand-alone service as defined by that Directive<sup>101</sup>. The creation of a package could also be possible when the traveller books separate travel services from different websites (separate traders) but bookings are interrelated through links provided by a website leading the customer on to another website, and the first trader transmits to the second trader the specific traveller's personal data, i.e. the traveller's name, payment details and email address, the so called "click-through" booking.

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<sup>96</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (OJ L 304, 22.11.2011, p. 64).

<sup>97</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

<sup>98</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).

<sup>99</sup> <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>.

<sup>100</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

<sup>101</sup> Report from the Commission to the European Parliament and the Council on the provisions of Directive (EU) 2015/2302 (COM(2019) 270 final of 21.6.2019).



Another important set of rules that need to be considered is the EU Regulation<sup>102</sup> on platform-to-business relations (P2B Regulation), which has applied since July 2020. The Regulation puts in place a harmonised framework for minimum transparency and redress rights. It also protects companies that depend on online platforms for reaching consumers, while safeguarding the innovation potential of platforms. In view of the global dimension of online intermediation services, the new rules apply to all providers of those services into the EU market regardless of whether they are established in a Member State or outside the Union.

## **5.5 EU added value**

As the special scheme constitutes a particular feature of the VAT system, which is harmonised at EU level, any intervention in this field can only pass through an amendment of the VAT Directive. Hence, the problems triggered by the rules of the existing VAT Directive cannot be tackled at national level alone as any initiative to modify VAT rules of the special scheme requires a proposal by the Commission to amend the VAT Directive.

The legal basis lies in Article 113 of the Treaty on the Functioning of the European Union according to which “*The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation 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*”.

It is precisely the harmonisation of the rules of the special scheme that is widely requested by most of the stakeholders during the process of evaluation and which can only be achieved at EU level: a common EU approach brings results that would otherwise not be achieved through individual national measures. As shown in the evaluation, due to the lack of clarity of the rules and inconsistency in adherence, Member States have adopted diversified interpretation and application of the law which, in turn, have hampered the correct functioning of the internal market by causing distortions of competition in terms of episodes of non-taxation or double taxation.

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<sup>102</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

## 6. CONCLUSION

The following sections summarise the key findings of the evaluation in terms of achievements and shortcomings of the special scheme as a basis for future policy actions.

### 6.1 Achievements of the special scheme

**The special scheme has been widely effective in achieving its two main objectives namely simplifying the application of VAT rules for travel agents and ensuring a fair allocation of VAT revenue.**

The interpretation of the special rules by the CJEU according to which B2B supplies fall within the scheme (customer approach) has in particular contributed to the achievement of the second objective.

**The place-of-supply rule and the concept of single service are the most important elements leaving no doubt that the scheme is much more straightforward to apply than the normal VAT rules. Taxation at origin permits indeed the highest level of simplification possible in relation to a cross-border oriented activity like that mostly conducted by travel operators.**

It is especially when a package includes travel facilities located in different Member States that the special scheme proves to be most beneficial. In particular thanks to the concept of single service, the need to qualify the services provided by the travel agent (single or multiple supply) is eliminated.

These simplification benefits, although variously perceived depending on the business model adopted, are mostly appreciated by the industry in the context of cross border and B2C supplies, where the final customer would not be allowed to deduct any input tax charged.

Finally, the fact that the special scheme prevents the travel agent from either deducting or obtaining refund of the VAT included in its costs, ensures equal distribution of revenues among Member States. The study in particular shows that the majority of VAT collected via the special scheme comes from irrecoverable input VAT while the VAT due on the margin is smaller in totality.

### 6.2 Shortcomings of the special scheme

While being effective in achieving its objectives, the special scheme presents the following shortcomings:

- **It is unfair:** the rule of taxation at the origin leads to non-taxation of the margin made by third country operators on travel services consumed in the EU. The inequality of treatment becomes more acute with the digitalisation of the travel industry and the rise of the online platform economy as no physical business presence is required to sell

travel services into the EU market. Online travel platforms have enlarged market opportunities at global level and increased their volume of trade across borders. While Europe is a large global travel and tourism destination, undisputed leaders in the online travel booking are however based outside the EU. This puts at risk EU competitiveness and EU VAT revenue. In the absence of a level playing field, EU-established travel agents can easily relocate their almost asset-free business outside the EU to fill the gap. The withdrawal of the United Kingdom from the European Union can further amplify this trend, as operators established in United Kingdom will apply zero-rating to travel services sold into EU market.

- **It is inefficient:** Taxation of B2B supplies at the margin does not ensure efficiency as it comes at a cost for businesses, that is non-deductibility of input VAT. If on the one hand the loss of input VAT deduction is an inherent consequence of the simplification, the fact that the special rules are mandatory for businesses could be said not to provide the flexibility to meet the needs of the complex multi-faced travel sector. Costs and benefits deriving from the application of the special rules differ according to the business model in use. In particular, a business that operates in both B2C and B2B segments, can still find the simplification benefits of the special scheme higher than the cost of non-deductible input VAT if the business can remain competitive on prices. On the contrary, a business that only makes B2B supplies could rather prefer to apply the normal VAT rules in order to enable its business customers to recover input VAT. Digitalisation has further facilitated contact of business customers to the travel agent's own service provides such as hotels and airlines from whom they can buy services directly and deduct the VAT paid.
- **It is outdated:** the special scheme was designed for "brick and mortar" travel agencies with a local office that hardly exist any longer. In the expanding digital landscape, travel agencies have partially or totally shifted online. Digital technology has forged new business and pricing models and disrupted the traditional value chain. At the same time, new services have emerged in the travel ecosystem and changed over time (and will continue to do so), raising a number of challenges as regards the application of VAT. The special rules do not capture well new business models, do not address the different needs of travel operators and certainly are not fit for the digital age. Travel agents are therefore less and less able to operate under the same conditions.
- **It does not ensure competitiveness:** The blocked input VAT has in particular placed travel B2B sectors, namely, TMC and MICE, at a competitive disadvantage when compared to suppliers not subject to the special scheme (e.g. principal suppliers, suppliers of in-house services and intermediaries). As a result, some Member States have in an arbitrary manner excluded or granted travel agents the option to exclude B2B supplies from the special scheme. In other Member States where such an exclusion is not available, travel agents can change their business model in order to be qualified as intermediaries and bypass the application of the scheme (notwithstanding the possible constraints of acting as intermediary such as for instance the fact that the margin has to be disclosed). The evaluation suggests that travel agents primarily

involved in B2B transactions would rather renounce to simplification benefits in order to restore VAT neutrality and allow for input tax deduction, thereby regaining competitiveness on the market.

A lack of a level playing field has also been detected when dealing with final customers, as travel agents suffer a competitive disadvantage compared to principal suppliers whose travel services can be exempted from VAT or subject to reduced rates (e.g. accommodation and transport). This is so since the margin of a travel agent must always be taxed at the standard rate of VAT regardless of the (reduced/zero) rate applicable to the underlying individual travel facility supplied. This has led to some avoidance practices, especially in the airline business, aimed at shifting the margin to subsidiaries not subject to the special scheme. However, the evaluation clearly indicates that in the B2C segments these competitive disadvantages are largely off-set by the simplification benefits granted by the special scheme.

