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HARMONISATION OF TURNOVER TAXES

SUMMARY OF RESULTS

PUBLIC CONSULTATION ON
"MODERNISING THE VALUE ADDED TAX TREATMENT OF
VOUCHERS AND RELATED ISSUES"

**SUMMARY REPORT ON
THE REPLIES RECEIVED IN RESPONSE TO THE
PUBLIC CONSULTATION ON**

MODERNISING THE VALUE ADDED TAX TREATMENT OF VOUCHERS AND RELATED ISSUES

1. INTRODUCTION

The Commission announced in its Communication COM(2000) 348 final, addressed to the Council and the European Parliament, “A strategy to improve the operation of the VAT system within the context of the internal market”, its intention to treat the review of the application of the then Sixth VAT Directive to vouchers as a future priority. In the Communication COM(2003) 614 final, the Commission reviewed and updated the VAT strategy priorities and reaffirmed that priority.

In line with this commitment, the Commission and the Member States have discussed the proper application of the current VAT rules to vouchers several times in the VAT Committee. Furthermore, the recently more widespread use of some kinds of vouchers in the travel and the telecommunications industry (and indeed now spreading outside these sectors) has increased the number of problems resulting from differences in VAT treatment across the Community.

The Court of Justice has also had the opportunity to analyse some types of vouchers, providing a case by case assessment which has sometimes proved difficult for Member States to implement.

It is against this background, and following different queries and submissions received by the services of the Commission, that the Directorate General for Taxation and the Customs Union, after a further meeting of WP1 with Member States, undertook a public consultation via its web site in December 2006 to assist with the formulation of a proposal for a Directive on the VAT treatment of vouchers.

The present working document presents a short and preliminary summary report of the responses to this public consultation.

2. THE BASIC ELEMENTS OF THE PUBLIC CONSULTATION

The Consultation was based on an analysis of the current VAT treatment of vouchers across the EU. The evolution of some vouchers in terms of functionality and the lack of clear rules has contributed to an inconsistent VAT treatment of vouchers. Some Member States treat the supply of a voucher as a supply of goods or services while others treat its purchase as a payment on account for future supplies. Other Member States again do neither of the above, taxing instead the supply of goods or services that occurs at the redemption of the voucher or treating them as a financial service (thus treating them similarly to payment systems such as credit cards, prepaid cards, electronic purses etc.).

It would appear that any possible legislative change or legislative fine-tuning of the current rules will involve a description and definition of the main features of vouchers and their functioning. The consultation proposed a description of free vouchers (including discount vouchers and business gifts), so-called Single Purpose vouchers and so-called Multi Purpose vouchers, together with their corresponding VAT treatment.

Description of vouchers:

- A free voucher is issued without charge, normally with the intention of promoting a product or service. Discount vouchers and business gifts are a subcategory of free vouchers;
- A Single Purpose voucher would in principle carry a right to receive goods or services identified at the outset and with the same VAT rate, or to obtain a discount when acquiring those goods or services, or to receive a refund at the time of the redemption by an individual redeemer (with exceptions), inside the same Member State of issue;
- A Multi Purpose voucher would be any medium, other than legal tender, which carries a right to receive goods or services, or to obtain a discount, when acquiring those goods or services, or to receive a refund, at the time of the redemption.

The time of supply:

- The Single Purpose voucher should in principle be taxed at the time of sale (as a prepayment);
- The Multi Purpose voucher should in principle be taxed at the time of the redemption.

The place of supply:

- The Single Purpose voucher is supplied where the voucher is sold;
- The underlying supply of a Multi Purpose voucher takes place where the voucher is effectively redeemed.

The evaluation of the taxable amount:

- A free voucher does not have any taxable amount;
- The taxable amount of goods and services supplied against an MPV is equal to the value of the MPV effectively used to acquire these goods and services;
- The taxable amount of an SPV is equal to the consideration effectively paid by the customer to acquire the relevant voucher.

