

## Germany removes Tour Operators' Margin Scheme simplification for non-EU businesses

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On 1 February 2021, The German Ministry of Finance issued a decree dated 29 January 2021 stating that non-European Union (non-EU) businesses that provide travel services do not have the right to use the value-added tax (VAT) simplification known as the Tour Operators' Margin Scheme (TOMS).

As a result, non-EU businesses have an obligation to register for VAT in Germany with effect from 1 January 2021 to the extent that their travel services are "used and enjoyed" in Germany.

According to the decree, the German TOMS simplification rules are not applicable to entities resident in non-EU Member States and without a fixed establishment in any EU Member State. This means that services provided by non-EU providers of certain "travel services" are subject to German VAT based on the general place of supply rules. For example, the following services supplied by non-EU residents are subject to German VAT, with a right to deduct corresponding input VAT:

- ▶ Transportation services in Germany
- ▶ Events held in Germany
- ▶ Accommodation services
- ▶ Catering services

However, the decree states that the TOMS simplification may be applied for services rendered by non-EU resident entities up to 31 December 2020.

It remains to be seen if the decree is in line with the German VAT law itself. If the respective German VAT regulation would not limit the TOMS regime to EU businesses, non-EU business would be able to invoke the German VAT regulation even if it would not be in line with the VAT directive.

The implications of this decree could be material for some businesses, including entities in a wide range of sectors that arrange travel for other group companies. Also, other EU Member States may potentially change their domestic VAT law related to TOMS or their interpretation of EU law to mirror this position. Given the retroactive nature of this new decree, and its wide-reaching implications, affected businesses should urgently consider its impact.

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EYG no. 000910-21Gbl

1508-1600216 NY  
ED None

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