- **It lacks clarity and harmonisation:** Despite or even because of the extensive case-law, the special rules remain unclear and not uniformly applied by Member States. This is not only a source of complexity in the application of the scheme but also leave scope for distortions of competition detrimental to the proper functioning of the internal market.

The lack of clarity is especially found with regard to the scope of the special scheme, and with regard to the normal VAT rules to be applied e.g. in case of in-house supplies. Without a precise definition of travel facilities, the provision of some services may not always be seen to fall within the special scheme as not qualified as travel related (e.g. car hire) while the provision of a travel related service may not always be seen as falling under the scheme if not comprised within a package (e.g. the provision of accommodation only). In addition, in the context of the supply of mixed packages, especially in the MICE sector, events containing services not ordinarily described as travel facilities (e.g. entertainment, food and drink, conference facilities) may be seen to fall outside the scope of the special scheme. On the other hand, absent the application of the special scheme, there is no clarity on which normal VAT rule should be applied, especially with regard to the place of supply (e.g. tour guides).

A high degree of non-harmonisation is present especially in the field of wholesale transactions, definition of travel facilities and margin calculation. With regard to the wholesale packages, inconsistency between Member States in the application of the scheme (some exclude or allow an option to exclude such supplies from the scheme) creates a significant distortion in the application of VAT rules. Non-uniformity of treatment may lead to non-taxation or double taxation of the margin as well as to a risk of VAT loss and wrongful allocation of VAT revenues which especially affects the DMC sector (as the one mainly involved in wholesale transactions). These mismatches in VAT treatment are also found in terms of margin calculation and definition of travel facilities, increasing distortions and inefficiencies in the functioning of the scheme.

### 6.3 Issues at stake

The special scheme was put in place together with the common VAT system in 1977 to facilitate in particular the application of VAT by travel agents that combine and sell services outside their own Member State.

Since its adoption, the VAT system has undergone fundamental changes that are not reflected in the special rules. The market for travel services as such was also subject to major changes.

The VAT system has gradually evolved towards taxation at destination allowing for a simplified way of charging and collecting VAT across Member States with the inclusion of third country operators. The new OSS will certainly make the application of the normal VAT rules easier with regard to cross-border B2C supplies. The simplified arrangements, however, will not be available to intra-EU B2B trade which remains part of the ambitious long-term project for a definitive VAT system.

At the same time, profound changes in the travel industry such as growth in international travel, digital transformation and rise of Online Travel Platforms have disrupted the traditional business models and increased competition in the global market. On top of that, travel and tourism are the worst affected of all major economic sectors by the outbreak of Covid-19 with a number of businesses that struggle to survive.

The special rules have, in many respects, been successful and there is low desire within the industry to see the scheme as such brought to an end. The public consultation strongly confirms that there is still a need for simplified rules for travel agents: 90% of respondents believe so in particular where cross-border and B2C transactions are concerned.

Widespread calls for improvements of the current rules however emerge from the analysis. The scheme in its present form is inadequate to meet diverse and new needs of travel operators and to support them in addressing the challenges of the industry arising from the digital disruption, changes in business environment and the Covid-19 crisis.

Stakeholders, in particular, request clearer, simpler and more harmonised rules for travel operators whilst keeping those flexible. These rules should also address distortions and ensure a level playing field for all travel agents operating in the EU market, including those not established within the EU.

Ensuring fairness and competitiveness in a borderless digital world is however a major challenge for the whole EU tax system. In the field of direct taxation, policy makers are struggling to find solutions to ensure fair and effective taxation as consensus on common tax principles is very hard to find but necessary. The VAT system is also at the centre of an ongoing in-depth review to adapt its structure to digital and technological developments while ensuring fair and effective taxation. The initiative “VAT in the digital age” will in particular examine the implications of the platform economy on VAT rules.

Overall, the Commission has included in its fiscal agenda a set of initiatives to support a swift and sustainable economic recovery and ensuring sufficient public revenue in the EU. In particular, the reduction of tax obstacles and unnecessary administrative burdens for businesses in the Single Market is confirmed to be a key objective of EU tax policy.

# ANNEXES

## **Annex 1: Procedural information**

### **1. Lead DG – DG TAXUD**

The initiative was planned under [PLAN/2019/5715 – TAXUD](#).

### **2. The evaluation was supported by an independent study carried out by KPMG.**

The contract with the contractor was signed on 10 January 2017. The Final Report was submitted on 1 December 2017 and published in December 2017.

### **3. The first meeting of the Inter-Service Steering Group (ISSG) took place on 9 October 2019 to discuss with the members the current rules of the special scheme, the future tasks of the Group and the draft roadmap including the consultation strategy of the evaluation. A second meeting with the ISSG took place on 25 November 2019 to discuss the meeting held with Member States (Group on the Future of VAT of 11 November 2019) and the draft online public consultation to be launched.**

## **Annex 2: Stakeholder consultation**

The consultation collected data and evidence to evaluate the special scheme for travel agents. To this aim the consultation gathered the views of the stakeholders on the following topics: i) whether the special scheme achieves its objectives of simplification, ii) which are the drawbacks of the special scheme compared to its benefits, iii) to what extent the special scheme is still aligned with stakeholders' needs, iv) whether it needs to be reformed.

The consultation process consisted of:

1. Business survey within the study by KPMG;
2. Targeted Consultation of Member States in the context of the Group on the Future of VAT;
3. Feedback to the evaluation roadmap;
4. A public consultation addressed to all stakeholders and members of the public.

The results and input received during these consultations were the main source of information to assess the evaluation questions and thus were instrumental for the conclusions of the evaluation report.

### **1. Business survey within the study by KPMG**

Surveys have been used in the 2017 KPMG study for two purposes: i) to collect information on the application of the Special Scheme local VAT rules from KPMG specialists across the EU; and ii) to collect 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 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 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. This business questionnaire was sent to KPMG



clients and known travel businesses within each of the business models identified. This business questionnaire was also sent to ETOA (European Tourism Association); ECTAA (European Travel Agents' and Tour Operators' Associations); EFAPCP (European Federation of the Associations of Professional Congress Organisers) 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, the intention was to obtain responses to the business questionnaire from at least 10 businesses per business model across each of Germany and the United Kingdom, 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 EUR 19 billion). No responses were received from non-EU businesses. Meanwhile by turnover, 94% of the utilised respondent businesses were based in only five Member States.

## **2. Targeted Consultation of Member States in the context of the Group on the Future of VAT**

On 11 November 2019 the Group on the Future of VAT met in order to collect Member States' views on the special scheme for travel agents with regard to the interpretation given by the CJEU of the common EU rules, the conclusions reached at the 2018 FISCALIS workshop, the findings of the study, the evaluation and the reform options. Member States were also invited to provide their feedbacks in written within one month following the meeting.

The 27 Member States present at the meeting were invited to contribute either orally or through written contributions to the questions listed in the working paper presented at the meeting.

### **Key findings**

#### ***Data availability***

Tax data as regards the special scheme was only collected in few Member States. According to the vast majority of Member States, data was not available and would also be difficult to obtain, either because travel agents could be taxed both under the special scheme and under the normal VAT rules or as data are consolidated in the tax returns.

