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Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers

{SWD(2012) 126 final}
{SWD(2012) 127 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Neither the Sixth VAT Directive[1] nor the VAT Directive[2] provide for rules on the treatment of transactions involving vouchers. Using a voucher in a taxable transaction can have consequences for the taxable amount, the time of a transaction and even in certain circumstances, the place of taxation. Uncertainty about the correct tax treatment can however be problematic for cross-border transactions and for chain transactions in the commercial distribution of vouchers.

The absence of common rules has obliged Member States to develop their own solutions, inevitably uncoordinated. The resultant mismatches in taxation cause problems such as double or non-taxation but also contribute to tax avoidance and form barriers to business innovation. Moreover, increased functionality in vouchers has made the distinction between vouchers and more generalised payment instruments less clear.

The world has moved on since common VAT rules were adopted in 1977 and the increased use of vouchers is just one of many changes which have transformed the way in which business is done, introducing complexities which were not envisaged at the time.

The Court of Justice of the European Union ('CJEU') has on several occasions been asked to explain how the VA Directives should apply in such circumstances. For vouchers, this process has given some guidance but has left other problems unresolved. The objective of this proposal is to deal with these issues by clarifying and harmonising the rules in EU legislation on the VAT treatment of vouchers.

General context

In making this legislative proposal, the search is for clarity. This should extend to the tax consequences of the different types of vouchers when issued, distributed or redeemed, either within a single Member State or in operations which extend to more than one Member State.

What is a voucher?

For the purposes of the VAT rules, a voucher is an instrument which gives the holder a right to goods or services, or to receive a discount or rebate in relation to a supply of goods or services. The issuer assumes an obligation to supply goods or services, to give a discount or pay a rebate.

A voucher may be in electronic or physical form and generally has an underlying commercial or promotional objective, which may be to promote the supply of particular goods or services

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[1] 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) ('the Sixth VAT Directive').

[2] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive'), replacing the Sixth VAT Directive as from 1 January 2007.

or to expedite the payment for particular goods or services. In other words a voucher is aimed at developing the market for goods or services, to instil loyalty in customers or facilitating the payment process. These objectives help to distinguish a voucher from instruments such as traveller's cheques where the objective is only to make payments.

Any instrument whose purpose is merely the making of payments falls outside the definition of a voucher for VAT purposes. For pure payment services, other VAT rules apply.

Vouchers come in different types. Some are issued against consideration and today can be taxed either at sale or at redemption, depending on the approach of individual Member States. A voucher may also be issued for free and entitle the holder to the supply of goods or services without further charge. Such a supply can be considered as a business gift. A free discount voucher that entitles the holder to receive a discount on a subsequent transaction can be seen simply as an obligation to grant a price reduction.

A right to a discount on all purchases over a period of time, even if granted against payment, is not however considered here to be a voucher because the entitlement is independent of the purchase transactions. The open-ended nature of such a right (even if restricted in time) is quite different to a discount voucher where the right is once-off and linked to a specific supply. This however does not mean that such a service will not be taxed.

What questions on the current VAT treatment of vouchers need attention?

A basic question arises about when transactions linked to a voucher should be taxed. Without common rules, the practices in Member States are not coordinated. Some tax the most common types of vouchers on issue whilst others tax on redemption. This creates uncertainty for businesses, particularly those wishing to exploit single market opportunities. Where a voucher is issued in one Member State and used in another, the practical consequences of mismatches in taxation include double and non-taxation.

The dividing line between vouchers (where the VAT rules are being addressed in the current exercise) and the development of innovative payment systems (whose VAT treatment is addressed elsewhere in the VAT Directive) needs to be clarified.

Vouchers often arrive in the hands of consumers via a chain of distributors (notably, prepaid telecommunications vouchers). Here again, the absence of common rules has led to a patch-work approach, sometimes incorporating local concessional arrangements, which acts as a barrier to the development of intra-EU business models.

Discount vouchers may involve a refund by a manufacturer or distributor (who issues discount vouchers) to a retailer to compensate for a price reduction given to a customer against a discount voucher. The existing rules, as interpreted by the CJEU, are cumbersome and difficult to apply in practice. A better approach is badly needed.

2. WHAT ANSWERS ARE PROPOSED?

To solve these problems, changes to the VAT Directive are envisaged. They fall under five headings.

1. Defining vouchers for VAT purposes

The first step is to make clear what a voucher is for VAT purposes. This involves a new Article 30a. The VAT Directive needs to be clear about which vouchers are to be taxed when issued and which are to be taxed only when redeemed. The former are described as 'single-purpose vouchers' and the latter as 'multi-purpose vouchers'. This distinction hinges on whether the information is available to tax on issue or whether, because their end-use is subject to choice, taxation has to await redemption. It is also necessary to ensure that instruments which can currently be used in settlement in multiple unconnected outlets and which are today not generally treated as vouchers should continue to be treated in the same manner.

Innovation in the delivery of payment services has blurred the distinction between vouchers and traditional payment systems. Article 30a also provides needed clarity on the limits to vouchers for VAT purposes.

2. Time of taxation

Once the different types of vouchers have been identified, some further changes are needed to ensure that the correct VAT treatment is clear.

The current rules on the time of chargeability of the tax (in Article 65) should be adjusted to ensure that single-purpose vouchers (SPVs) are subject to VAT at the time they are issued and paid for.

