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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 983

NEW LEGISLATION

MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

ORIGIN:	**Commission**
REFERENCES:	**Articles 30a, 30b, 73a, 410a and 410b**
SUBJECT:	**Questions raised following implementation of the Voucher Directive**

1. INTRODUCTION

At its meeting on 12 April 2019, the VAT Committee had the occasion briefly to examine questions raised by Italy regarding the application of the new rules on vouchers that Member States had had to transpose into national law by 1 January 2019. It also looked at the issue of city cards that BusinessEurope had first evoked in the context of the EU VAT Forum[1].

2. SUBJECT MATTER

Although vouchers have been around for long, up until 1 January 2019 the VAT Directive[2] did not include rules to regulate the VAT treatment of such instruments. In the absence of common rules, Member States have developed their own practices not coordinated at EU level that have led to instances of double or non-taxation.

The Council sought to address that situation by adopting the Voucher Directive[3]. The aim of the new legislation is to simplify and harmonise the rules on the VAT treatment of vouchers throughout the EU.

The new rules will only affect vouchers issued after 31 December 2018 and do not interfere with the legislation and interpretation previously adopted by Member States. The rules have been implemented by Member States in their national legislation, however, there are some voucher related issues that urge an in-depth discussion in order to establish a common approach to such rules for ensuring fiscal neutrality and legal certainty.

The issues that the request of the Commission services' opinion is stemming from are:

- The qualification of utility tokens in the light of the Voucher Directive (section 4.2)
- Exempt supplies of services incorporated into a voucher (sections 4.3.1 and 4.3.2)
- The relation between the VAT treatment of vouchers and VAT special schemes (sections 4.3.3 and 4.3.4)
- The qualification of city cards in the light of the Voucher Directive (section 4.4)

3. BACKGROUND

Using a voucher in a taxable transaction can have consequences for the taxable amount, the time of transaction and even in certain circumstances, the place of taxation. Uncertainty about the correct tax treatment may be problematic, in particular for cross-border transactions but also for chain transactions in the commercial distribution of vouchers.

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1 See minutes of the 112th meeting (Working paper No 970).

2 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

3 Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers (OJ L 177, 1.7.2016, p. 9).

The resultant mismatches in taxation had caused problems such as double taxation or non-taxation but also contributed to tax avoidance and barriers to business innovation. Moreover, increased functionality in vouchers had made the distinction between vouchers and generalised payment instruments less clear.

Prior to the Commission coming forward with a proposal in 2012[4], work around vouchers had stretched back years. After discussing vouchers and their VAT treatment during Fiscalis seminars in 2002 and 2006, the Commission asked for the carrying out of a study[5], which fed into the impact assessment[6] accompanying its proposal.

In view of the problems faced, the proposal had envisaged the following changes[7]:

"*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

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4 Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers (COM(2012) 206 of 10.5.2012).

5 Study of the VAT treatment and quantification of vouchers at an EU level for the provision of economic analysis in the area of taxation, 14 July 2010.

6 Commission Staff Working Document – Impact Assessment – Accompanying the document 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 of 10.5.2012).

7 See Explanatory Memorandum of the proposal, section 2.

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."

When adopting the proposal, the Council decided to leave aside part of what the Commission had proposed. As a result, the Voucher Directive mainly centres on the definition of the concept of voucher and the time of taxation, as illustrated:

	Proposal	**Voucher Directive**
Defining vouchers for VAT purposes	Article 30a(1) Voucher SPV MPV Discount voucher Article 30a(2) Payment service excluded	Article 30a Voucher SPV MPV - - -
Time of taxation	Article 30b SPVs taxed upon sale MPVs taxed upon redemption Articles 65 and 66 Payment on account and limitation in ability to derogate from normal rules on chargeability	Article 30b(1) and (2) SPVs taxed upon sale MPVs taxed upon redemption - -
Rules for distribution	Article 25(d) Distribution of MPVs Article 25(e) Redemption of free discount vouchers	Article 30b(2), second subparagraph Distribution or promotion linked to MPVs - -
Discount vouchers	Article 74c Taxable amount in respect of redemption of free discount vouchers	- -
Taxable amount	Article 65 Payment on account in respect of SPVs Article 74a Taxable amount of MPVs, including where partially redeemed Article 74b Taxable amount in respect of distribution of MPVs	- - Article 73a Taxable amount of MPVs - -

	Proposal	**Voucher Directive**
Other technical or consequential changes	Article 169(d) Entitlement to deduction Article 193 Designating the redeemer of an MPV delivering the goods or services as the supplier Article 272(1)(b) and (2) Simplified obligations	- - - - Article 410a Limitation in application of new rules Article 410b Assessment report
Entry into force	Article 2 Rules in place by 1 January 2014 and applicable from 1 January 2015	Article 2 Rules in place by 31 December 2018 and applicable from 1 January 2019