#### ***Evaluation questions***

##### ***Effectiveness – The special scheme achieves its objective of simplification***

The special scheme allows travel agents to benefit from simplified origin-based taxation by paying VAT on their profit margin in the Member State where they are established. This is particularly important when supplying a package of different facilities which is considered as a single supply under the special rules. The margin scheme permits travel agents to operate in all other Member States without further need for VAT registration or

declaration. That is so since travel agents are not paying VAT on supplies made in those Member States. By not having to deduct input VAT, travel agents do not have to understand and comply with those Member States' differing VAT regimes and to interact with the respective tax authorities requiring different evidential requirements to support input tax refunds. By not deducting the VAT included in their costs, VAT on the underlying supplies always remains in the Member State of consumption.

22 Member States contributed to this question. The vast majority of them recognised the achievement of the simplification objectives by the special scheme (in terms of place of supply, input tax deduction, taxable amount). Some Member States mentioned the need for an increased simplification and therefore for a reform of the scheme. Some Member States, however, showed a misled interpretation of the term "simplification" by requesting, for example, the exclusion of B2B transactions from the scope of the scheme in order to "simplify" its application. However, it is in fact the inclusion of business clients in the scope of the scheme that allows it to achieve its objectives of simplification (in terms of place of supply, input tax deduction, taxable amount). Finally, few Member States, while recognising the simplification benefits of the scheme at the time it was introduced, raised doubts on its current effectiveness (potential replacement of the scheme by the OSS system).

#### Third country operators

The place of supply rule within the special scheme is an origin based rule as the travel agent's margin is subject to VAT in the Member State in which the travel agent is established. This simplification rule has, however, the non-intended effect of excluding third country operators which, with the expanding use of the Internet, have become increasingly involved in the supply of travel packages to EU consumers. According to almost half of the Member States, this has led to a distortion of competition due to a lack of level playing field. Little and mostly anecdotal evidence could however be provided in this regard. Some Member States proposed to apply the OSS to third country operators.

#### ***Efficiency – The common rules, although interpreted by the CJEU, still lack clarity***

##### Lack of clarity

The large majority of Member States expressed the need for more clarity of the rules on the special scheme. Among the main issues raised were the need to clarify the definition of travel facilities, especially in case of provision of single travel facilities.

##### Need for harmonisation

One third of Member States raised the issue of lack of harmonisation in the interpretation and implementation of the rules governing the special scheme which, in turn, raised problems of distortion of competition within the internal market. The lack of harmonisation among Member States was in particular claimed in the field of B2B transactions, margin calculation and definition of travel facilities/single travel facilities.

### Business to business transactions

One third of Member States asked for the exclusion of business clients from the scope of the special scheme, granting them the right of input VAT deduction under the normal VAT rules. Some of them would prefer to allow an “opt-out” to exclude B2B transaction, while others expressed opposition to an option which would further increase the degree of non-harmonisation among Member States.

### Margin calculation

Almost half of Member States agreed on the difficulty of calculating the margin for each transaction. Some of them expressed a preference for a global margin calculation.

### ***Relevance – The travel industry continues to need special VAT rules***

Almost unanimously, Member States agreed on the need of a special scheme for the industry, while underlining as well the need for it to be reformed. Few of them proposed to consider the application of the One Stop Shop mechanism to the industry as an alternative to the special scheme.

### ***Coherence – There is a need for amending the current rules as interpreted by the CJEU and consequently a need for an impact assessment, which could be followed by a Commission proposal***

Almost unanimously, Member States agreed on the need for a revision of the special scheme for travel agents.

The special scheme taxes the margins in the Member State of establishment of the travel agent while according to the wider VAT system, and, in particular, through the implementation of the One-Stop-Shop in 2021, services are to be taxed at the place of consumption. Some Member States therefore proposed the application of the OSS mechanism to the travel industry, not only for non-established operators but also for EU travel agents.

### **3. Feedback mechanism – Comments and contributions to the evaluation roadmap**

The Roadmap was published on 4 February 2020. During the 4 weeks after the publication of the roadmap, interested stakeholders had the opportunity to provide comments and suggestions. By 3 March 2020, a total of 8 contributions were submitted, mostly from business associations.

### **Key findings**

While recognising the achievement of the simplification benefits by the special scheme, primarily the avoidance of multiple registration obligations, it was largely underlined the need for a review and a reform of the scheme. Among the main issues raised were i) the distortion of competition by third country operators, ii) the need for harmonisation in the application of the scheme among Member States, iii) the exclusion/optional exclusion of

B2B transactions from the scope of the scheme, iv) the difficulties in calculating the margin, v) the compatibility of the scheme with the taxation at destination principle, vi) the need for clarifications especially with regard to the definition of travel facilities.

#### 4. Public consultation open to all stakeholders and members of the public

The public consultation was launched on 25 May 2020 and remained open until 14 September 2020, for a total of 16 weeks (i.e. for longer than the usual 12 weeks, to take into account potential capacity limitations of interested stakeholders due to the Covid-19 crisis). A total of 206 responses were received from 18 Member States, the United Kingdom, and Liberia.

The public consultation questionnaire consisted of 24 questions (both open and close) mainly focused on the assessment of the evaluation criteria.

##### 4.1. The overview

A total of **206 valid responses** were received and were used for the analysis. *The majority of respondents answered in their professional capacity*, while 5 private individuals participated in their personal capacity. Amongst professionals, the largest group is “company and business organisations”, with 153 respondents. Noteworthy are furthermore the group of business associations with 30 respondents. Smaller numbers have been collected for NGOs (3 respondents), public authority (2), research and academia (1), consumer organisation (1), and the group of other respondents (11). Due to their low participation, these groups have been aggregated into the category ‘other’ (O) for the analysis.

*In total, 18 EU Member States, the United Kingdom and Liberia are represented within the Public Consultation.* The Member States most represented are Germany (62 respondents), Austria (47), Belgium (24), Netherlands (12) and Italy (10). Respondents answering in their professional capacity come from all 18 Member States, while private individuals participating are resident in 5 Member States. The below table illustrates the countries of respondents.

**Table 2: Country of origin**

Country of origin	Number of respondents	Country of origin	Number of respondents
Germany	62	Portugal	3
Austria	47	Croatia	2
Belgium	24	Cyprus	2
Netherlands	12	Denmark	2
Italy	10	Romania	2
Spain	9	Bulgaria	1
Estonia	8	Finland	1
France	7	Liberia	1
Malta	4	Poland	1
Sweden	4	<b>Total</b>	<b>206</b>
United Kingdom	4		

***Most of the participating companies (83%) are either SMEs or micro-sized respondents<sup>103</sup> (86 respondents each).*** Additionally, 29 large companies (14%) with more than 250 employees submitted their answers to the Public Consultation<sup>104</sup>.

Regarding the market segments in which companies and consultancies are active in, ***53 respondents (26%) declared the Business to Business (B2B) segment as either exclusive or dominant, while 35 respondents declared the Business to Customer (B2C) as their exclusive or predominant market.*** 42 respondents resulted being active in equal measure in both segments.