Premium rate

It is uncertain if the supply of premium rate phone services has to be considered as a payment vehicle or a bundled supply. Dependant on how the service is classified, further decisions, in respect of the place of supply and the VAT rate for example, follow.

Unredeemed vouchers

Some modification of Article 64 of the VAT Directive (2006/112/EC) could be envisaged in order to create a chargeable event at the time of the expiry date.

Innovative general payment schemes

Some vouchers could be seen as a means of payment because they are involved in payment transactions. If this were to be agreed, it is clear that neutrality between voucher-based generalised payment systems and traditional or mainstream payment systems has to be achieved.

3. GENERAL OUTCOME

Thirty three responses were received from various parts of the EU and various sectors. Four responses have been classified as confidential in accordance with the explicit request of the contributors. The responses were divided by sector and five different categories were identified: banking; telecommunication; dealers and distributors; associations (of different types: Vouchers, Tax experts, Retailers etc.) and a residual category containing responses not included elsewhere.

More specifically, there were 2 responses from the banking sector, 7 from telecommunications, 6 from dealers and distributors, 10 from associations and 8 from various other sectors (entertainment, University, Vouchers management, distributors etc.).

All responses very much welcomed the initiative of the Commission because there is agreement on a real need to clarify the VAT treatment of vouchers in a market which despite the misunderstanding or the misapplication of the VAT rules, is constantly increasing and constantly evolving. The current divergence of national rules and difference in application of the Directive is not considered tenable.

Some Member States have bigger and more evolved vouchers markets than others and in these Member States it could be observed that the rules for vouchers are rather complex. In some circumstances these rules create unjustified compliance costs and could be seen as stretching the limits of interpretation of the VAT Directive.

The compatibility between some new forms of vouchers and classic means of payment seems to be one of the most relevant issues. The neutrality of treatment between systems having the same functionalities is considered by all contributions as absolutely fundamental.

Any change in the legislation or in the VAT treatment should, however, take into account the time needed by the business for the adaptation of systems. A transitional period between the publication of the law and its entry into force is considered as ideal.

4. SPECIFIC OUTCOMES

The most salient views provided in the responses are summarised below.

Description of vouchers

Whereas some contributions consider that a definition of vouchers in the VAT Directive is not necessary because it is a constantly developing area leading to rapid obsolescence, others have a different opinion and welcome or demand a definition as being necessary for legal certainty. Some respondents suggest that possibly some more details could be included in legislation for some specific vouchers like “tickets restaurant” or discount pooling vouchers. Some others thought that any proposal should go in the direction of a single set of rules (namely that one proposed for MPVs).

SPV

Single Purpose vouchers are those vouchers that contain all the elements necessary to identify a specific transaction. In the view of the respondents this level of specificity is however is very much liable to limit the future use of SPVs. For this reason some respondents added that there was no real need to apply a different VAT treatment between these vouchers and MPVs.

MPV

Multi Purpose vouchers are vouchers that do not contain all the elements to identify a specific transaction. Moreover they should still be considered as MPVs even if they could be used for a wide range of goods/services or potentially be open-ended. The opinion was expressed that the definition should be further clarified and some guidance could be usefully added to the legislative definition. (The relationship between vouchers and means of payment is summarised here below).

Discount vouchers

Further clarification about the meaning and the variety of discount vouchers is needed. Perhaps a further category (like “Pure discount vouchers”) should be added in order to make a distinction between free discount vouchers and discount vouchers which are not free even if they include a discount.

Business gifts

The definition should be enhanced because several responses seem to mix SPVs bought and distributed to client and employees “as business gifts”, and business gifts as defined in the Kuwait Petroleum case.

The treatment of business gifts

Some respondents supported the Commission's view and preferred to adopt the non-deduction of the input VAT of business gifts as it seems easier from an administrative perspective. However big distributors have a different opinion and regard the non-deductible VAT as a cost higher than the administrative burden of deducting it. The VAT treatment and also the constituent features of a business gift should in any case be analyzed further as it seems that the present rules (as correctly interpreted by the ECJ) do not, in the view of many respondents, fit well with commercial realities. They think that there is also room for improvement of the actual system: an example of this improvement being to address the general issue of rebates (volume or product rebates) or of the gift value.

