VAT - Treatment of Vouchers

PRACTICAL ISSUES

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Introduction

Being able to trade across Europe within the Internal Market is essential for the European commerce sector. Unfortunately, the reality is different. The VAT Directive 2006/112/EC does not provide any rules or clarity on the treatment of vouchers. Uncertainty about the correct treatment is problematic for cross-border transactions and for chain transactions in the commercial distribution of vouchers. This affects many businesses, not only in the telecommunications sector, but also in the general retail sector.

For telecommunications businesses the current proposal is of utmost importance. These businesses are responsible for over 70% of all vouchers in circulation. In light of the new rules as per 1 January 2015 and the mini one-stop-shop (MOSS), an agreement will have to be reached before 1 January 2014 in order to meet the timetable required to implement the B2C 2015 rules and the MOSS.

From the current discussions at EuroCommerce a number of concerns have been raised about the fact that the discussions about the current proposal have mainly been focused on the treatment of telecommunications vouchers. It is important to recognise that retail businesses also have to deal with a myriad of vouchers, both self-funded, 3rd party funded (e.g. manufacturer or supplier coupons) and as both principal and agent.

EuroCommerce has identified the most important problems in the current proposal for all sectors. The topic is complex and for that reason we have not yet provided specific input on the articles and recitals in the proposal. However, EuroCommerce will be pleased to elaborate on these practical issues, especially with regard to the retail business, together with the Irish Presidency and the Commission and also to find proper solutions.
Distinction between a voucher and a means of payment

EuroCommerce strongly supports the proposed distinction between vouchers and payment instruments. For example, the primary purpose of a telecommunication voucher is to develop the market and to confer a specific right to receive telephony services; it is not necessarily intended as a means of payment. Furthermore, it should be mentioned that telecommunication businesses will have no interest in issuing telecommunication vouchers combined with unlimited payment services and there will be no business model supporting this combination.

EuroCommerce recognizes that it is not always clear what should fall under the definition of a voucher. For example:

- Payment for unrestricted entitlement to a discount over a period of time (e.g. public transport reduction cards)
- Gift vouchers (replacement of money or MPV/SPV)

Kind of vouchers

The VAT treatment of any supply of vouchers prior to redemption must recognise the commercial nature of the contract/supply chain involved. There are situations where there is a true buy/sell arrangement, but also a real agency where the intermediaries pass back the value of the voucher after deduction of their contractual commission.

Single Purpose Vouchers (SPVs)

There needs to be a clear definition of SPVs. The definition given in the Consultation Document, with slight variances, seems appropriate.

An SPV\(^1\) entitles the holder to receive identified goods or services, in circumstances when the following can be identified from the outset:

- The level of taxation (in particular, the rate of VAT)
- The supplier’s identity, and
- The Member State in which the underlying supply takes place

In our view the taxation point would follow the basic time of supply rules in the Directive:

- **Article 62**
  For the purposes of this Directive:
  ‘Chargeable event’ shall mean the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled;

- **Article 65**
  Where a payment is to be made on account before the goods or services are supplied, VAT shall become chargeable on receipt of the payment and on the amount received.

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\(^1\) A voucher that is free of charge does not fall under this definition. Such voucher is a promotional instrument. It will be used as a discount voucher to ‘purchase’ a product with or without any additional cash payment and should therefore have no VAT consequences when distributed.
EuroCommerce believes that the definition and the conditions of a prepayment have been made clear by the European Court of Justice in the BUPA Hospitals case\(^2\) and also recently the Lebara case\(^3\). In case of a prepayment, there is a taxable (or exempt) supply or service for VAT purposes. If not, the relevant VAT treatment can only be determined upon redemption of the voucher, including the place of supply and the taxable amount.

For the sake of completeness and clarity EuroCommerce would like to mention these examples in the proposal and explain whether or not they fall under the definition of a voucher, and if not what would be the VAT consequences of transactions with these ‘non-vouchers’.

In this respect it is clear that we need clarity on whether tickets to events are, in themselves SPVs. Any cross-border sale through a supply chain creates significant issues based on the place of supply rules.

**Multi-Purpose Vouchers (MPVs)**

Anything which is not a method of payment or an SPV should be treated as an MPV. VAT will be due at the point of redemption i.e. when the underlying goods or services are known and both the underlying time and place of supply can be identified. Tax will be charged on the Face Value of the voucher.

