



It's a package but the regulations don't apply

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Article 2 of the Package Travel Directive 2015 (PTD) outlines a number of exemptions where packages are being sold but to which the PTD doesn't actually apply, some existing ones carried over from the current regime and some new ones. The inclusion of an Article outlining the scope of the PTD is in itself very welcome as under the current Package Travel Regulations 1992 (PTRs), the scope had to be deduced from the definitions! The scope of the new PTD is therefore already considerably clearer than the current position.

One new exemption under the PTD, and perhaps the one that's invited the most interest, is that of business travel sold under a "general agreement". Section 2(c) stipulates that the PTD shall not apply to "packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession".

Excluding business travel

Exclusion of business travel from the UK's regulatory regime is nothing new. The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (best known quite simply as the ATOL regs), already excluded business travel from its scope, stating that anyone who made flights available to corporate bodies was exempt from the requirement to hold an ATOL. However the ATOL regs made it clear that the exemption only applied where flights were not sold as part of a package and it must be made clear on the invoice or receipt that the flight was not ATOL protected. So, the PTD follows where the ATOL regs lead, with one very important distinction, which is the requirement for the corporate travel management company (TMC) to have a 'general agreement' in place with the customer.

So, what is meant by a 'general agreement'? Referred to as a 'framework agreement' in previous drafts, the Commission may have thought that changing it to 'general agreement' clarified what was meant by this however I'm not sure it does! One can only assume (and hope!) that a standard commercial agreement or set of terms and conditions, outlining the terms upon

which the TMC provides business travel arrangements to the customer, will suffice. Having raised this matter with the DBEIS, they've advised us that some guidance will be provided around this point in due course.

Exemptions of ATOL for corporates

Another important distinction from the ATOL regs exemption, is that where the ATOL regs exemption applies only to 'corporate bodies', the PTD exemption applies to any "natural or legal person" who is acting for purposes relating to his trade, business etc. and where a general agreement is in place. The preamble to the PTD makes it clear that the exemption shall not apply to sales made to business travellers where there is no general agreement in place; stating that these business travellers, often from small businesses or self-employed and booking business travel through the same channels as "normal" consumers, should be afforded the same protection as that offered to "normal" (e.g. leisure) consumers.

Most TMC's already have a model in place which avoids ATOL, both due to the corporate sales exemption but also due to the IATA exemption, with the vast majority of TMC's being IATA ticket agents. Further, most TMC's sell business travel as separate and independent components so as to avoid the application of the PTRs, the need for advertising or offering travel services at an inclusive price not being as critical or important when selling to business travellers. So, will this new exemption really have that much of an impact on TMC's after all? Of course, it means they can sell the travel components at an inclusive price if they really wanted to without having to worry about package regulations but otherwise, I would argue possibly not!

Moving on, the PTD continues and builds upon the current exemption for packages offered "other than occasionally" under the existing PTRs. Crucially though, the PTD is much more specific with this exemption, stating that packages offered (or LTA's facilitated) "occasionally and on a not-for-profit basis and only to a limited group of travellers". Therefore, there are three elements to this exemption for it to apply; it must be "occasionally" and "on a not-for-profit basis" and "only to a limited group of travellers". Only upon

satisfying these three elements will the exemption apply to a package organiser. Critically, and again, very much welcome, is some guidance around this exemption in the preamble to the PTD – something which was sorely needed under the current regime. The example given is that of a charity, school or sports club organising trips for their members/ students, a few times a year, without them being offered to the general public. This clarification means that those clubs who were previously inadvertently brought within the scope of the PTRs due to the ambiguity of "other than occasionally" can now confidently rely on this exemption under the PTD, provided they meet its three requirements.

Time limits

Lastly, the PTD continues the existing exemption of those trips which do not cover a period of 24 hours unless they include overnight accommodation. Specifically, the PTD will not apply to packages (or LTA's) "covering a period of less than 24 hours unless overnight accommodation is included". Again, worded in a way which is much clearer than the existing exemption, although having the same effect, these short term trips continue to remain outside the scope of package regulation.