Other respondents considered that a correct approach should take into account that business gifts are a promotional tool where the customer will never get the second product (e.g.. the toy or the DVD player) if he does not make a purchase first. Therefore they would the supplier to be able to always takes into account the consideration for the sale of the original good as a consideration for both goods (the original goods and the business gift).

Finally there was a specific request to align the treatment of services to that of goods as provided for in Article 16 and 26 of the VAT Directive.

The time of supply

Some contributions wanted to make a distinction between the value of the voucher itself and the value of the supply of goods or services against which the voucher could be redeemed. Actually, however, this distinction does not seem to be useful either in the case of an SPV (because the voucher represents an advance payment of the goods or the services against which it will be exchanged) or of an MPV (because the sale of this voucher should be regarded as out of the scope of VAT). On the contrary, the distinction would be useful only in the case of a voucher free at issue but sold on (e.g. by an intermediary) where the value of the voucher in itself could be separated from that of the goods or services against which it can be exchanged or to which it can confer a discount.

The place of supply

“The correct identification of the place of supply under the current rules is a problem and could be exacerbated under the proposed Place of Supply Directive”. This quotation from one contributor highlights that it is very difficult to identify correctly the place of residence of the customer at the time that the voucher is sold. Non-taxation of the initial sale of a voucher was therefore sought. No respondent took exception to the need to ensure that vouchers cannot be used to undermine the correct application of the general rules concerning the place of supply of services.

The distribution chain

The issue of the correct regulation of the distribution chain was raised. This was not addressed in the Public Consultation. Any decision about the VAT treatment of vouchers (taxable, exempt or out of scope) may directly affect the distribution chain and the taxable persons involved. Moreover the type of the chain (agent or principal scheme) should also be analyzed in order to provide clarity and certainty both for Member States and businesses.

The invoices

Also guidance for invoicing was requested: it should be addressed (together with the chain distribution) in order to provide a comprehensive perspective and to avoid differences at the time of the application of the future rules.

The evaluation of the taxable amount

For one respondent the taxable amount should not be based on the face value, as this is not an indication of the real consideration paid. For example those contributions considering that MPVs are a means of payment consider that, in the distribution chain, there is a possibility that the face value could be higher than the consideration actually received by the issuer at the time of sale. To solve this situation they propose that the issuer could make a VAT adjustment at the time of the redemption of the voucher but at the same time they feel that this adjustment would be too burdensome. They therefore propose to apply VAT on the full face value even if this results in partial double taxation. Others responses focussed on the taxable amount of an MPV claiming that it should be equal to the consideration received instead of the face value or the consideration paid by the final consumer.

Premium rate

Some respondents consider that where a charge is made by a telecom operator for premium rate telephone calls in circumstances where the telecom operator passes on part of the charge to another person who provides the content, the telecom operator should be treated as providing a means of payment.

Where the telecom operator directly provides the content and therefore does not pass on part of the premium rate charged to another person, the supplier is the telecom operator. The question of whether the content is incidental to the telephone service or not could be solved on the basis of the ancillary services.

Unredeemed vouchers

As there is no taxable transaction there is no taxable amount. This situation should be dealt with as an "enrichment issue" or it could be treated as a third party contribution.

Innovative general payment schemes

Several responses supported the idea that MPVs are actually (or could soon be) a general purpose means of payment and therefore they should be accordingly treated. As a consequence, intermediaries would be treated as making exempt supplies of financial

services. In order to avoid a problem with the practical application of the pro-rata rules, one suggestion was that the option to tax financial services of this nature (payments and transfers) should be made generally available and allowed not only for B2B but also for B2C transactions.