To avoid confusion, the supply of the right which is inherent in a voucher and the underlying supply of goods or services cannot be regarded as separate transactions. SPVs are taxed from the outset so this potential problem will not arise. For vouchers which are not taxed when issued because the place and level of taxation cannot yet be established, tax should only be charged when the underlying goods or services are supplied. To make sure this happens, and that only this happens, a new Article 30b is proposed. This makes it clear that the issue of a voucher and the subsequent supply of goods or services constitute a single transaction for VAT.

3. Rules for distribution

Once the VAT Directive has established that multi-purpose vouchers (MPVs) are to be taxed on redemption, some issues which relate to their distribution need to be addressed. Before they arrive in the hands of a consumer, these vouchers often pass through a chain of distributors. Although the underlying transaction is not to be taxed until the eventual supply of goods or services takes place, the commercial distribution of an MPV is in itself a supply of a taxable service which is independent of the underlying supply. When this MPV changes hands in a distribution chain the taxable amount for the service involved can be measured via the evolution in the value of the voucher. Where a distributor buys a voucher for X and subsequently sells it for a higher figure, X plus Y, the increment Y puts a value on the distribution service supplied.

Since distribution chains for MPVs can extend across several Member States, common rules are necessary for identifying and measuring this distribution service. An additional point (d) to Article 25 makes clear that the distribution is a supply of a service for the purposes of the VAT Directive. The computation of the taxable amount for this service is dealt with in a new Article 74b.

To facilitate the computation of the taxable amount for each stage of a distribution chain, a concept of nominal value is established and defined in Article 74a as the total consideration accruing to the issuer of an MPV which in turn is the taxable amount (plus VAT) attributable to the supply of the underlying goods or services.

The construction used in these two provisions ensures that the totality of the taxable operations associated with an MPV – the supply of a distribution service and the supply of the underlying goods or services – are described and taxed in a manner which is comprehensive, neutral and transparent.

4. Discount vouchers

Difficulties arise with discount vouchers when the discount is ultimately met by the issuer rather than the redeemer. To avoid a complex series of adjustments, it is proposed to treat this discount as a separate supply of a service by the redeemer to the issuer. The measures required for this are set out in a new point (e) to Article 25 and in Article 74c.

5. Other technical or consequential changes

Some further technical changes to the VAT Directive will be required to ensure the proper functioning of these solutions, notably as regards the right of deduction (Article 169), the person liable for payment of the tax (Article 193) and other obligations (Article 272). Technical changes to Articles 28 and 65 are needed to deal correctly with MPVs and SPVs respectively.

3. TECHNICAL EXPLANATION OF THE MAIN ELEMENTS OF THE PROPOSAL

The definition of vouchers and the different criteria which apply including the time of taxation (Article 30a(1) and (2) and Article 30b)

VAT rules should be clear and consistent about when tax is to be charged. If the information needed for a correct taxing decision is not available when a voucher is first issued, the practical consequences are that taxation can only be settled at the time of redemption. In the absence of any guidance in the VAT Directive, there is no consensus on which vouchers should be taxed at the time of issue and which should be taxed on redemption. As a result, some Member States will treat a particular kind of voucher (say, a prepaid phone credit[3]) as a payment on account to be taxed upfront whilst other Member States will deal with the same type of voucher by taxing the eventual supply[4]. If a voucher is issued in the former and redeemed in the latter, then both will levy VAT on the same supply. This is legitimate from both perspectives, but the result is double taxation. In the converse situation no Member State would levy VAT and the result is non-taxation.

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[3] Prepaid phone credits are the most common kind of voucher. The economic study annexed to the Impact Assessment estimates the total value of prepaid mobile phone credits for the EU in 2008 at EUR 38 billion.

[4] The different approaches to the time of taxation of vouchers are set out in the Impact Assessment accompanying this proposal.

Double taxation arising from mismatches can and does act as a barrier to commercial arrangements seeking to take advantage of single market opportunities. Conversely, unintentional non-taxation through mismatches can be exploited for abusive purposes.

To deal with this problem, the proposal starts by defining vouchers and the main categories of vouchers, distinguishing in particular between SPVs and MPVs.

An SPV entitles the holder to receive identified goods or services in circumstances when the level of taxation (in particular, the rate of VAT), the supplier's identity and the Member State in which the underlying supply of goods or services takes place, can be definitively identified from the outset. The VAT treatment is settled when the voucher is sold. An example of an SPV is where a service provider sells vouchers (either directly or via an agent) which carry an entitlement to a defined service (e.g., telecommunications) to be supplied in one particular Member State.

An MPV entitles the holder to receive goods or services where these goods or services or the Member State where they are to be supplied and taxed are not sufficiently identified such that the VAT can be fixed at the time the voucher is issued. An example would be where an international hotel chain seeks to promote its products through vouchers which can be redeemed for accommodation in its establishments in any of several Member States. Another would be where prepaid credit could be used either for telecommunications (standard rated for VAT) or to pay for public transport (where a reduced rate may apply).

