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Some new considerations related to VAT treatment of vouchers and similar assets

In November 2019 VAT Committee issued Working Paper No 093 discussing certain aspects concerning **taxation of vouchers and similar assets**, including the following

1. **Utility tokens** in the light of the Voucher Directive
2. **Exempt supplies** incorporated into a vouchers
3. Relationship between vouchers and VAT **special schemes**
4. **City cards** in the light of the Voucher Directive.

Utility tokens

This aspect is interesting as tokens are digital assets, differences between currency tokens, investment tokens and utility tokens are not clear and there is no EU regulation defining utility tokens. VAT Committee also stated that the European Parliament carried out a study on Cryptocurrencies and blockchain, defining utility tokens as digital instruments that *“grant their holders (future) access to specific products or services. They can be used to acquire certain product or services, yet they do not constitute a general-purpose medium of exchange, simply because they can generally only be used on the token platform itself”*. VAT Committee concludes that because of the hybrid nature of utility tokens, certain doubts arise as to whether rules on taxation of voucher are applicable to utility tokens.

There are certain *arguments in favor of qualifying utility tokens as vouchers*, as follows:

- they can be exchanged with good or services;
- they can be used only in a limited network.

However, there are certain *arguments against of qualifying utility tokens as vouchers*, as follows:

- redemption of the right embedded in the instrument is not its only purpose;
- a utility token not redeemed seems to be able to be transformed into a currency token or an investment token and then be traded in secondary market;
- there may be a lack of sufficient detail of the goods supplied or the services provided, or there may be a lack of sufficient detail of the identity of potential suppliers taking part in the chain;
- in certain situations they operate as cryptocurrencies and therefore could be considered to be payment services.

While in the past vouchers were mainly issued on paper, today the issuers of the vouchers quite often decide or consider issuing voucher as digital assets and they also show more creativity in designing their business involving vouchers. If a voucher is issued in digital form, this does not automatically mean that such digital asset is no longer a voucher – as defined by VAT regulations. However, there is no clear line between utility tokens which should not be regarded as vouchers from VAT perspective and digital vouchers which are still vouchers as defined by VAT regulations, so each case should be closely checked taking into account relevant facts and circumstances.

Exempt supplies

At first sight, it may be unclear what is unclear in respect of vouchers granting the right to obtain exempt supply. However, after the VAT rules on vouchers have become applicable, their application identified some unclear aspects. This is relevant only in case of so called single purpose voucher (SPV) where each transfer of SPV represents a taxable event, while a supply of goods or services in return for SPV is not taxable event. Basically, the transfer of SPV should be subject to the same VAT treatment as the underlying supply that shall be done in return for SPV. In case of exempt supplies, where exemption depends on the nature of supply (objective criteria), there is no problematic issue. However, problematic issue may exist in case of exempt supplies, where exemption depends on some subjective criteria (e.g. status of the service provider, relationship between service provider and service recipient). VAT Committee has provided some examples, e.g. an example of a voucher for dentist services where the exemption of the underlying services depends on whether a dentist acts in his professional capacity or not (subjective criteria), and where SPV is transferred between an entity (not being a dentist acting in his professional capacity) and the final user of dentist service in such a way that it may be deemed that the dentist service was provided by that entity to the final user. If this was done without using a voucher, the entity would have to charge VAT, i.e. VAT exemption would not apply. In such case, it should be taken into account that using of voucher should not change the VAT treatment of underlying supply.

Therefore, when there is a supply in return for SPV which might be VAT exempt, all parties involved and their rolls should be carefully check in order to verify whether VAT exemption is applicable or not.

Special schemes

Special scheme - travel agents

Travel agents quite often use some documents referred to as “vouchers”, so this raises a question whether VAT rules on vouchers are applicable on not in such cases. VAT Committee has stressed that, in answering that question, it is important to take into account that rules on vouchers are general rules (not exemptions), that special scheme for travel agent is mandatory scheme (not optional scheme) and that the rules of mandatory special scheme may, if needed, prevail over the application of rules on vouchers in order to achieve the objectives of such special scheme. It is concluded that the Commission services are of the view that where the conditions for the travel agent scheme to apply are met, the voucher rules cannot be applied.

Therefore, travel agents should be careful when they use vouchers as this can change VAT burden.

Special scheme – SME scheme

Another special scheme is SME scheme which is optional, based on which SME can be exempt from VAT. VAT Committee stress that, when considering interaction between rules on vouchers and SME scheme, the general view is that VAT could neither come to light upon issue of the voucher nor upon transfer of the same, since the underlying supply of goods or services would be subject to a special scheme which excludes VAT from being applicable. However, it should be noted that this is not always the case and that various

scenarios could arise. VAT Committee provided an example where SPV is issued by enterprise 1 (applying exemption based on SME scheme) and transferred to enterprise 2 (not applying exemption based on SME scheme) and transferred by enterprise 2 to final consumer, and concluded that in such case only the first transfer would be VAT exempt.

Therefore, where someone in the chain of vouchers' issuance, transfer and redemption is VAT exempt based on SME scheme, final VAT results of the interaction of VAT rules on vouchers and VAT rules on special SME scheme can differ depending on actual facts and circumstances.

City cards

VAT Committee has considered whether VAT rules on vouchers are applicable to city cards or not, concluding that there is no clear answer to that question because there is no common understanding what, for commercial purposes, is considered a city card and city cards have hybrid nature (as they can include entitlement to enjoy various goods or services e.g. transportation, access to certain touristic attractions, etc., but also some other rights such as price reductions).

Therefore, there is no unique and straightforward answer to the question of VAT treatment of city cards, so VAT treatment should be carefully checked and determined on case-by-case basis, taking into account actual facts and circumstances. ■

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