The *banking sector* contributions generally agree that a voucher should cease to be a voucher when it is “loaded with legal tender” and should become a means of payment. Moreover the recharge of a multi purpose voucher should be regarded as a money transfer and therefore as an exempt transaction¹ and the issue in itself of an MPV could be seen as an issue of e-money. A specific analysis of the various forms of payment was therefore sought in order to avoid the lack of neutrality which it is claimed is already in place between mobile telephone operators and the traditional banking sector. At the same time any solution should be consistent with the related Directives on Payment Services and E-money.

The *telecom sector* contributions generally strongly support the idea that there is a fundamental difference between bank accounts and MPVs. Where in general terms the aim of the bank is to hold money deposited by customers (because customer inactivity gives higher returns) or to generate fees through the provision of payment and transfer services, the aim of the telecom operators is to invite the customer to use the money on their products (because customer activity becomes revenue) although in an increasing number of instances to generate fees by also providing payment services. Others considered that the sale of a voucher is a “money exchange for a substitute for money”.

Finally, several responses supported the idea that it is preferable to maintain the position that the sale of MPVs are out of the scope of VAT but that the input VAT costs for vouchers should be allowed for deduction.

5. CONCLUSIONS

On the basis of the replies given to the Consultation some preliminary conclusions can be drawn.

Several contributions consider that the problem of the different application of the VAT rules is principally due to a misunderstanding rather than a real obsolescence of the rules themselves. The conclusion is that, in order better **harmonize the VAT treatment** it is preferable to first harmonize the interpretation of the current rules and only when the interpretation cannot be of any help, a legislative change should be envisaged.

Particular attention should be given to the definition of vouchers. A general overview of the responses shows that the definitions used are not developed or comprehensive enough to fully clarify the situation. The difficulties in understanding the definitions generated comments on the **definition of the various kind of vouchers** but these comments were not homogeneous: actually several responses mixed up the category of vouchers, thus mixing up also the underlying features defining a specific type of voucher. This could be taken as a twofold indicator: on the one hand, it shows that vouchers have been used without common interpretation, on the other hand, it underlines the difficulty that operators have in correctly analyzing the kind of vouchers they are dealing with and

¹ It is questionable that a recharge of a single purpose voucher has to be seen as a payment of a supply and the recharge of a multi purpose voucher can not be seen as a supply of money.

perhaps in correctly applying the VAT rules. A clear definition seems therefore necessary as well as examples of the correct categorisation of specific vouchers (e.g. the restaurant ticket or discount pooling vouchers).

The **place of supply** and the **time of supply** could be considered to be agreed in substance. However a spotlight has been turned on to the relationship between vouchers and the proposal for a Directive on the place of supply rules.

The treatment of **business gifts** should be reviewed and better analyzed as it seems that the present rules do not fit well with current commercial practices and realities. The alignment of the provisions in Articles 16 and 26 was requested in order that both goods and services would be covered.

The **distribution chain** and the related question of **invoices** have not been analyzed in the Public Consultation but there is a need to deal with these two issues.

The question of **premium rates** should be solved through an analysis of the underlying contracts. The telecom operator could act as an undisclosed agent for the content provider or could sell the content directly or could merely supply a payment service. In any case the appropriate VAT treatment has to be applied.

With regard to **unredeemed vouchers** the majority of the responses affirmed that they should not be taxed because of the lack of any taxable transaction.

The majority of the responses defined a **MPV as means of payment** or a “money exchange for a substitute for money”, i.e. as a financial service; even the re-charge of an MPV should be classified as a transfer of money. This approach has the merit that it would simplify the VAT treatment of some vouchers. It should be explored further. The biggest counter argument, at the moment, is based on the fact that payment services are generally exempt and this could be excessively burdensome for the distribution chain because of the pro rata or partial exemption implications². Other respondents, however, consider that there is a fundamental difference between bank accounts and MPVs and because of this difference MPVs should not be included in the category of the means of payment. In any case a solution should be found for vouchers which can not be used themselves as means of payment and therefore are not included in the issue above. The dividing line should reflect the commercial reality of the service being provided.

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² However there is also a respondent that encouraged the exemption because “it would be a large administrative burden if VAT were applied to any segment in the payment vehicle chain”.