Distinction between vouchers and payment instruments (Article 30a(2))

Given the different VAT treatments, neutrality requires that there is a clear distinction between vouchers and more general means of payment which takes account of their respective intrinsic natures. Where a mere method of payment acquires some of the characteristics associated with vouchers (*e.g.*, a stored value card or a prepaid credit stored on or linked to a mobile phone), it would be necessary to look closely at the essential nature of its operation. The redemption of a voucher against goods or services is not a payment but rather the exercising of a right subsequent to a payment which occurred when the voucher was issued or changed hands. On the other hand, where a stored or prepaid credit is used to meet the cost of goods or services, any entitlement to such goods or services occurs only when the payment is made. Conceptually, this is fundamentally different to the exercising of an acquired right by the holder of a voucher.

Vouchers should always lead to the supply of goods or services and are often issued to promote the sales of a particular supplier or group of suppliers or to facilitate purchases. These characteristics when combined with the entitlement to receive goods or services (corresponding to an obligation to supply these goods or services) play a role in distinguishing vouchers from more general payment instruments (that do not contain such specific entitlements).

The growth in the number of mobile devices reinforces the need for a clear distinction between prepaid telecommunications credits (which are vouchers) and mobile payment services more generally which are likely to leverage the prepaid billing system of the former. Mobile payment systems typically allow a consumer to use a mobile phone to pay for an increasing range of goods and services over and above telecommunications services (even to make money transfers). If the system has the objective of facilitating payment for a wide ranging or open-ended list which may include content (music files, games, maps, data, etc) or other services (parking, etc) or goods (say, from a vending machine), it becomes difficult to

see it as a voucher. The distinction between an MPV (where the holder has access to telecommunications services as well as other specified services or goods) and a payment service (where the purpose is to facilitate the spending of a prepaid credit for the purchase of goods or services, notably including from third party providers) hinges on the existence of a right to receive goods or services.

Therefore instruments which may carry some of the characteristics of vouchers but whose primary role is as a means of payment should be excluded from the definition of a voucher. This is the purpose of Article 30a(2).

Vouchers distributed in a chain (Article 25 point (d), Article 74a and Article 74b)

Vouchers can be distributed in many ways (for instance via newspapers, intermediaries, attached to products in the supermarket, etc).

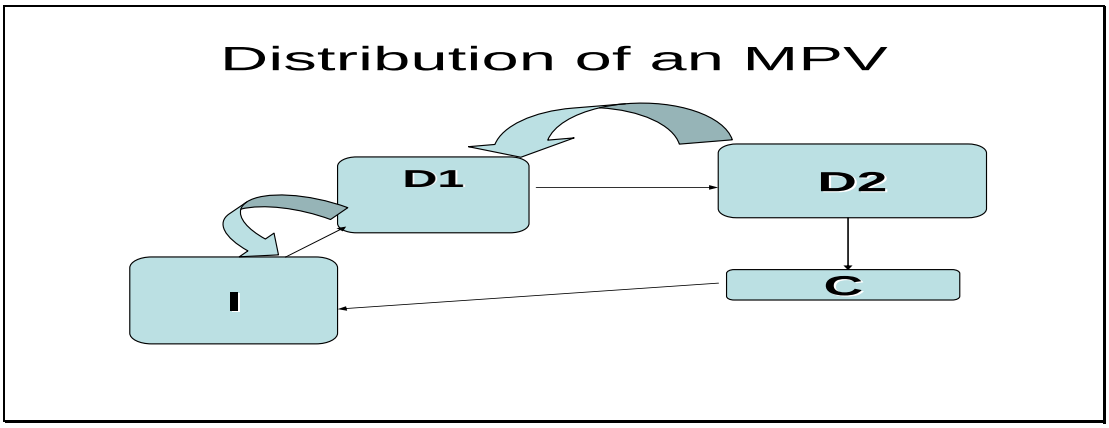
As SPVs can be taxed up front, their distribution is relatively straightforward. Distribution of MPVs via intermediaries in a sales chain, on the other hand, may not be so straightforward.

Many models exist but one perspective would see the price at which the issuer (I) sells the MPV at the beginning of the chain differing from the price paid by the customer at the end of the chain because of distributors margins or mark-ups. The customer who buys the MPV at the end of the chain pays a higher price than the consideration obtained by the issuer of the voucher at the beginning of the chain. Unless the margin (or mark-up) is accounted for properly, there would be a mismatch between the (output) VAT of the issuer and the (input) VAT of the customer, who is possibly a taxable person with a right to deduct, expects to find on an invoice.

Arrangements like this are common in the distribution of prepaid telecommunications vouchers.

To deal with this, it is proposed to introduce a nominal value concept, a constant value fixed by the issuer of the MPV at the outset, and to treat any positive difference between this nominal value and the price paid by a distributor of the MPV as the consideration for a distribution service. The distributor (D1) supplies a (taxed) distribution service to the issuer (I). Subsequent distributors (D2) supply a similar distribution service to the preceding distributor (who has sold them the MPV).

This can be illustrated as follows:



Company I (a telecommunications supplier) sells in this instance an MPV to a distributor (D1) with a nominal value of EUR 100. D1 pays EUR 80 to the issuer. The difference between the nominal value and the price paid is EUR 20. This amount is deemed to be the consideration (VAT included) for a distribution service supplied by the distributor to the telecommunications supplier.

D1 will issue an invoice to I, showing the cost of the distribution service and the applicable VAT. Assuming a VAT rate of 25%, the distribution service will be EUR 16 and the VAT of EUR 4.