- Telecommunication voucher including content, such as gaming service, lottery, parking service.
- Gift vouchers for commercial reasons (e.g. attract customers to the stores, temporary close of store, products are temporarily sold out or unhappy customer) entitle customers to purchase\(^4\) goods at own stores or other stores (whereby different rates apply)

**Discount vouchers distributed by manufacturer**

Under the current proposal the treatment of discount vouchers distributed by a manufacturer to a customer may in national situations lead to a significant loss of margins at the level of the retailer where the discount voucher relates to products that fall under the reduced or zero rate. This has already been acknowledged by the European Commission.

The retailer can only charge the gross amount of the discount but has to account for VAT too. Where the retailer takes into account a reduced (or zero) rate when he sells the related product to the customer (so his net price is (say) 100/106 of the sales price, he now has to charge this gross amount (the discount) to the manufacturer subject to the standard rate (say 21%). This means that he will only receive 100/121 of the amount of the discount.

In cross-border situations however, the reverse charge system will apply. In that case the retailer will benefit from this system as VAT will be on top of the gross amount of the discount charged to the manufacturer.

\(^2\) Case C-419/02 (21 February 2006).
\(^3\) Case C-520/10
\(^4\) Gift vouchers that entitle customers to a discount on a next purchase are discount vouchers (not MPVs).
The proposed treatment should therefore be adapted. It will not be easy to find a 'one-size-fits-all solution' because of the administrative complexity.

Possible solutions in national situations could be:

- to allow the redeemer (the retailer) to charge the issuer of the voucher (the manufacturer or another party in the distribution chain) for the amount of the voucher (the discount) at the VAT rate applicable to the underlying supply of goods or services. Should the underlying supply of goods and services consist of goods or services that are subject to both reduced rate and standard rate, the redeemer has to proportionally charge this to the issuer.

- to allow the redeemer (the retailer) to charge the issuer of the voucher (the manufacturer or another party in the distribution chain) for the amount of the voucher (the discount) excluding the VAT amount applicable to the underlying supply of goods or services.

The aforementioned solutions would only require a small change of the current text in the proposal, but as mentioned before will increase the administrative complexity at the level of the retailers.

In cross-border situations the reverse charge will apply, whereby it is not yet clear whether the reverse charge will be added to the amount of the voucher (the discount) or that the retailer has to exclude the amount of VAT from the gross amount and charge a net amount plus VAT under the reverse charge regime. It seems that based on the current proposal the retailer will – in cross-border situations – receive the gross amount ‘VAT-free’ as the additional VAT charge will not affect the margin.

**Cash-back promotions by Manufacturers**

There are many examples where manufacturers offer promotional discounts of a “cash-back” nature. A customer of a retailer buys a product for say £200 and is given a manufacturer’s voucher enabling him to claim a specified sum as a cash-back from the manufacturer. In these cases the manufacturer must be able to treat the cash-back as a discount against his original sale and be able to adjust VAT accordingly. This follows the European Court decision in Elida Gibbs case.

**Promotional schemes (loyalty schemes)**

In retail business it is common practice to have all kind of schemes to bind the customers to their businesses (to generate ‘traffic’). Retail business combines direct discounts (for instance buy-one-get-one-free) and discounts in arrears (cash backs and loyalty schemes). Moreover, retail business very often acts as agents for other businesses that sell all kind of vouchers (e.g. gift cards, hotel vouchers, entrance vouchers for an attraction such as a zoo or theme park).

It is essential that there is clear guidance confirming that such promotional or loyalty schemes are covered by the current proposal.

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5 Cross-border situations mean within EU, but also EU to non-EU and vice versa.
6 C317/94
In article 30a of the proposal a relation is required between the underlying transaction (‘with regard to a supply’) and the subsequent discount. With loyalty schemes such relation will not always be visible or traceable, especially if there are a number of issuers and redeemers involved, though it is quite obvious that those retailers intend to provide the customer with a discount (in arrears). It should be recognized that in retail business “there is no such thing as a free lunch”. These vouchers are issued and used solely for business purposes and are designed to generate traffic – for a longer period of time – in the stores either via discounts to a subsequent sale or a provision of alternative loyalty rewards, as identified in the Loyalty Management UK case 7.

