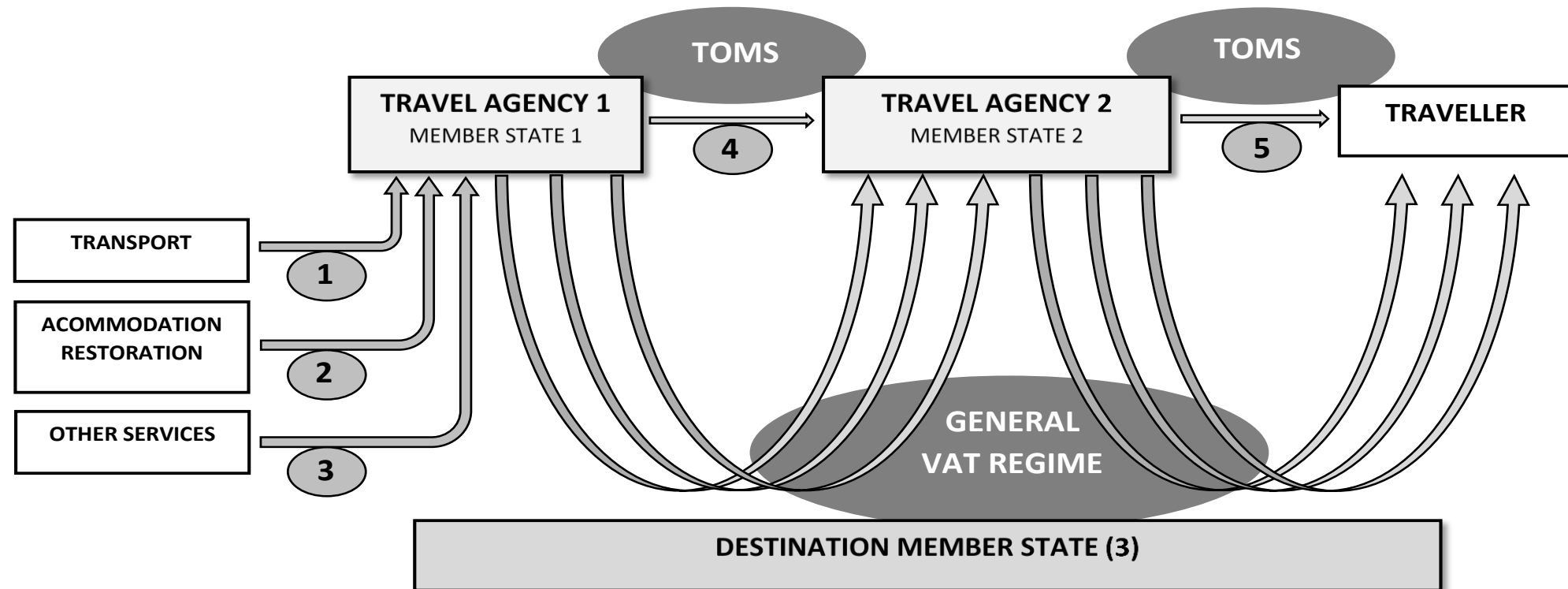


ON TRAVEL AGENCIES AND VAT



MAIN CHALLENGES

A. BUSINESS TRAVEL

B. NON-EU TRAVEL AGENCIES

C. FUNCTIONING OF THE SPECIAL SCHEME

MAIN FEATURES (I)

- **PURPOSES**

- Making VAT “**workable**”, due the difficulties to apply the general rules to transactions including a variety of supplies (compare flows 4 and 5 with the curved lines at the bottom of the drawing), as the ECJ explained in its judgments of 12-11-1992, Van Ginkel, C-163/91, or 13-3-2014, Jetair and BTWE Travel4you, C-599/12.
- In addition, the TOMS guaranties a **distribution of the VAT revenue** between Member States of location of the travel agencies (where they pay VAT on their commercial margin) and the destination Member States (due to the impossible deduction of the VAT corresponding to the inputs of the travel agencies, as far as they are included in the trip).