D1 then sells the MPV to a sub-distributor, D2, for EUR 90. Here, D2 is seen as supplying a distribution service to D1 and issues an invoice reflecting the difference between the nominal value (EUR 100) and the amount paid (EUR 90). This will show EUR 8 for the service plus EUR 2 in VAT.

D2 then sells the voucher to the final customer (C), for EUR 100. C uses the voucher (a prepaid credit) to acquire telecommunications or other services from I. If this is for business use, C (a taxable person) would receive an invoice from I for EUR 100, including VAT.

No VAT invoice is issued at any stage in relation to the sale of the MPV in the distribution chain.

As far I, the telecommunications supplier and issuer of the MPV, is concerned the company will have supplied services to the value of EUR 80 with output VAT of EUR 20 (assuming always a constant 25% VAT rate for the illustration). Company I will have incurred distribution costs of EUR 16 (plus input VAT of EUR 4) in order to place the MPV into the hands of the final customer.

Neutrality of free discount vouchers (Article 25 point (e) and Article 74c)

Free discount vouchers entitle the holder to a discount at redemption against the supply of certain goods or services. If the issuer and redeemer are the same person the taxable amount of these supplies is reduced with the amount of the discount (less the included VAT). Thus the consumer who buys a product of EUR 100 will pay only EUR 95 if he uses a EUR 5 discount voucher.

In practice the items to which the discount vouchers relate often pass through the hands of several taxable persons (such as wholesalers, distributors and the retailer) before reaching the final customer. The discount is often reimbursed by the issuer (for instance the manufacturer) to the redeemer (for instance a retailer) of the voucher. It may even happen that the consumer pays the normal price but receives a 'cash back' reimbursement (or 'rebate') from the issuer afterwards. Here, difficulties in identifying the correct tax treatment have arisen.

Today, on the basis of the settled jurisprudence of the CJEU[5], the original issuer (wholesaler or manufacturer) can deduct the reimbursement made to the redeemer from the price of the original sale of the goods to which the voucher refers. To avoid a tax loss (the subsequent taxable persons in the chain do not have to correct their input VAT) the reimbursement is seen as a third party payment by the manufacturer to the redeemer which must be added (except

[5] Case C-317/94 Elida Gibbs Ltd v Commissioners of Customs and Excise [1996] ECR I-5339; Case C-427/98 Commission of the European Communities v Federal Republic of Germany [2002] ECR I-8315.

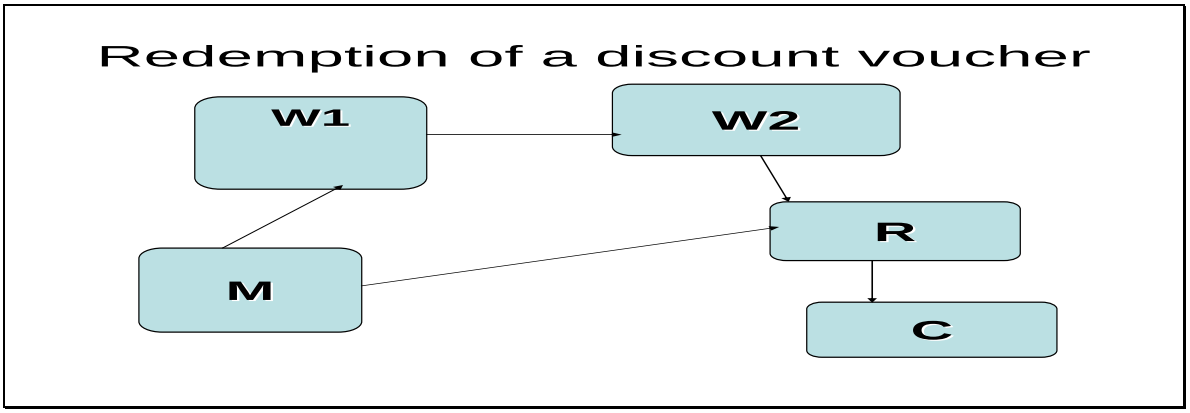
the included VAT) to the taxable amount on the invoice issued by the redeemer to the customer. Hence in the example above, the redeemer will issue an invoice of EUR 100 (including VAT) to the customer, even if the customer has paid only EUR 95.

Problems still arise however where these adjustments need to be made through a distribution chain (this is complex and businesses face inconsistencies in VAT accounting and documentation rules) or where the voucher is redeemed in a Member State other than that in which it has been issued. There is no easy solution to the conflict between the right of deduction of the customer (when the voucher is used by a taxable person for goods or services which will be used for his economic activity) and the reduction of the taxable amount for the manufacturer. Moreover, the jurisprudence fails to deal with the outcome where the issuer of the voucher is not the source of the refund.

An appropriate modification of the existing situation is therefore being proposed. Instead of representing third party consideration, the reimbursement is henceforth to be seen as consideration (VAT inclusive) for the supply of a redemption service. Rather than reducing the taxable amount of the first sale, the manufacturer (who issues the voucher) deducts the input VAT on the redemption service supplied by the redeemer.

When a free discount voucher is presented for redemption against a supply of goods or services, the price paid will still be reduced by its face value but this then acts to reduce the taxable amount of the supply. This taxable amount (plus the VAT) is the price effectively paid by the customer. In the example above this means that the redeemer issues an invoice for EUR 95 (including VAT). The customer can never deduct more VAT than appropriate and neutrality is restored.

