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### **Mr Pat Dawson**

Chief Executive

Irish Travel Agents' Association

4<sup>th</sup> Floor

8-9, Westmoreland Street

Dublin 2

23 April 2015

### **Re: Selling Linked, or Assisted, Travel Products: VAT – Agent v Principal**

Dear Pat,

I am writing to you further to our recent meeting in relation to the importance, from the perspective of VAT, of a travel agent being able to establish whether he is acting as an agent or as a principal in relation to the sale of a travel package to a customer.

#### **TAMS – Acting as a Principal**

In order for the sale of a product by a travel agent to be within the charge to VAT under the Travel Agents Margin Scheme (TAMS), the travel agent must be acting as a principal in selling the product to his customer.

This is particularly important when a travel agent is selling linked, or assisted, travel products. These are the kind of products which are often referred to as “dynamic packaging products”.

When the travel agent is acting as an agent, then the commission, fee or margin earned by the travel agent does not come within the scope of TAMS. Commissions earned from Irish principals will be subject to VAT at 23% in the normal way, whereas commissions earned from overseas principals are not subject to Irish VAT.

Where the travel agent is acting as a principal, however, the sale of the product will always come within the scope of TAMS. If the travel destination is outside the EU, the travel agent's margin is zero-rated for VAT. If the destination is within the EU, the margin is deemed to include VAT at 23%.

In order to establish the correct VAT treatment in relation to the sale of any such product, it is critical for a travel agent to understand whether he is selling that product as a principal or as an agent for another party.

I believe that travel agents would also like the comfort of knowing that, if they regard themselves as acting as an agent (and, therefore, the sale of their product being outside the scope of TAMS), that Revenue would concur with their interpretation.

In this regard, I wrote to Revenue seeking their views as to the main criteria they would expect to see in place where a travel agent purports to act as an agent of another party in the sale of linked, or assisted, travel product to a customer – specifically, a non-business customer.

### **Indicators of an Agency Relationship – Revenue’s View**

Although the list is not exhaustive, and it is not always necessary that all of the indicators need to be satisfied to demonstrate that an agency relationship exists, the following are the indicators which Revenue believe suggest that a travel agent is acting as an “agent” in respect of the sale of products by him:

- The travel agent and the principal have both agreed that the travel agent will act as the intermediary (or agent). The travel agent must normally be able to demonstrate this, by holding commercial documentary evidence, for example an agreement or contract.
- The travel agent must routinely fully disclose the name of the principal it is acting for, for example on all tickets it issues, or in the travel agent’s booking terms and conditions.
- The travel agent is not taking any significant commercial risk in relation to the services it is arranging.
- The travel agent will not usually be liable to the traveller if something goes wrong with the holiday. This is because liability will fall upon the principal rather than the agent, on general principles of commercial agency law.
- All monies (less any commission payable) are due to, and should be relayed to, the principal. The travel agent should not treat deposits and other monies which it receives from customers as its own monies. It would be usual to see these monies in a suspense account.
- The travel agent has the authority to bind the principal in a contract to supply relevant products to the traveller.
- The contract is between the customer and the principal. Once the contract is made, the principal is responsible to the customer to provide to provide the service, and the travel agent will have no liability to the customer for any losses incurred.
- The principal will deal with matters of complaint and compensation.

- The value of the travel agent's services must be separately identifiable from the main supply, and should normally be known to the principal; although it can be based on an agreed percentage of the sale/purchase price. The travel agent should invoice the principal in respect of his commission.

### **The Context of the Agent/Principal Relationship**

Travel agents should bear in mind that, in order to ensure correct VAT compliance, there are more issues to consider than just whether they are acting as a principal or agent in relation to certain types of travel product. In this regard, it may be helpful for ITAA members to refresh their memories as to the contents of the Revenue's Information leaflet on TAMS (April 2012), and also to the booklet which we prepared for ITAA members in February 2014, entitled "VAT Guide to Travel Services for ITAA Members".

### **VAT Queries from ITAA Members**

We would be very happy to answer any queries which your members may have in relation to their VAT obligations. We could offer a service whereby queries are sent to us, and responded to, by email. Telephone advice is not encouraged.

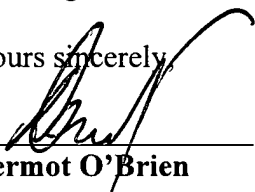
We will respond to all queries – unless they are hugely complex – within two working days. Our fee for this service will be €200 + VAT, where the query can be responded to within one hour. If the time needed to resolve the matter will take more than one hour, we will discuss the fee with the travel agent beforehand.

Owing to the nature of the work, fees for assignments of up to one hour must be paid in advance.

I trust the foregoing is clear. If there are any issues you would like to discuss in more detail, do not hesitate to contact me.

Kind regards,

Yours sincerely,

  
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**Dermot O'Brien**