4. THE COMMISSION SERVICES' OPINION

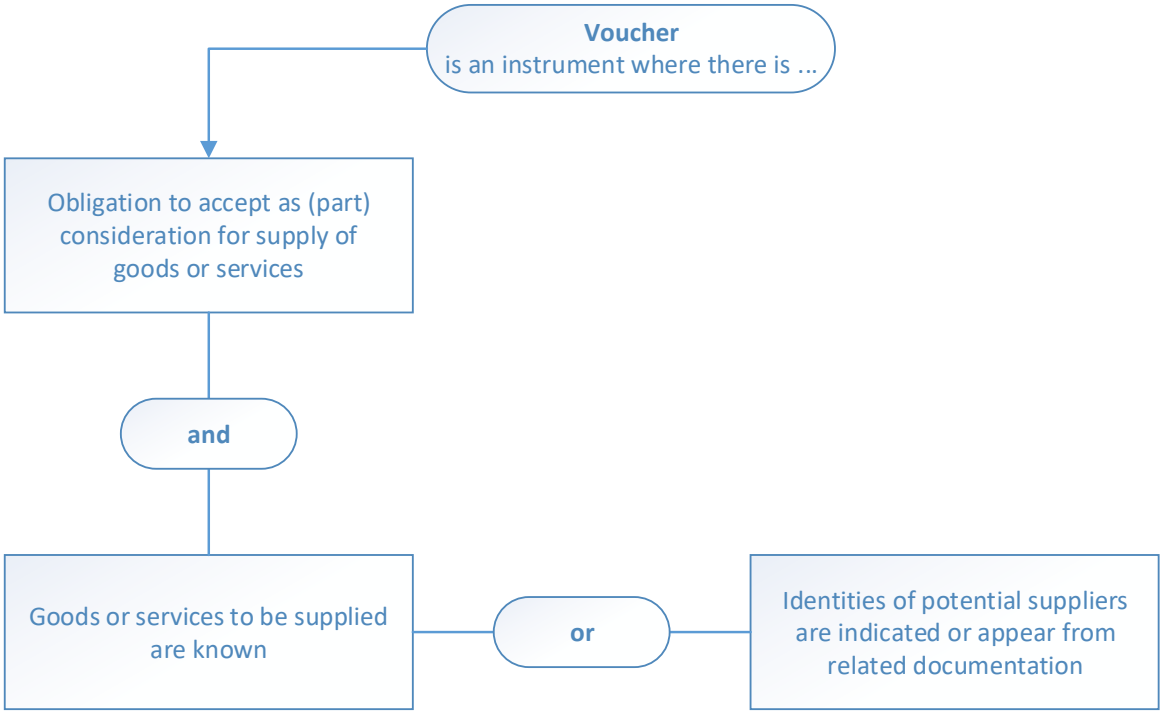
With a view to continue discussions, the Commission services have examined the questions raised with regard to vouchers. Those are to be addressed based on the Voucher Directive. Before turning to the questions at hand, it is therefore appropriate first to outline the voucher rules as adopted by the Council.

4.1. Outline of rules governing vouchers

4.1.1. Targeted by the new rules

Point (1) of Article 30a of the VAT Directive sets out a definition of the concept of a voucher. This definition, as illustrated below, frames what the new rules cover.

Figure 1: Concept of voucher



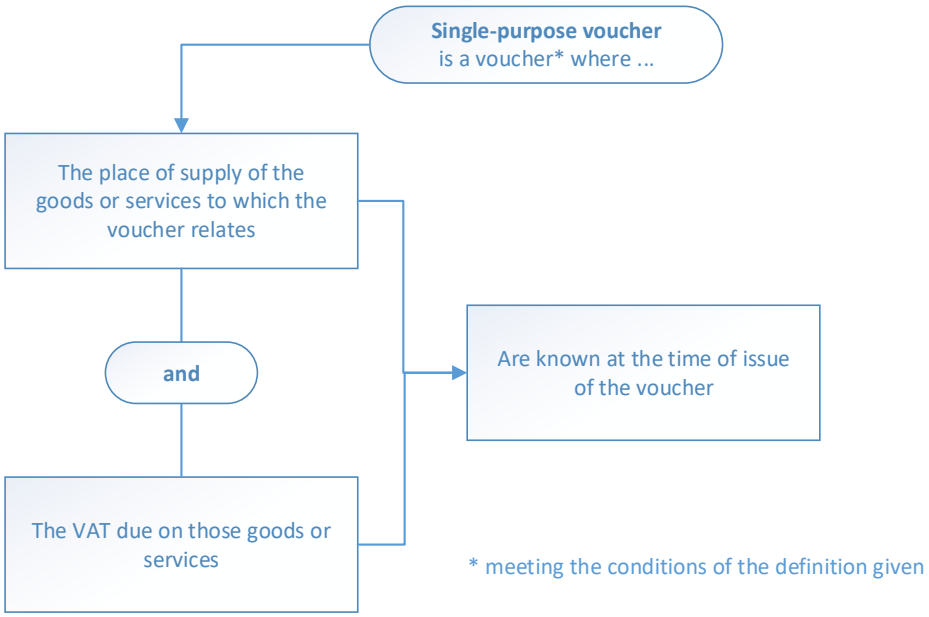
The Commission had proposed to define as a voucher any instrument that would be "carrying a right to receive a supply of goods or services, or to receive a price discount or rebate with regard to a supply of goods or services and where there is a corresponding obligation to fulfil this right".