This can be illustrated as follows:



Company M, a manufacturer, sells goods to a wholesaler W1 for EUR 70. W1 then sells them to W2 for EUR 80 who in turn sells them to R, a retailer, for EUR 90 (all figures VAT inclusive).

R finally sells the goods to the end customer, C, for EUR 100.

Meanwhile, to encourage sales M distributes a free discount voucher which entitles to a EUR 5 discount via newspapers and one of these is held by C when he makes his purchase. This is accepted in part-payment by R who in turn asks M for re-imbursement.

Today, this reimbursement allows M to reduce the taxable amount of the supply to W1. It is however considered impractical to carry this adjustment through the distribution chain and the

CJEU solution was to treat the EUR 5 as a third party payment. This however is an imperfect solution, leading to a tax loss, if C is a taxable person (with a right to deduct input tax) or if the chain of supply involves more than one Member State (with a zero-rated intra-EU acquisition).

To deal with this, the proposed point (e) to Article 25 sees the EUR 5 as a redemption service for which R issues an invoice to M (the EUR 5 being the VAT inclusive amount). M no longer adjusts the taxable amount of the original supply and C, who pays EUR 95 in reality, receives an invoice for that amount (all figures include VAT).

CONSULTATION OF INTERESTED PARTIES

The issue of the VAT treatment of vouchers was discussed in Fiscalis seminars in 2002 and 2006 with representatives from the fiscal authorities of the Member States. This was followed by a public consultation in 2006 the results of which can be found at:

http://ec.europa.eu/taxation_customs/common/consultations/tax/article_2992_en.htm.

Most contributions concluded that the problems are largely attributable to different applications of VAT rules by Member States, causing particular problems for intra-EU operations. A harmonised interpretation of the current rules is needed and, in the view of respondents, this probably requires changes in primary legislation. A legal definition of vouchers for VAT purposes was generally considered essential.

Evolution in the versatility of vouchers means that the dividing line with mainstream means of payment is not always clear or consistent. As a result, neutrality of treatment between systems having the same functionalities was widely considered as needing attention.

IMPACT ASSESSMENT

The problems encountered, which this initiative seeks to address, are attributable to shortcomings in legislation which has not kept abreast of recent commercial developments.

The proposal is accompanied by an Impact Assessment. It concludes that the only realistic way to deal with the identified shortcomings is a modernisation of the VAT Directive by inserting new provisions which deal with vouchers.

Two other options were considered: doing nothing and a soft-law approach. The former would imply leaving the problems encountered for the Member States to resolve. The Member States could put in place ad-hoc solutions or seek guidance from the CJEU. An example of the latter could be the issuing of guidelines. However, none of these options would ensure legal certainty or a legal act modifying the existing VAT rules. The deficiencies identified, notably the absence of guidance in the VAT Directive which would assure a consistent treatment by Member States, are particularly unfortunate in the tax area where legal certainty is especially important.

A study undertaken made by Deloitte is included as an annex to the Impact Assessment. It sustains the economic justification for making this legislative proposal, in particular the actual and potential consequences from mismatches between Member States. It also confirms that vouchers for pre-paid telecom services are by far the most significant category of vouchers and differences in their tax treatment is widespread. This can lead to avoidance schemes,

distortion of competition or even makes economic exploitation unattractive because of tax uncertainties.

LEGAL ELEMENTS OF THE PROPOSAL

The proposal consists of several amendments to the VAT Directive aimed to define clearly the different types of vouchers and to harmonise their VAT treatment. It is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU).

Subsidiarity principle

The proposed changes are needed in order to clarify and to harmonise the rules concerning the VAT treatment of vouchers. This objective cannot be sufficiently achieved by the Member States.

Firstly, the relevant VAT rules are set out in the VAT Directive. These rules can only be amended via the EU's legislative process.

Secondly, action by Member States alone could not achieve the objective of uniform application of VAT due to the possibility of different interpretations of rules. The current legislation is not clear and its heterogeneous application by Member States is the main reasons for the problems being encountered. Clarifying the VAT treatment of taxable goods and services supplied against vouchers requires an amendment of the VAT Directive.

The scope of the proposal is limited to what can only be achieved with EU legislation. It therefore complies with the subsidiarity principle.

Proportionality principle

The amendments to Directive 2006/112/EC are necessary on the basis of the problems identified and should deliver solutions likely to meet the objectives. These solutions will contribute to achieving tax neutrality, reducing compliance costs and eliminating the risk of double taxation so that economic operators can allocate resources more efficiently. Clear rules establishing a common level playing field reduce the scope for possible tax avoidance and generate legal certainty for both taxpayers and tax administrations.

The proposal therefore complies with the proportionality principle.

Simplification

The proposal provides for simplification by categorising and clearly defining different types of vouchers, by aligning the VAT treatment for each type of vouchers and by increasing neutrality for discount vouchers.

Choice of instruments

The proposed instrument is a Directive. No other means would be adequate as the VAT treatment of vouchers involves several articles of the VAT Directive. The objectives as set out above can therefore only be achieved by an amending directive.