***Half of respondents (50%) gave his contribution as travel agent/tour operator,*** 29 respondents as both tour operator and provider of their own services and 4 as providers of their own services.

***60 respondents (29%) declared to act as principal*** in their own name, 36 as intermediary, while 37 declared to act in equal measure as principal and intermediary.

***90 respondents (44%) work both via online and offline channels,*** while 32 only via offline channels and just 10 only via online channels.

Laslty, ***88 respondents (43%) are only or mainly taxed under the special scheme,*** while 21 are only or mainly taxed under the normal VAT rules. 23 respondents declared to be taxed in equal measure under both the special scheme and the normal VAT rules.

## **4.2. Key findings**

### *Overall assessment of the special scheme*

When asked regarding the most important aspects of the special scheme, the majority of respondents (176 equal to 85%) pointed to the unique VAT registration number, followed by the simplified margin calculation (no need to recover input VAT) by 172 (83%), the access to a simplified VAT declaration (160 equal to 78%) and the treatment of a package as a single supply (157 equal to 76%). 88 respondents (43%) also appreciated the fact that with the special scheme there is no need to identify the legal status of the customer (taxable or non-taxable person). The combination of all these 5 aspects was selected by 70 respondents, most of which companies/business associations (58) of micro and small size (56). The need to identify the legal status of the customer was less of a problem for large businesses (21, equal to 72% of them, did not select it).

The special scheme simplifies the application of VAT rules for travel agents according to the majority of respondents which either agree (106 respondents equal to 51%) or strongly agree (57 equal to 28%). Companies/business associations accounted for most of this majority (85 and 41 respectively). A minority of respondents either disagree (15) or strongly disagree (12).

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<sup>103</sup> From 1 to 9 employees.

<sup>104</sup> The remaining 5 respondents are private citizens.

According to slightly more than half of respondents the current rules of the special scheme are not fit for purpose in the digital age (90 disagree and 15 strongly disagree, equal to 51% in total). Those respondents are mainly companies/business associations (82) of micro and small size (76) acting as travel agents/tour operators (56). The same position was shared by the majority of whom declared to operate only online (7 out of 10).

The highest importance when it comes to B2B supplies was attributed by respondents to the benefit of input tax deduction (165 respondents equal to 80%) provided by the normal VAT rules instead of to the benefit of simplification provided by the special scheme (only 37 respondents equal to 18%). Out of 53 respondents who declared to operate exclusively or mainly with taxable persons, 41 (77%) attributed the highest importance to input tax deduction. Almost all the large size respondents (22 out of 29 large respondents) and most of the middle size ones (26 out of 36) shared the view of the majority of respondents.

On the contrary, the highest importance when it comes to B2C supplies was attributed by respondents to the benefit of simplification (160 respondents equal to 78%) provided by the special scheme instead of to the benefit of reduced rates provided by the normal VAT rules (only 39 respondents equal to 19%). Out of 35 respondents who declared to operate exclusively or mainly with non-taxable persons, 30 shared the view of the majority attributing the highest importance to the benefit of simplification granted by the special scheme.

Almost all respondents (191, equal to 93%) agree that the transaction-by-transaction margin calculation adds complexity to the simplified rules of the special scheme, either to a large extent or to a significant extent. This margin calculation method is also seen as detrimental to the industry, because negative margins cannot be offset against positive margins, by almost the same majority of respondents (188 equal to 91%). 90% of respondents who declared to be taxed mainly or exclusively under the special scheme shared the view of the majority regarding the complexity of the margin calculation (80 out of 88).

166 respondents (80%) declared that the rules of the special scheme, as interpreted by the CJEU, lack clarity in terms of the scope of the scheme and in terms of the application of the normal VAT rules once the scheme is not applied. This view was shared in particular by the 83% (24 out of 29) of those who declared to provide travel services partially as travel agent and/or tour operator, partially as provider of his own services.

The existence of a distortion of competition due to differences in VAT treatment between competing travel agents and/or tour operators was confirmed by 177 respondents (86%). The main reasons for this distortion have been attributed firstly to different implementation and application of the rules by Member States (167 respondents equal to 81%), secondly to third country travel agents and tour operators not covered by the special scheme (158, 77%) and thirdly to the rules of the special scheme as interpreted by

the CJEU (137, 66%). In particular, 129 respondents (66%), most of which companies (103), selected all of these three aspects as the main sources of distortion of competition.

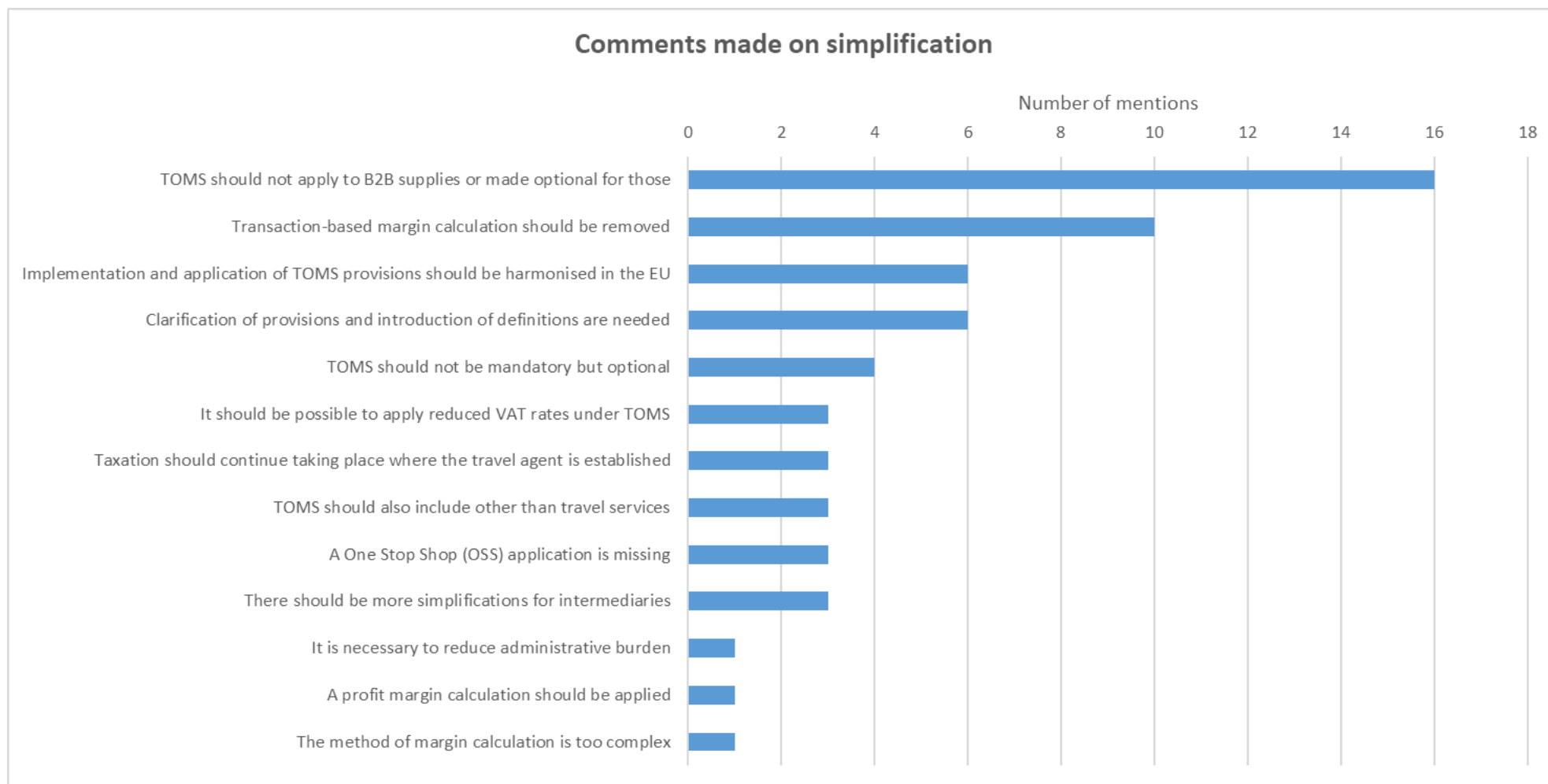
Although slightly more than half of respondents (108, 52%), believes that the special scheme does not respond anymore to the evolved needs of the industry, the vast majority (185 equal to 90%) either strongly agree (145) or agree (40) that the travel industry continues to need special VAT rules.