During discussions in Council, the definition evolved. For an instrument to qualify as a voucher, in the sense of the VAT Directive, two conditions thus have to be met. Those are that the instrument must oblige the redeemer to accept it as consideration, whether in full or partly, for the goods or services supplied in return, and that it must give details of those goods or services or the identity of the potential suppliers.

4.1.2. Single-purpose vouchers and their treatment

It is necessary to distinguish between two types of vouchers. One such is the single-purpose voucher (SPV) for which point (2) of Article 30a of the VAT Directive provides a definition, as illustrated below.

Figure 2: SPV

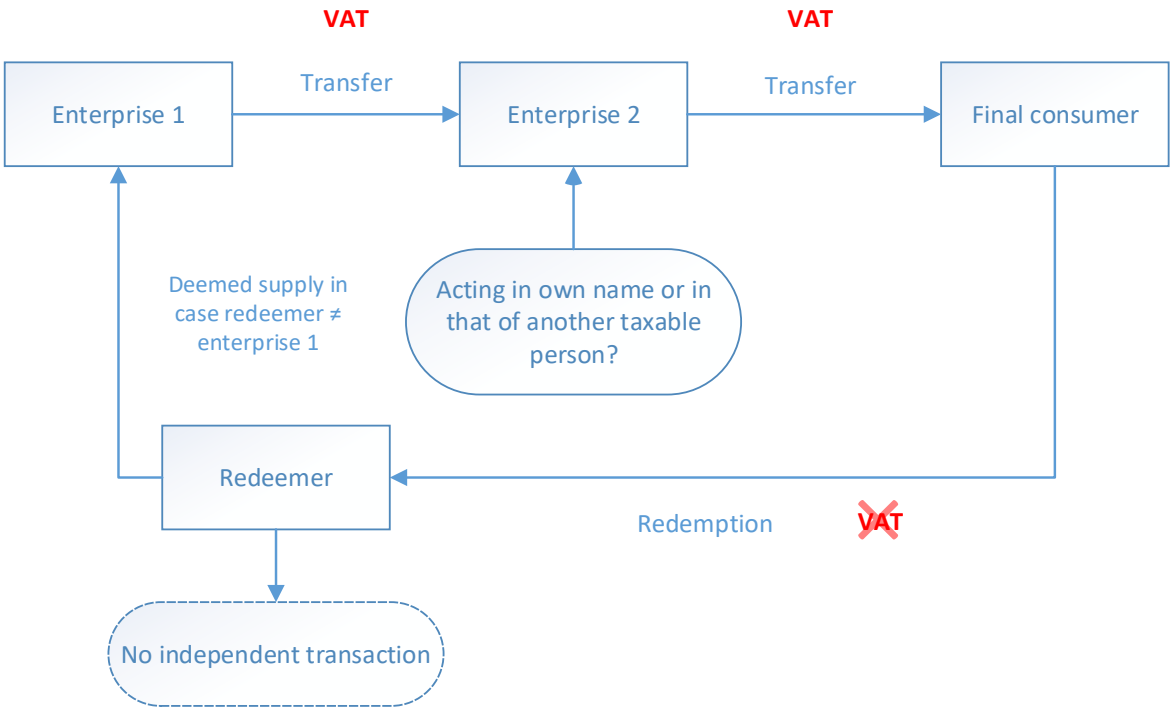


An SPV is a virtual or material document that embeds a right to receive a supply of goods or services where the place of supply and the VAT due in respect of these goods or services are known at the time of issue of the voucher, that is before its release for use.

This represents the simplest hypothesis for the use of a voucher as an instrument for carrying out a transaction relevant for VAT purposes. To qualify as an SPV, there however needs to be certainty about the tax treatment. That entails knowledge of *where* the goods or services to which an SPV entitles will be supplied and *what else* is needed to determine how much VAT will have to be paid in respect of those goods or services, subject to what is paid for the SPV.

Rules have been put in place by which SPVs are taxed up front rather than upon redemption. That explains the requirements that will have to be met in order for a voucher to be able to qualify as an SPV.