- **REQUISITES**

- The provision of services consisting in a **trip** (see judgments of the ECJ of 12-11-1992, Van Ginkel, C-163/91, 13-10-2005, Ist, C-200/04, 9-12-2010, Minerva Kulturreisen, C-31/10, 1-3-2012, Star Coaches, C-220/11 -an order- and of 19-12-2018, Alpenchalets Resorts, C-552/17).
- By a travel agency **acquiring** in its own name goods and services **from other taxable person** (see judgments of 6-10-2005, MyTravel, C-291/03, and 25-10-2012, Maria Kozak, C-557/12, for partial use, and of 22-10-1998, Madgett and Baldwin, C-308/96 and C-94/97, on the possibility for taxable persons not being travel agencies to apply the TOMS).
- Regardless of whether it is the agency that provides the service to the traveller or an agency that is in the previous phase of the **distribution chain** (judgments of 26-9-2013, Commission versus Spain, C-189/11, among others of the same date).

MAIN FEATURES (II)

- **FUNCTIONING**

- **VAT borne** because of goods and services acquires to be provided to the traveller is not deductible.
- Said goods and services follow their own location and taxation (reduced rate) rules (flows 1, 2 and 3).
- In order to avoid double taxation, the travel agency has to pay VAT on its **commercial margin** (see judgments of 19-6-2003, First Choice Holidays, C-149/01, 6-10-2005, MyTravel, C-291/03, 26-9-2013, Commission versus Spain, C-189/11, 8-2-2018, Commission versus Germany, C-380/16, and of 19-12-2018, Skarpa, C-422/17, in relation with the taxable base).
- The service provided by the travel agency is considered a **single supply**, located where the travel agency is established (flows 4 and 5, see judgment of 20-2-1997, DFDS, C-260/95).
- Trips outside the EU are exempted (sort of “export” transactions, see the judgment of the ECJ of 27-10-1992, Commission versus Germany, C-74/91).

FUTURE CHALLENGES (I)

- **BUSINESS TRAVEL**

- The inclusion of **VAT** in the price makes impossible its **recovery** in the case of business trips, something that makes the TOMS dysfunctional in this area
- Authorising the **opt-out** of the TOMS would be a possibility:
 - Nevertheless, in international trips takes the travel agencies back to the problems that the special scheme trays to solve, as far as they should register, charge and enter VAT on their supplies when they include services located on a destination –place of effective supply- principle (as accommodation or restoration, something that nowadays is undiscussed, not in the past), as the curved lines in the first page drawing show.
 - On national trips, this possibility woks perfectly.
- Different solutions, like **notional VAT** included in invoices or similar, would be extremely difficult to be accepted by the destination Member States (like Spain)

- **NON EU-AGENCIES**

- Travel agencies located (or supposed to be located) outside the EU, selling trips that happen inside the EU, can strongly **distort the competition**, as far as it can happen that they are not obliged to pay VAT.
- The increased experience in the functioning of the **MOSS** in the EU should make a destination principle –traveller place of residence- possible in this context.
- How to effectively **control** this is a different question...

FUTURE CHALLENGES (II)

- **FUNCTIONING OF THE SPECIAL SCHEME**

- **Specific problems**

- Objective scope, what is a trip to this effect?
 - Subjective scope, application by non travel agencies
 - Taxable base, individual versus global assessment (somehow mandatory due to the features of the tourism sector)

- **General VAT problems**

- Existence of fixed establishments itself
 - Attribution of transactions to fixed establishments of headquarters

- **RELATED ISSUES**

- **Tax rates** (excluded in the judgments of 25-12-2012, Maria Kozak, C-557/11, and 19-12-2018, Alpenchalets Resorts, C-552/17, something maybe to be discussed)
 - **Exemptions** (not for trips outside the EU, but for the passengers air transport services, closely related and somehow striking in 2020)

ADDITIONAL INFORMATION

Additional information about some of those topics can be found in the book "**ECJ case-law on VAT**", also **available electronically** and whose link is attached:

<https://www.efl.es/catalogo/manuales-juridicos/ecj-case-law-on-vat>