Correlation table

Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as one or more documents explaining the relationship between the components of this Directive and the corresponding parts of national transposition instruments. The requirement of such documents is justified and proportional with regard to this Directive, as it will assist in ensuring that taxpayers can have clarity about their rights and obligations in transactions involving vouchers, particularly where intra-EU operations are concerned.

4. BUDGETARY IMPLICATION

The proposal has no implication for the European Union budget.

5. DETAILED EXPLANATION OF THE PROPOSAL

Article 25

Point (d)

When MPVs pass through distribution chains, the VAT treatment of any margin or fee made or received by distributor should be clear and consistent. To that end it should be specifically provided that this represents a taxable supply of services.

Point (e)

The aim of point (e) is to ensure that where a voucher giving entitlement to a discount or a rebate is issued for free and redeemed by a taxable person other than the issuer and who is reimbursed by the issuer, this operation is to be considered a supply of a service from the redeemer to the issuer. This will ensure that the taxable amount plus VAT on the invoice issued by the redeemer will correspond to the amount actually paid by the customer/taxable person.

Article 28

This article is amended to avoid excessive administrative burdens in a transaction chain involving MPVs.

MPVs are not taxed when they change hands but only at redemption. Without the clarification here, there is a risk that when the voucher is redeemed and the VAT rate is known, a perceived need might arise to make corresponding adjustments to all prior stages of a distribution chain (at the rate applicable to the goods or services redeemed).

Such a late and retrospective VAT adjustment would be excessively cumbersome and would discourage business without really generating any new tax revenue (assuming that input VAT is recovered at each stage). To avoid this, VAT should not be applied on the supply of a voucher along the chain but only to the final transaction at redemption.

This provision is to be read in conjunction with the provision of Article 25 where it is stipulated that the margin for distribution of MPV is separately taxed as an independent service. The consequences of these two provisions is that the underlying goods or services to

which the MPV entitles are taxed at the time of redemption, i.e. in the right place at the right time, while the distributor's margin is taxed as a service each time it is supplied, i.e. each time the MPV changes hands.

Article 30a

As explained above, this article defines vouchers and sets limits to their functionality in order to distinguish vouchers from more general means of payment. The distinction between SPV and MPV lies in whether there is sufficient certainty to charge tax at the time of issue or whether it is necessary to wait until the goods or services are supplied. For an SPV, there should be certainty about the identity of the party assuming the obligation to supply which is inherent in the voucher.

Vouchers issued other than against consideration give rise to specific VAT consequences which are dealt with separately.

Article 30b

Under the terms of this article, where a voucher bears a right to a supply of goods or services, the supply of this right and the subsequent supply of goods or services are linked and shall be regarded as a single transaction.

Since the tax treatment of this single transaction shall be the same as that which would have been applied had the goods or services not been supplied through the use of a voucher, the place of supply and the applicable rate should be determined by the goods or services supplied. It also follows from this article that MPVs are taxed at redemption. SPVs are taxed at sale (see Article 65).

To avoid confusion, it is also necessary to ensure that the use of a voucher in a transaction which falls under the special scheme for travel agents does not interfere with the rules of that scheme.

Article 65

The paragraph added to this article deals with the chargeability of SPVs. Similar to payments on account, VAT shall become chargeable here on receipt of the payment and on the amount received.

Article 66

This article is amended to avoid that Member States derogate from Article 65 for SPVs. Otherwise the chargeability of SPVs could still differ between the Member States, possibly resulting in double or non-taxation.

Article 74a

This article deals with the taxable amount for supplies involving an MPV, including where an MPV is partially redeemed. It also introduces the concept of 'nominal value' which is crucial in establishing order in taxation, particularly for intra-EU operations, as it ensures that the value of an MPV is constant between the beginning and the end of a distribution chain.

The nominal value is defined (in Article 74a(2)) as everything received or to be received against a voucher by the issuer of the voucher. This is needed to take account of the value of the distribution service supplied by a distributor (either a principle or a commission agent) of an MPV in a sale chain. The margin made by the distributor is to be treated as the consideration (including the VAT amount) for a taxed supply of a distribution service (see Article 25).

The nominal value of an MPV is a VAT inclusive figure. The amount of the VAT included will be known only on redemption when, on the basis of the VAT rate applicable to goods and services to be redeemed, it will be possible to split the nominal value between the VAT amount and the taxable amount.

In the case where a customer has paid more than the nominal value, it means that a distributor charged a margin and the customer would then have a right to a separate invoice for that difference (which will obviously not be reflected in the invoice for the supply). Where the customer has paid less than the nominal value it may mean that a distributor made a loss but, in any case, the consideration received by the issuer does not change.

Article 74b

This article sets out the calculation of the distributor's margin in case of supplies involving an MPV. In this respect the taxable amount of the distribution service provided is a balancing figure – calculated as the difference between the nominal value of the MPV and the actual amount paid by the acquirer.

The total tax amount for distribution services is constant, regardless of the number of parties in the sale chain. In case more than one distributor is involved the total tax amount for distribution services is divided among the distributors (see the example on the distribution of an MPV).

Article 74c

Since a free discount voucher is no longer to be treated as third party consideration for a supply, clarity is needed in observing and measuring the taxable amount of the redemption service introduced by point (e) of Article 25.

Article 169

The paragraph included in this article, ensures consistency in the entitlement to deduction.