Figure 3: Rules governing an SPV



Article 30b(1) of the VAT Directive, in stipulating that each transfer of an SPV should be seen as a supply of goods or services to which it relates, provides a *fictio iuris* predicated on the *status* under which the transfer is made. Where the transfer of an SPV is undertaken by a taxable person acting in his own name, the transfer will be regarded as a taxable supply made by him (*first subparagraph*). If, on the other hand, the taxable person is a disclosed agent acting in the name of another taxable person, the transfer is regarded as having been undertaken by that other taxable person (*second subparagraph*).

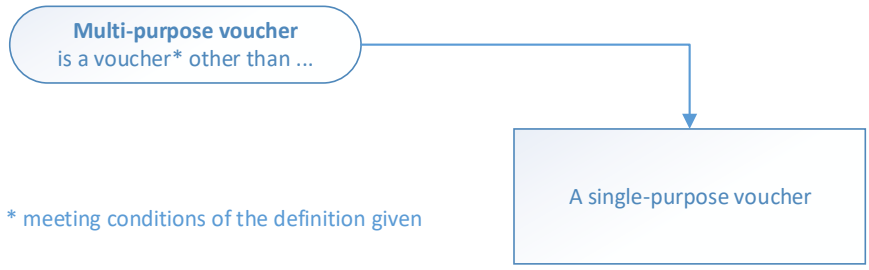
While each transfer of an SPV must be regarded as a supply of the underlying goods or services, the actual handing out of goods or services in return of an SPV is not seen as an independent transaction. Where goods or services are handed out by a taxable person other than the issuer of the SPV, that taxable person is however deemed to have supplied those goods or services to the issuer (*third subparagraph*).

According to Article 73 of the VAT Directive, the taxable amount of an SPV is the full price obtained in exchange of the voucher (which will include any intermediation service).

4.1.3. Multi-purpose vouchers

The multi-purpose voucher (MPV), which is the other type of voucher at stake, is defined by point (3) of Article 30a of the VAT Directive.

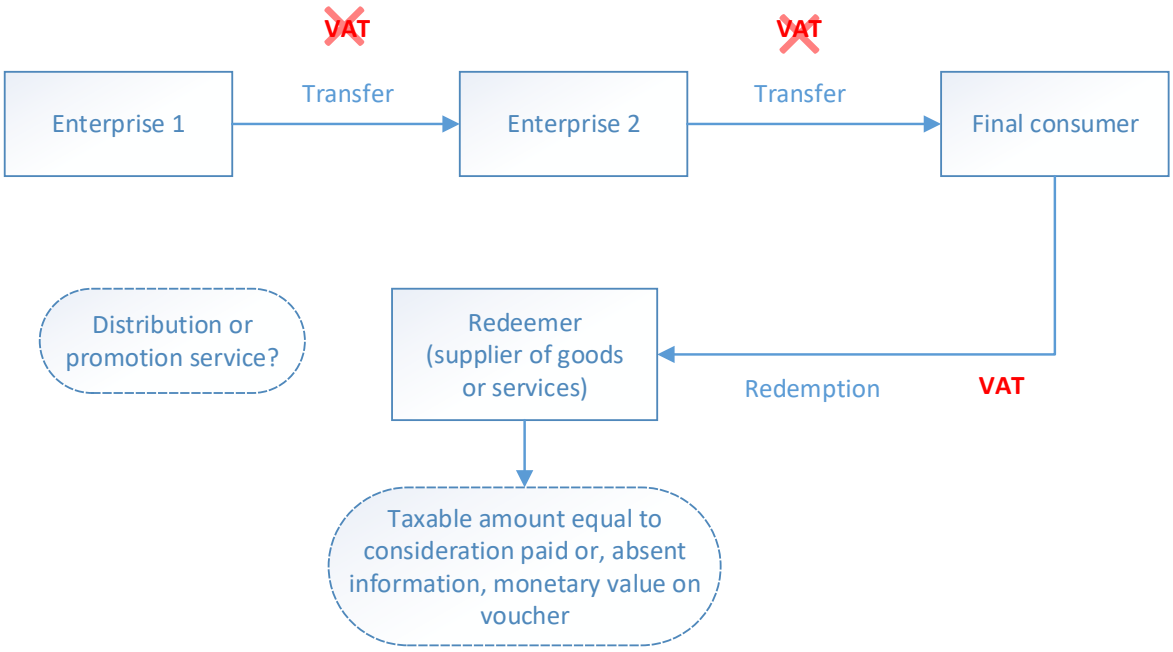
Figure 4: Concept of an MPV



The distinction between an SPV and an MPV lies in whether there is sufficient certainty for VAT to be charged at the time of issue of the voucher or whether it is necessary to wait until the goods or services are actually supplied (that is, when the voucher is being redeemed). Any instrument meeting the conditions for being a voucher whilst not falling under the notion of an SPV, must be considered to be an MPV.

Since the tax treatment of this single transaction should 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 follows from this that MPVs can only be taxed upon redemption.