The vast majority of respondents (150, 73%) stated the coherence of the special scheme to the principle of taxation at destination, notwithstanding that under the special scheme the margin is taxed where the operator is established.

Finally, 176 respondents, equal to 85%, believe there is a need to reform the special scheme against 19 respondents for which the scheme does not need amendments and 11 which does not know.

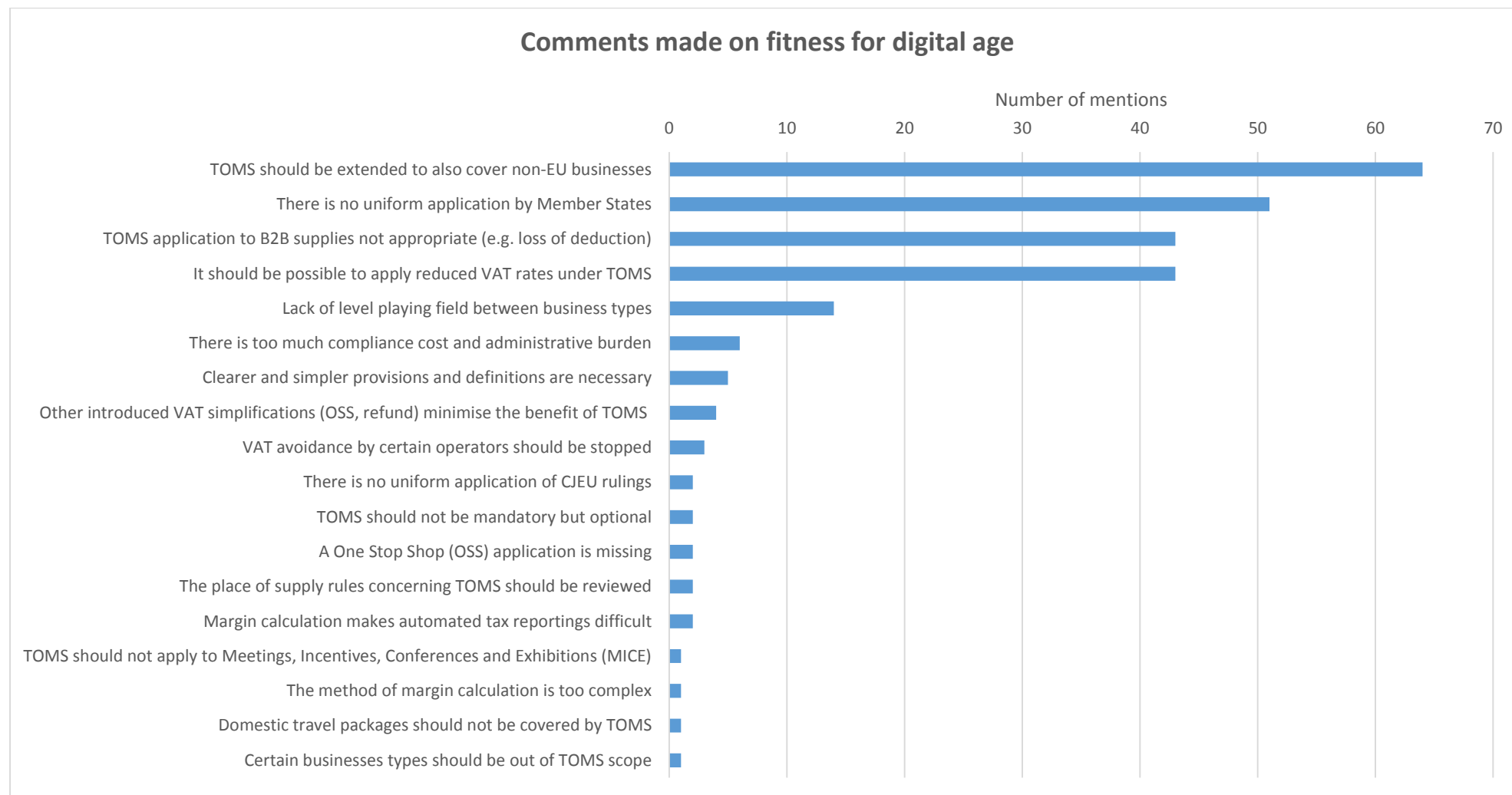
The following pages illustrate the main messages received in response to each of the main issues raised in the consultation.