If the issuer of an MPV redeems the voucher against taxed transactions, Article 168 provides that he can deduct the VAT due or paid in relation to the issue of that voucher. In order to provide for a level playing field, where MPVs are redeemed, in the course of transactions which give rise to deduction, by someone other than the issuer, it should be clarified that the issuer maintains the right to deduct the VAT due or paid on expenditure connected with the issue of the voucher. This might include printing or encoding costs.

This provision is needed when an MPV is redeemed by someone other than the issuer. The consequent reimbursement by the issuer to the redeemer is out of scope. In the absence of such a provision, the issuer would not be able to sustain a right of deduction.

Article 193

The paragraph to be included in this article, clarifies that it is always the redeemer of an MPV who carries out the taxable supply of goods or services and is therefore the person liable for payment of VAT. This is significant where the issuer and the redeemer of the voucher are not the same person. Only the redeemer knows what has been supplied and where and when that supply took place.

Article 272

The aim of the changes to this article is to ensure that the information on cross-border supplies of services, including those related to vouchers, is received by all Member States where the tax is due to ensure that VAT can be correctly assessed and collected on their territory. In particular the obligations for taxable persons to be identified for VAT and to complete recapitulative statements should apply consistently in all Member States.

2012/0102 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament[6],

Having regard to the opinion of the European Economic and Social Committee[7],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[8] lays down rules on the time and place of supply of goods and services, the taxable amount, the chargeability of value added tax (VAT) and the entitlement to deduction. Those rules are, however, not sufficiently clear or comprehensive to ensure consistency in the tax treatment of transactions involving vouchers to an extent which has undesirable consequences for the proper functioning of the internal market.

(2) To ensure certain and uniform treatment and to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance, there is a need for specific rules applying to the VAT treatment of vouchers.

(3) So as to identify clearly what is a voucher for the purposes of VAT and to distinguish vouchers from payment instruments, it is necessary to define vouchers, which can have physical or electronic forms, recognising their essential attributes, particularly the nature of the entitlement attached to a voucher and the obligations assumed by the issuer of the voucher.

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6 OJ C , , p. .
7 OJ C , , p. .
8 OJ L 347, 11.12.2006, p. 1.

(4) The VAT treatment of the transactions associated with vouchers is dependent upon the specific characteristics of the voucher. It is therefore necessary to distinguish between various types of vouchers and the distinctions need to be set out in Union legislation.

(5) A right to receive goods or services or to receive a discount is inherent in the nature of a voucher. This right may be assigned from one person to another before the voucher is eventually redeemed. To avoid the risk of double taxation, were the service represented by such a right to be taxed, it is necessary to establish that the assignment of this right and the redemption of goods or services should be regarded as one single transaction.

(6) The supply of goods or services may involve direct payment or be associated with a voucher. To ensure neutrality in the treatment of these transactions, the tax borne by the single transaction should be determined by the goods or services supplied in return for the voucher.

(7) The margin scheme for travel agents provides for taxation in the Member State in which the travel agent is established. To avoid a shift in the place of taxation, it should be specified that goods or services supplied using vouchers remain covered by this scheme.

(8) Vouchers are frequently distributed through an agent or pass through a distribution chain based on the purchase and the subsequent resale. In order to preserve neutrality, it is essential that the amount of VAT to be paid on the goods or services supplied in return for a voucher, remains intact. To assure this, the value of multi-purpose vouchers should be fixed upon issue.

(9) If vouchers are distributed by a taxable person acting in his own name but on behalf of another person, the taxable person would be deemed to have received and supplied the vouchers himself. Should the distribution involve multi-purpose vouchers where taxation takes place only once the voucher is redeemed, that would result in adjustments to all stages of the distribution chain, generating little or no new tax revenue. In order to avoid excessive administrative burdens, a taxable person distributing such vouchers should not be seen as having received and supplied the voucher himself.

(10) It is necessary to clarify the tax treatment of the transactions linked to the distribution of multi-purpose vouchers. Where such vouchers are purchased below value to be resold at a higher price, the service of distribution should be taxed based on the margin made by the taxable person.

(11) Vouchers may involve the supply of goods or services across borders. Should the chargeability differ between Member States, this could result in double taxation or non taxation. To prevent such situation, no derogation from the rule by which VAT is chargeable when the goods or the services are supplied should be allowed.

(12) Where payment is made on account before supply is made, VAT is however due on the amount received. It should be clarified that this also covers payments made for vouchers carrying a right to a supply of goods or services where the place and level of taxation of which are known (single-purpose vouchers). For other vouchers (multi-purpose vouchers), VAT should only become chargeable upon redemption of the voucher.

(13) Some vouchers allow for discounts upon the supply of goods or services. Since the reduction in the price is mainly used to promote the goods and services of the issuer of the voucher, it is appropriate to provide for the redemption of the voucher by the supplier of the goods or services to constitute a service supplied by him to the issuer.

(14) In order to comply with the neutrality principle, where a reduction in the price of the goods and services is granted in return for a voucher, the taxable amount of the promotional service provided by the redeemer to the issuer of the voucher should consist of the reimbursement obtained by the former.

(15) In so far as the goods or services supplied upon redemption of a voucher are taxed, the taxable person is entitled to deduct the VAT incurred on expenditure in relation to the issue of the voucher. It should be clarified that this cost of VAT is deductible even if those goods or services are supplied by someone other than the issuer of the voucher.