Figure 5: Rules governing an MPV



An MPV entitles the holder to receive goods or services but the goods or services in question or the Member State where they are to be supplied and taxed, cannot be sufficiently identified such that the VAT due can be fixed at the time the voucher is issued. It is the reason why MPVs are only taxed upon redemption.

Details are set out in Article 30b(2) of the VAT Directive under which the actual handing over of goods or the actual provision of services by the supplier to the final consumer who remits the voucher to him as the total or partial consideration of these goods or services is taxable whilst any transfer of the MPV that precedes redemption is not subject to VAT (*first subparagraph*).

Where the transfer is made by a taxable person other than the actual supplier of the goods handed over or services provided by him to the final consumer, VAT may nevertheless be triggered on any supply of services identified such as distribution or promotion (*second subparagraph*). That construction ensures that the totality of taxable operations associated with an MPV – its distribution and supply of the underlying goods or services promoted through it – is captured and taxed in a manner which is comprehensive, neutral and transparent.

The taxable amount serving as a basis for the VAT to be collected by the tax authorities cannot exceed the consideration actually paid by the final consumer, which is the basis for calculating the VAT ultimately borne by that consumer[8]. For goods supplied or services provided in exchange of an MPV, a particular rule has been introduced, to be found in Article 73a of the VAT Directive, whereby a distinction should be made between situations where:

(i) consideration for the voucher is known: the taxable amount is then equal to the consideration paid;

(ii) such information is absent: in that case, the taxable base is the monetary value indicated on the MPV or shown in related documentation, less the VAT related to the goods or services supplied[9].

That particular rule does not extend to services identified as distribution or promotion the taxable amount of which will therefore need to be determined under Article 73 of the VAT Directive.

4.2. Interaction between the rules governing vouchers and other rules

Among the questions raised, one pertains to the line that needs to be drawn between a voucher for which rules have now been introduced and other instruments, notably utility tokens. As such, it seeks to clarify the scope of those new rules.

4.2.1. Vouchers and payment instruments

The distinction between a voucher (where the holder is given access to multiple goods or services) and a payment service (where the purpose is to facilitate spending of a prepaid credit for the purchase of goods or services in general, notably from third party providers) rests on whether or not the instrument in question entails a right to receive those goods or services.

8 CJEU, judgment of 24 October 1996 in case C-317/94 *Elida Gibbs*, EU:C:1996:400, paragraph 19.

9 The price is deemed to include VAT because the final customer has no right to deduct input VAT, while the intermediaries may have this right.

In order to draw a line between vouchers and means of payment in general, the Commission's proposal included a provision[10] that excluded from the definition of voucher payment services within the meaning of Directive 2007/64/EC[11], subsequently repealed and replaced by Directive 2015/2366[12] (Payment Service Directive). That provision was removed during negotiations in the Council.

However, what still has to be kept in mind is that according to the Payment Service Directive certain payment instruments covered by the limited network exclusion, such as vouchers, fall outside the scope of that Directive[13]. Therefore, it is clear that, according to EU legislation in the field of payment services, vouchers and payment services in any event have to be distinguished. In that particular field, the criterion used to distinguish vouchers, being a *specific-purpose instrument*, from instruments qualifying as payment services is that vouchers can typically be used only in a limited network and correspond exactly to the pre-defined goods and services embedded in it[14].

From a VAT perspective, the neutrality principle requires there to be a clear distinction between vouchers and, more in general, means of payment which takes account of their respective intrinsic nature. The need for such a distinction is confirmed by recital 6 of the Voucher Directive[15] with a view to accommodate for differences in VAT treatment. Where a means of payment acquires some of the characteristics associated with a voucher, it would thus be necessary to look closely at the essential nature of the instrument and how it operates. The redemption of a voucher against goods or services is not a payment but rather the exercise of a right subsequent to the payment, which was made when the voucher was first acquired or changed hands. On the other hand, where a credit stored or prepaid is used to meet the cost of goods or services, any entitlement to the goods or services in question will only be acquired when payment is made. Conceptually, this is fundamentally different from the exercise of an acquired right by the holder of a voucher.

Therefore, under the legal framework governing VAT, the criterion to be used in order to distinguish a voucher from a payment service is the specific purpose of the instrument leading to the supply of goods or services. A voucher is often issued to promote the supply of particular goods or services or facilitate sales of a particular supplier or a group of suppliers. In addition, the entitlement to receive goods or services (corresponding to an obligation for these goods or services to be supplied) plays a role in distinguishing

10 Article 30a(2) of the proposal.

11 Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

12 Council Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

13 See Article 3, point (k), read in conjunction with recital 14 of Payment Service Directive.

14 As established by the CJEU the face value of the voucher constitutes the consideration for the supply. See judgment of 24 October 1996, case C-288/94, *Argos*, paragraph 16, EU:C:1996:398.

15 *"6) So as to identify clearly what constitutes 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, in particular the nature of the entitlement attached to a voucher and the obligation to accept it as consideration for the supply of goods or services."*.

vouchers from general payment instruments (that do not contain any such specific entitlement).