**Figure 15: Comments re simplification**

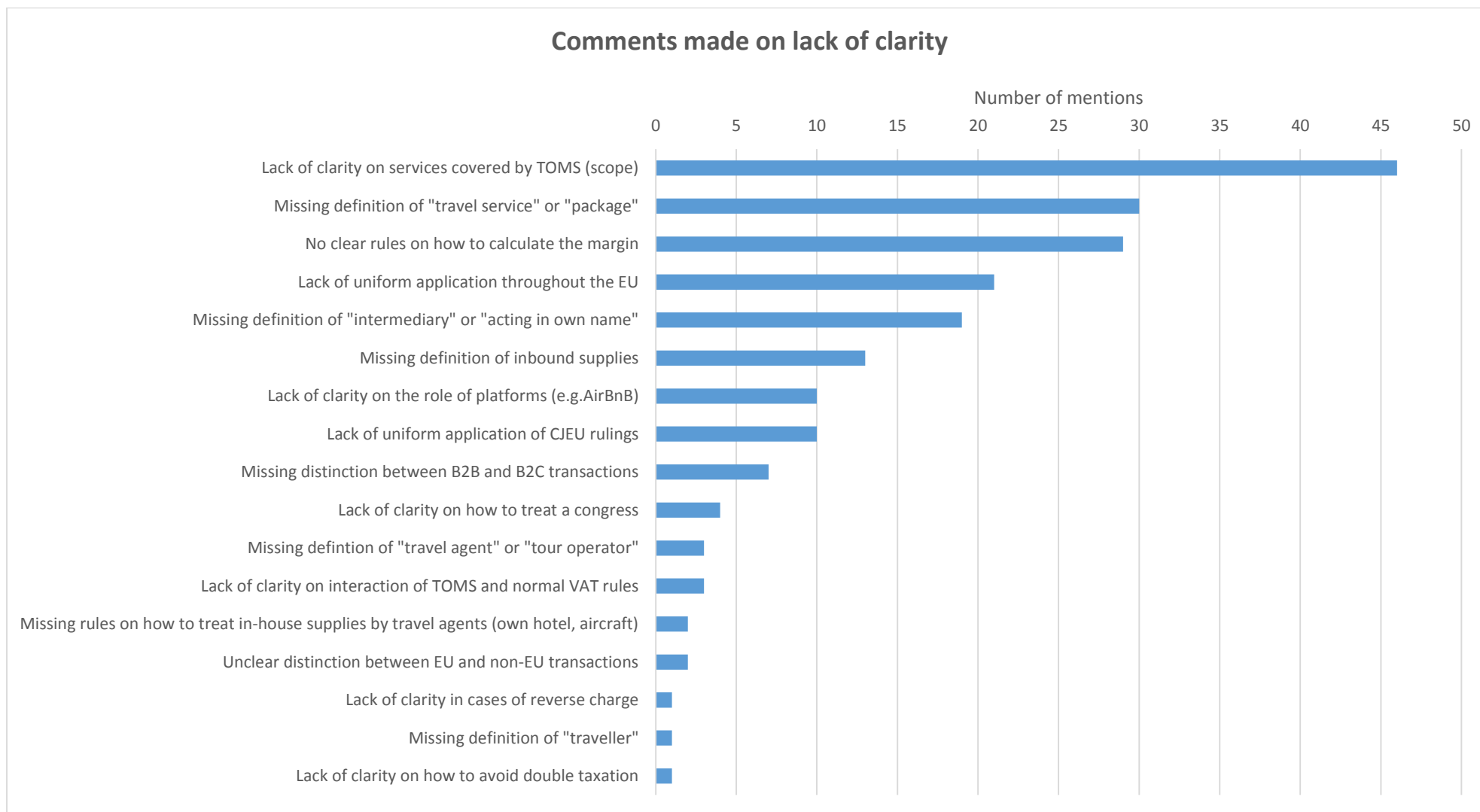




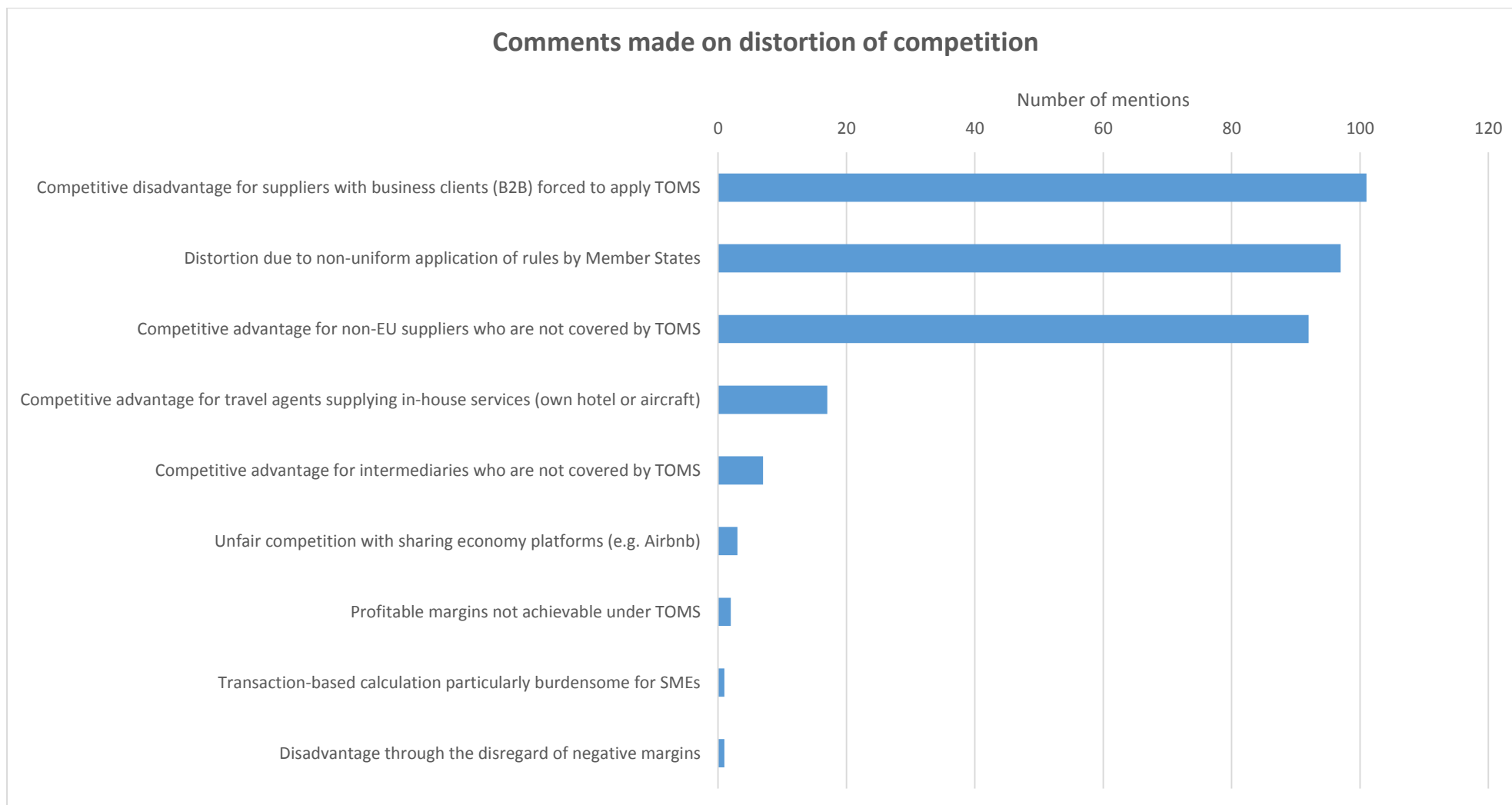
**Figure 16: Comments re fitness for digital age**