EuroCommerce would like to point out that from a business perspective there is no difference between immediate discounts and those given in arrears.

Where a business allows a customer to redeem vouchers for the full value of an item either directly or through other parties the goods or services acquired should not be treated as “free gifts” or “third party consideration” as decided in the Kuwait Petroleum case 8 or the Loyalty Management UK case but should be recognised as being equivalent to a discount. We would like to refer to the latest judgement of the UK Supreme Court 9 in the latter case.

Redemption of vouchers and change of VAT rates

EuroCommerce would like to stress that an MPV should be taxed only on redemption (and only for the amount of the redemption). Any change of VAT rates will not affect the MPV as such as VAT will be due upon (partly) redemption of the MPV at the applicable rate at the moment of redemption. No (additional) VAT should be due if the MPV remains (partly) unredeemed.

EuroCommerce would also like to mention that there can only be one chargeable event for SPVs which is at the time of the sale of the SPV. Any change of VAT rates between this tax point and the redemption of the SPV should not lead to any additional VAT or any refund of VAT paid. We would like to advise to explicitly mention this in the proposal, as this VAT treatment has not been recognised as such by all Member States.

Some examples:

- **Customer buys ticket for sports game, but does not go there**
  - Seller charges the amount including VAT due at the time of the sale to customer;
  - No additional VAT consequences

- **Customer buys a ticket for sports game, but returns the ticket to seller before the game takes place**
  - Seller charges the amount including VAT due at the time of the sale to customer;
  - Upon returning the ticket by customer, seller refunds the total amount including VAT due at the time of the prior sale to customer;
  - Seller is entitled to a refund of the VAT amount

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7 Case C53/09
8 Case C-48/97 (27 April 1999)
9 Revenue and Customs v Aimia Coalition Loyalty UK Ltd, UKSC 15 (13 March 2013)
- Customer books into hotel, but does not show up
  - The hotel charges the total amount for the first night, but there is no VAT due.

**Volume discounts and group discounts**

EuroCommerce assumes that volume discounts and group discounts do not fall under the scope of this proposal.

Volume discounts are rebates granted by the supplier of goods to the recipient of the goods if the supplies exceed a certain level as agreed by both parties. Since volume discounts are corrections of the sales price, the discounts will be subject to VAT. In case of cross-border situations the same rules apply as to the underlying supply.

Group discounts are discounts – in most cases – granted by the head office of the supplier to the head office of the recipient. These discounts come on top of volume discounts and all other arrangements that are agreed on national/bilateral level. There is (very often) no direct relationship between the group discount and the underlying supplies of goods. Many Member States therefore assume group discounts are to be out of scope of VAT. However, some Member States take the approach that the head office of the recipient supplies a taxable service to the head office of the supplier, where such service is deemed to be a kind of broker service; the head office of the recipient directs its subsidiaries to purchase from subsidiaries of the head office of the supplier. EuroCommerce is of the opinion that some clarification is needed in this respect.

**Carousel fraud in distribution chain**

EuroCommerce is concerned about the fact that the proposed treatment of the distribution of the SPV will give rise to serious carousel frauds. They can be easily produced and distributed as most vouchers are distributed electronically (e-vouchers). However, the risk of such carousel fraud can easily be avoided by determining that in the distribution chain the telecommunication vouchers will be deemed to be MPV or introduce the same rule as in respect of the distribution of MPVs. At the end the telecommunication business (MNO or MVNO) that provides the telecommunication service to the end user – and issued the voucher – will be paying the VAT due. The equal treatment in the distribution chain with respect to SPVs and MPVs will be clear and auditable.

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**EuroCommerce and the commerce sector**

EuroCommerce represents the retail, wholesale and international trade sectors in Europe. Its membership includes commerce federations and companies in 31 European countries.

Commerce plays a unique role in the European economy, acting as the link between manufacturers and the nearly 500 million consumers across Europe over a billion times a day. It is a dynamic and labour-intensive sector, generating 11% of the EU’s GDP. One company out of three in Europe is active in the commerce sector. Over 95% of the 6 million companies in commerce are small and medium-sized enterprises. It also includes some of Europe’s most successful companies. The sector is a major source of employment creation: 31 million Europeans work in commerce, which is one of the few remaining job-creating activities in Europe. It also supports millions of dependent jobs throughout the supply chain from small local suppliers to international businesses.