In light of this, a voucher, as defined, cannot be considered a payment instrument for VAT purposes even if it might be seen a consideration for the underlying transaction as well. The entitlement to receive goods or services (corresponding to an obligation to supply these goods or services) plays a role in distinguishing a voucher from general payment instruments. Payment instruments fall outside the scope of the new voucher rules as they are considered as not having any specific entitlement attached[16]. This is a difference also confirmed by the related EU legislation laid down in the Payment Service Directive[17] which excludes from its scope payment instruments covered by the limited network exclusion like vouchers[18].

It could be argued that in the field of VAT, it is possible to resort to autonomous notions of EU law[19]. Still, it should be noted that the Commission recently proposed that a definition of the notion of "payment service" drawing on the Payment Service Directive, be included in the VAT Directive[20]. Also with that in mind, the notion of voucher and its interpretation should be the result of the combined reading of the two pieces of EU legislation. Therefore, any instrument whose purpose is merely the making of payments should be seen as falling outside the definition of a voucher for VAT purposes. For pure payment services, other VAT rules apply.

Another issue that deserves attention, albeit not featured among the issues raised, is the relation between the voucher rules and the exemptions laid down in Article 135 of the VAT Directive that provides for the VAT treatment of certain payment services. The categories of services covered by points (d), (e) and (i) of that provision present characteristics that might be also supplied through vouchers[21]. Moreover, such provision regulates a special exemption for payment services, which, being an exemption, override the rules on vouchers as explained in section 4.3.1 below.

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16 See recital 6 of the Voucher Directive.

17 See Annex I of Council Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

18 See recital 14 of the Payment Service Directive.

19 Advocate General Saugmandsgaard Øe in his Opinion of 21 March 2018 in case C-5/17 *DPAS*, , EU:C:2018:205, paragraphs 32 and 35 recalled the judgment in *SDC* where the CJEU defined the concept of a 'transaction concerning payments or transfers' in the context of the VAT system for the first time. He endorsed that based on that definition that the decisive criterion making it possible to identify there being a transfer clearly lies in the changes which take place in the legal and financial situation which are characteristic of the transfer of a sum of money. Stating that "In other words, a complex supply of services may be regarded as 'transactions concerning transfers' only where it has the effect of making the legal and financial changes which are characteristic of the transfer of a sum of money".

20 Proposal (1) amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers (COM(2018) 812 final) and (2) amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud (COM(2018) 813 final).

21 To provide an example, reference may be made to the judgment of 25 July 2018, case C-5/17, *DPAS*, where the company advised a dentist providing dental care services agreeing as a consideration a monthly fee.

This provision has to be taken into account when drawing the line between vouchers and payment services, because the consequence of an instrument being qualified as an exempt payment service is that voucher rules are not applicable.

4.2.2. Vouchers and tokens

Tokens are digital assets that can be used as virtual currency, as financial instruments similar to securities ("financial tokens") or as instruments representing goods and services ("utility tokens")[22]. Given their hybrid nature, doubts could arise as to which tax rules are applicable. Various different instruments may be considered to be tokens but at EU and international level, the difference between currency tokens, investment tokens and utility tokens is not clear. The first category refers to tokens used as a virtual currency; the second refers to tokens used as financial instruments; the third refers to tokens exchanged with assets. In particular, utility tokens can be used for the acquisition of goods or services either within a digital platform only or within a limited network of digital platforms. They are transferred on a peer-to-peer basis, and due to the fact that they can be exchanged with goods and services it seems that they could be comparable to vouchers. As long as there is no EU regulation to define the notion of utility tokens, it is not possible to know with certainty their essential characteristics (in fact, it is recognised that tokens can be hybrid instruments). However, experts in general consider them to be crypto assets that can be traded on a specific market and represent an alternative model to traditional venture capital funding[23].

The Policy Department of the European Parliament carried out a study on Cryptocurrencies and blockchain[24], which provides a definition of utility tokens as digital instruments that "*grant their holders (future) access to specific products or services. They can be used to acquire certain products 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*"[25].

From the study, it seems that utility tokens have a hybrid nature as they can be compared to digital coins, and they also have an investment component, as they are traded, and hence sold at a profit, in the community of token holders[26]. They are mostly used in a form to ease payment across borders, or to provide access to a product on the block chain. In substance, they confer rights to use or consume certain products developed by the issuing company and deposited on the block chain but they can also be traded being an autonomous source of profit without relation to any entitlement to goods or services embedded in the token.

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22 https://en.bitcoinwiki.org/wiki/Token

23 For more information on their possible qualification as a crypto asset used in financial markets, see ESMA, Own Initiative Report on Initial Coin Offerings and Crypto-Assets, 19 October 2018.

24 Study requested by the TAX3 committee: Cryptocurrencies and blockchain – Legal context and implications for financial crime, money laundering and tax evasion, July 2018.