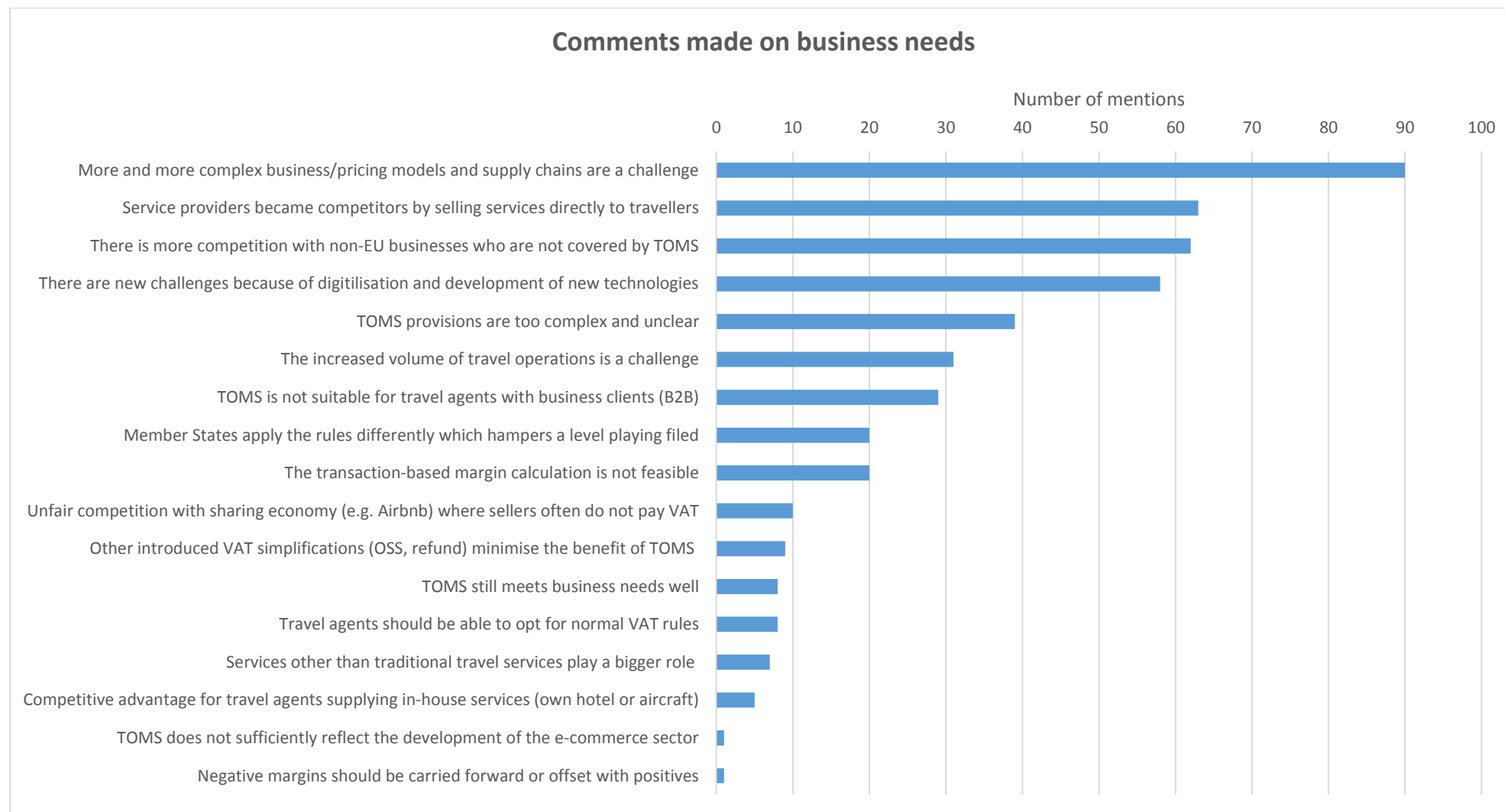
**Figure 17: Comments re lack of clarity**



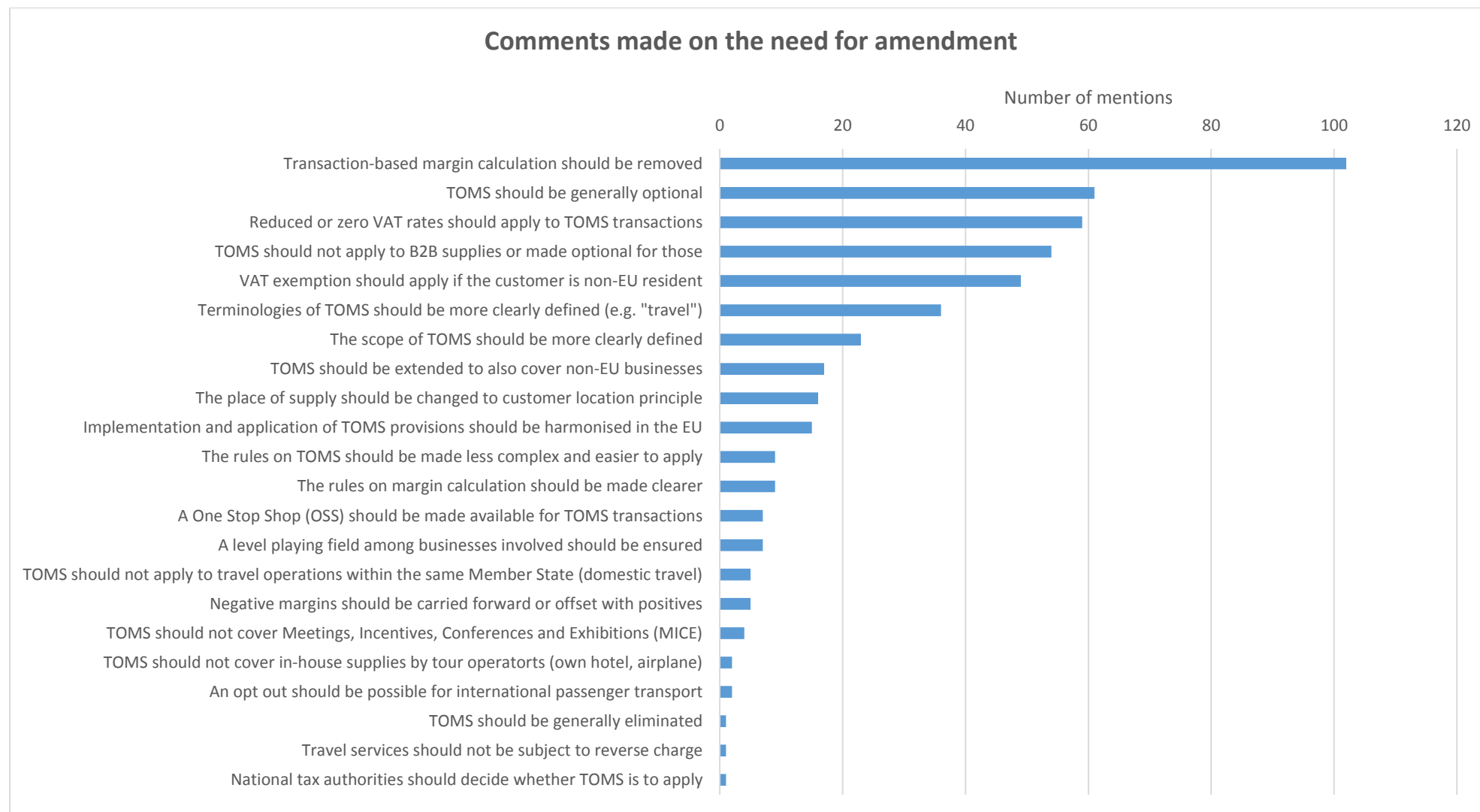
**Figure 18: Comments re distortion of competition**