(16) Several taxable persons may play a role in the issue, distribution and redemption of a voucher but in the case of multi-purpose vouchers only the redeemer of the voucher knows what has been supplied, when and where. To ensure that the amount of VAT paid is correct, the redeemer should in all instances be the person liable for payment of VAT to the tax authorities on the goods or services eventually supplied.

(17) Where the distribution or redemption of a voucher itself creates a separate supply of services distinct from the goods or services being acquired by the voucher, and that supply is cross border, it is important that VAT obligations are completed to ensure the correct application and collection of the VAT due.

(18) Since the objectives of the action to be taken regarding the simplification, modernisation and harmonisation of the value added tax rules applying to vouchers cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(19) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents[9], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(20) Directive 2006/112/EC should therefore be amended accordingly,

[9] OJ C 369, 17.12.2011, p. 14.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

(1) In Article 25, the following points (d) and (e) are added:

"(d) the distribution of a multi-purpose voucher by a taxable person, other than the issuer of the voucher, where the voucher is supplied to him at a price below the nominal value by the issuer of the voucher or from another taxable person acting in his own name;

(e) the redemption of a free discount voucher, where the taxable person supplying the goods or services to which the voucher relates receives consideration from the issuer."

(2) In Article 28 the following paragraph is added:

"However, the first paragraph shall not apply where the taxable person takes part in the supply of a multi-purpose voucher."

(3) In Title IV "Taxable transactions", the following Chapter 5 is inserted:

"Chapter 5

Provisions common to Chapters 1 and 3

Article 30a

1. "Voucher" shall mean an instrument carrying a right to receive a supply of goods or services, or to receive a price discount or rebate with regard to a supply of goods or services and where there is a corresponding obligation to fulfil this right.

"Single-purpose voucher" shall mean a voucher carrying a right to receive a supply of goods or services where the supplier's identity, the place of supply and the applicable VAT rate for these goods or services is known at the time of issue of the voucher.

"Multi-purpose voucher" shall mean any voucher, other than a discount or rebate voucher, which does not constitute a single-purpose voucher.

"Discount voucher" shall mean a voucher carrying a right to receive a price discount or rebate with regard to a supply of goods or services.

2. A payment service within the meaning of Directive 2007/64/EC shall not be regarded as a voucher.

Article 30b

The supply of a voucher carrying a right to receive a supply of goods or services and the subsequent supply of these goods or services shall be regarded as a single transaction.

This single transaction shall be treated in the same way as a supply of goods or services had the goods or services not been supplied through the use of a voucher.

Where a voucher carries a right to receive a supply of goods or services to which the margin scheme for travel agents applies, the supply of goods or services shall be treated for VAT in accordance with the rules of that scheme."

(4) Article 65 is replaced by the following:

"*Article 65*

Where a payment is to be made on account before the goods or services are supplied, including payment for a single-purpose voucher, VAT shall become chargeable on receipt of the payment and on the amount received."

(5) In Article 66, the second paragraph is replaced by the following:

"The derogation provided for in the first paragraph shall not, however, apply where payments are made against a voucher, or to supplies of services in respect of which VAT is payable by the customer pursuant to Article 196."

(6) The following Articles 74a, 74b and 74c are inserted:

"*Article 74a*

1 The taxable amount of the supply of goods or services redeemed against a multi-purpose voucher shall be equal to the nominal value of that voucher, or in the case of partial redemption, to that part of the nominal value which corresponds to the partial redemption of that voucher, less the amount of VAT related to the goods or services redeemed.

2 The nominal value of a multi-purpose voucher shall include everything which constitutes consideration, including the VAT amount, obtained or to be obtained by the issuer of the voucher.

Article 74b

In respect of the supply of the distribution services referred to in point (d) of Article 25, the taxable amount shall be equal to the difference between the nominal value of the voucher and the purchase price paid, less the amount of VAT related to the supplied distribution service.

Article 74c

In respect of the supply of the redemption services referred to in point (e) of Article 25, the taxable amount shall be equal to the price reduction granted to the customer and reimbursed by the issuer, less the amount of VAT related to the supplied redemption service."

(7) In Article 169, the following point (d) is added:

"(d) transactions relating to the payment of consideration by the issuer of a voucher to the taxable person supplying the goods or services to which the voucher relates in so far as the supplied goods or services give rise to deduction."

(8) In Article 193, the following paragraph is added:

"Where a single transaction as referred to in Article 30b consists in the supply of a multi-purpose voucher and a subsequent supply of goods or services, the redeemer shall be regarded as having carried out the taxable supply."

(9) Article 272 is amended as follows:

(a) point (b) of paragraph 1 is replaced by the following:

"(b) taxable persons carrying out none of the following transactions:

(i) those referred to in Articles 20, 21, 22, 33, 36, 138 and 141;

(ii) those referred to in Article 44 but only where VAT is payable by the customer pursuant to Article 196;"

(b) paragraph 2 is replaced by the following:

"2. If Member States exercise the option under points (d) or (e) of the first subparagraph of paragraph 1, they shall take the measures necessary to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions."

Article 2

1. Member States shall adopt and publish, by 1 January 2014 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2015.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President