25 Ibid., p. 23-24.

26 Hacker, Philipp and Thomale, Chris, Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies under EU Financial Law (November 22, 2017). 15 European Company and Financial Law Review 645-696 (2018). Available at SSRN: https://ssrn.com/abstract=3075820 or http://dx.doi.org/10.2139/ssrn.3075820

In light of the characteristics of utility tokens as summarised above, due to their uncertain nature, such tokens could possibly be seen as e-money, a payment service, a security or a voucher. Therefore, it is necessary to assess how utility tokens should be qualified under VAT and other EU legislation.

As to the qualification as a payment service, regard has to be had to the Payment Service Directive that excludes from its scope *payment instruments used only in a limited network as a* specific-purpose instrument. As utility tokens can generally be used only on a designated token platform, they will be limited to a certain community involved in a specific process. Therefore, they cannot be considered to be a service payment which in itself would have seen them fall outside the scope of the new voucher rules.

Regarding the qualification as e-money or cryptocurrency, reference should be made to previous discussions of the VAT Committee on the VAT treatment of Bitcoins[27]. On that occasion, the Commission services, in line with the CJEU[28], found that e-money and cryptocurrencies could be considered to be an exempt supply of services falling under Article 135 of the VAT Directive depending on the actual use made of the instrument. Considering the multiple use given to utility tokens, it is not possible, however, to establish *a priori* whether they could be qualified as e-money instead of a negotiable instrument or a security.

Regarding the qualification as a voucher, albeit utility tokens are comparable in some respects, in particular because they are susceptible to embed an entitlement to goods or services, it is still necessary to verify if all the conditions laid down by the definition given of a voucher are met. As outlined above, considering the differences between payment services and vouchers, the conditions to be met by an instrument in order for it to qualify as a voucher are, according to Article 30a(1) of the VAT Directive, that there is an obligation to accept it as consideration for a supply of goods or services and that details of those goods or services or the identity of the potential suppliers are indicated or available.

First of all, it has to be noted that the issuer of a utility token may not deliver the goods or services as it represents goods or services, which do not exist at the moment of issue of the token and may in fact never materialize. The consequence of using the utility token to purchase future goods or services could be the lack of its redemption. Such a situation is however also possible in the context of vouchers, where a voucher may be purchased but never redeemed.

However, the difference between the two instruments could be found in the fact that a voucher, which can no longer be redeemed, is deprived of its value, as it is strictly linked to the goods and services embedded in it, while the utility token can continue to be traded in a secondary market, as the instrument has multiple functions further to that of being considered the consideration for a supply of goods or services. Therefore, the first condition related to the obligation of considering the token as a payment for a supply of goods or services is unlikely to be met.

[27] Working paper No 854, *VAT treatment of Bitcoin and digital currencies*.
[28] CJEU, judgment of 22 October 2015 in case C-264/14 *Hedqvist*, EU:C:2015:718.

As regards the second condition on details provided on the goods or services exchanged or the identity of the potential suppliers, it has to be noted that such details are not required for use of the instrument as it is secured by cryptography and only the identity of the issuer in the sense of being the platform where the tokens can be exchanged (but not other platforms) is known. For this reason, also the second condition to qualify a utility token as a voucher seems not fulfilled.

Based on the analysis carried out, the Commission services believe that the arguments that could lead to utility tokens qualifying as a voucher are that:

– they can be exchanged with goods or services;

– they can be used only in a limited network.

On the other hand, the arguments that could lead utility tokens to being excluded from being treated as a voucher are that:

– 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 a secondary market;

– there may be a lack of sufficient detail of the goods supplied or the services provided, or of the identity of the potential suppliers taking part in the chain, as otherwise needed;

– in certain situations they operate as cryptocurrencies and therefore could be considered to be payment services.

4.3. Interaction of rules on vouchers with other provisions of the VAT Directive

Another question raised touches on how the voucher rules are to be applied where other provisions may come into play. That is relevant, for instance, where a voucher incorporates exempt services. It thus seeks to clarify the interaction of various rules of the VAT Directive.

4.3.1. Vouchers and exemptions

The provisions regarding vouchers, as integrated in the VAT Directive, are general rules falling under Chapter 5 of Title IV (*Taxable transactions*) and they are common to Chapters 1 and 3 of that Title. These must not be interpreted as an exception to the general rules. Therefore, the principle of strict interpretation that applies to provisions entailing an exception to the general rules (e.g. exemptions or reduced rates) does not apply to the definition of vouchers or associated rules.

The provisions on vouchers should not affect the application of other provisions of the VAT Directive but are to be applied on the basis of an objective assessment of the conditions provided therein. For instance, the fact that a voucher is used to redeem an exempt supply of services should not change the VAT treatment of that supply. However, to be able to exempt a supply related to a voucher from VAT, the conditions for the exemption provided for in the VAT Directive still need to be satisfied.