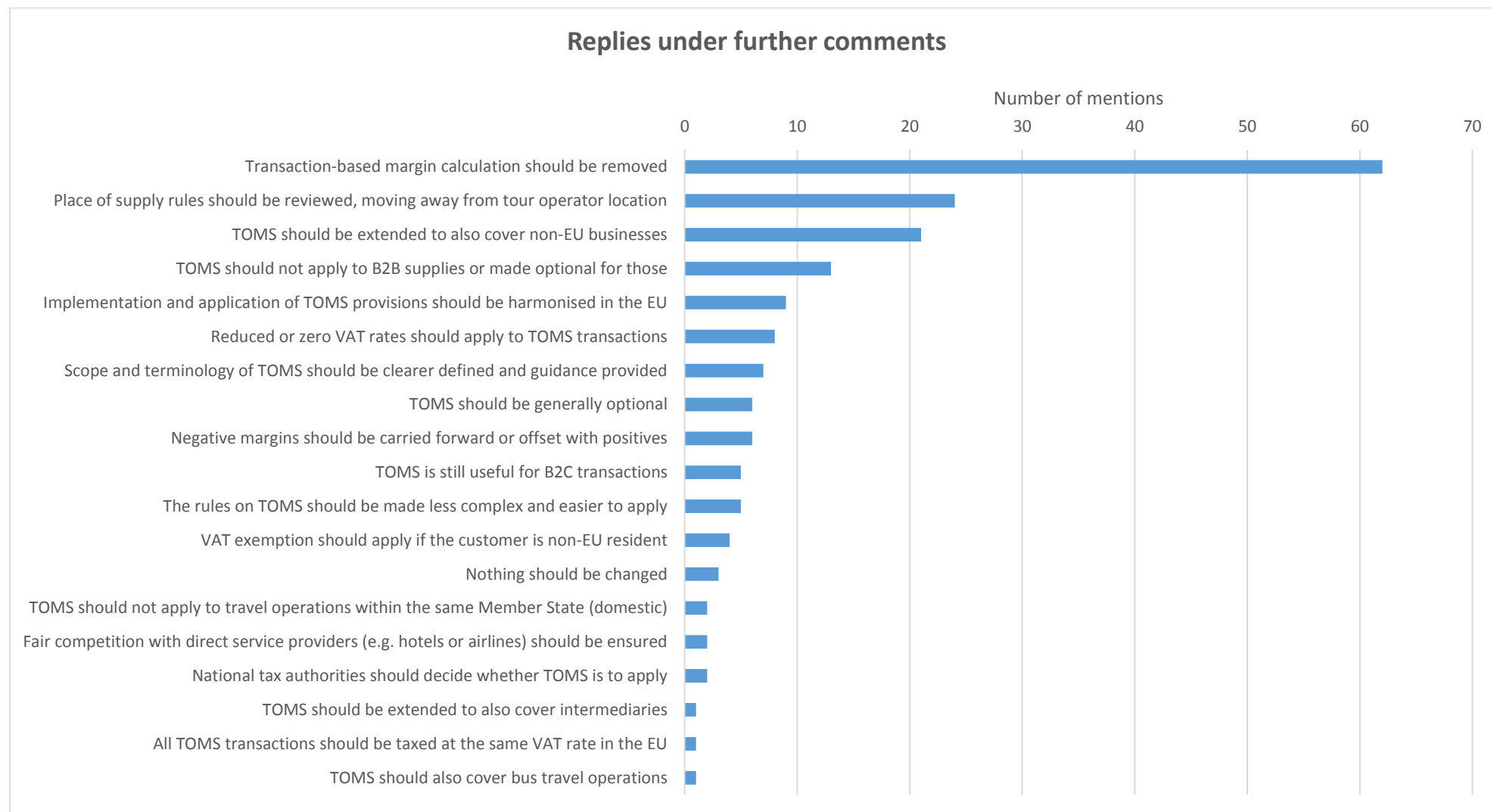
**Figure 19: Comments re business needs**



**Figure 20: Comments re need for amendment**



**Figure 21: Further comments**



### **Annex 3: Methods and analytical models**

The evaluation is supported by a study<sup>105</sup>, a consultation of Member States in the context of the Group on the Future of VAT, feedback received regarding the roadmap, and a public consultation (see Annex 2 on the consultation process).

With respect to the availability of underlying economic data, the study relied on pre-existing data sources, such as Eurostat, that helped provide a wider economic backdrop to the travel industry in Europe as a whole. At the time the study was conducted, available data referred to 2015. For the purpose of this evaluation, these data have been updated through desk research in order to properly describe the current state of play of the industry and its economic importance (see section 3.1).

As Eurostat data do not distinguish between the VAT treatments applicable to respective sales and purchases, specific surveys (questionnaires) have also been used by the study to gather VAT data from a representative sample of businesses (see Annex 2 on how the business consultation was conducted). The extent of such data was however curbed by limited willingness of businesses to respond with commercially sensitive financial information, and was further constrained by the practicalities of conducting a survey within limited timeframe.

To compensate from these constraints, extrapolation methodologies have been used by the contractor to combine survey responses with macro-economic Eurostat data to provide indicative VAT figures at European level. The study used Eurostat EU turnover data referring to the accounting year 2015 and turnover data from the business questionnaire indicative of a 2016 accounting period. The aggregate values of interest were benchmarked against the turnover of businesses in the sample, and this ratio was then applied to total EU turnover to give indicative figures at an EU level. For example, in order to estimate the amount of output VAT under the special scheme at EU level, the average output tax of 75 respondents was used (equal to circa EUR 2.1 million) and proportioned against the average turnover of the same respondent businesses (equal to EUR 194 million). The resulting estimated percentage of the output tax (equal to 1% of turnover) was then applied to the total proxy EU special scheme turnover (equal to circa EUR 187 billion) in order to obtain an indication of the amount of output tax under the special scheme (equal to EUR 1.9 billion).

At the outset of the study, the expectation was that these figures could be scaled by each Member State and by each business model. However, the relatively small sample size in

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<sup>105</sup> Cf. *supra* note 49.

the majority of Member States<sup>106</sup> meant that specific quantification of any given issue in a particular Member State was not possible.

Lack of available tax data and of enough granularity of their estimates have therefore not allowed advanced statistical methodology or econometric modelling to be applied in the preparation of this evaluation report.

Instead, in the study the contractors applied VAT extrapolations and simulated VAT impacts. As the study did not achieve through the VAT extrapolation the expected granularity of data, contractors analysed possible VAT implications in different scenarios through the use of numerical and graphical examples involving multiple Member States and five business models considered as a proxy for the travel industry.

The evaluation also benefits from the data analysis of the answers to the public consultation, conducted through the use of Pivot tables and a software specialised in data analytics services (DORIS – Data ORiented Services). This enabled grouping the responses into stakeholders groups, calculation of percentages, comparisons and identification of recurrent topics. In the context of the analysis of the evaluation criteria, a qualitative counterfactual analysis was also conducted with reference to the VAT obligations and complexities that would arise in the absence of the special scheme. Lastly, a qualitative cost-benefit analysis was applied when considering the application of the special scheme by travel agents dealing with business customers.

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<sup>106</sup> The final responses utilised in the calculations covered 98 businesses in 18 Member States, spanning five business models in the travel industry. The total turnover of these businesses represents approximately 10% of the estimated EU market (circa EUR 19 billion). No responses were received from non-EU businesses. Meanwhile by turnover, 94% of the utilised respondent businesses were based in only five Member States.