The new rules could raise doubts about the correct VAT treatment of a transfer of a voucher relating to an exempt supply. As the transfer of an MPV is not subject to VAT, the question raised is relevant only as concerns SPVs.

Article 30b of the VAT Directive stipulates that each transfer of an SPV by a taxable person acting in his own name must be regarded as a supply of goods or services to which the voucher relates and that the actual handing over of goods or provision of services shall not be regarded as an independent transaction.

Some Member States have expressed the view that any transfer of an SPV incorporating an exempt supply should automatically follow the same VAT treatment of that supply and therefore be exempt from VAT irrespective of whether the taxable person transferring the voucher meets the conditions for the exemption (e.g. medical services). The main reason for this interpretation seems to be that as an SPV can only be redeemed by a specific supplier for a particular good or service that ultimately hands out the good or provides the service and in doing so qualifies for exemption, the SPV should also be subject to exemption. Therefore, in the opinion of these Member States the actual redeemer of the voucher should be the person that has to qualify for the exemption.

It is reasonable to suppose that since the transfer of an SPV and the supply of goods and services to which the voucher relates cannot be regarded as separate transactions, the VAT treatment of the transfer should be identical to that which the underlying supply entitles to. This also reflects the fact that each transfer of an SPV constitutes a taxable event while the actual handing over of the goods or provision of services in return for the SPV is not treated as an independent transaction.

However, the Voucher Directive did not set specific rules governing the tax treatment of transactions related to an SPV[29] and therefore it cannot be assumed that the exemptions provided for in Article 132 of the VAT Directive should apply automatically to such transactions when and if the subjective conditions provided therein are not fulfilled. Any such interpretation would allow, through the use of vouchers, to circumvent certain provisions of Article 132 of the VAT Directive and may eventually lead to an extension of the exemptions.

4.3.2. Vouchers qualifying as SPVs and incorporating exempt services

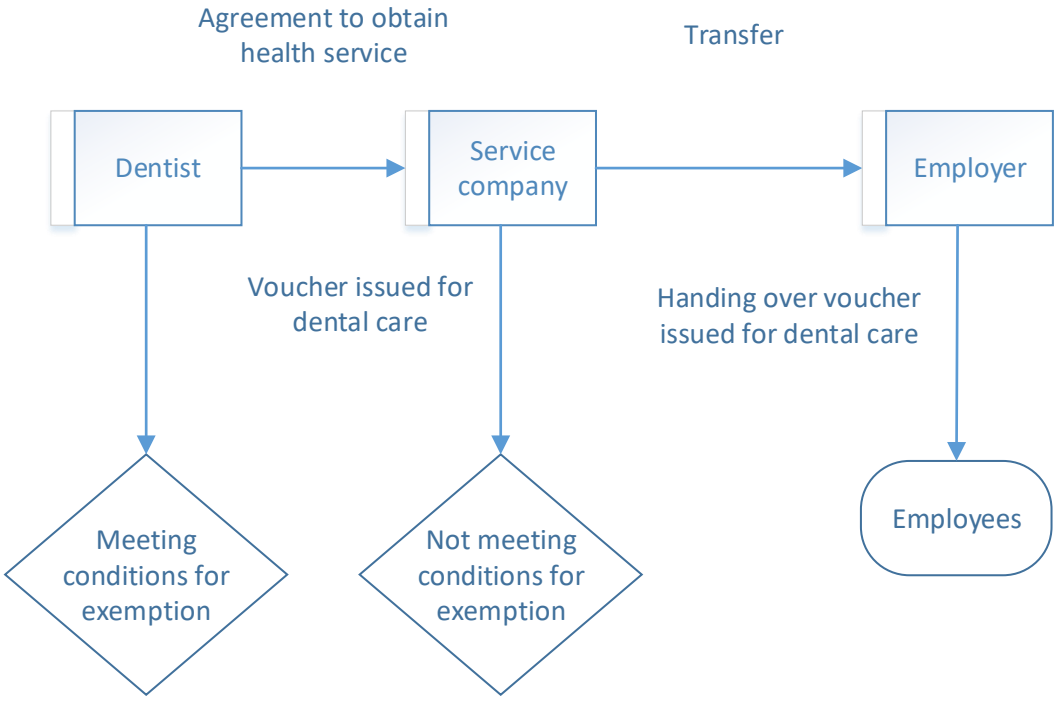
One example raised concerns a service company that issues on-line SPVs granting the right to obtain dental care services to be provided by dentists belonging to a network of professionals with whom the company has an agreement. The company sells those vouchers to employers of the end-users who will be the real beneficiaries of the dental care services.

[29] The Commission proposal included specific provisions for vouchers in other sections of the VAT Directive (e.g. in regard to chargeability and deduction) and clearly stated that the transfer of an SPV and the subsequent supply of goods and services were to be regarded as a single transaction subject to the same treatment of the underlying supply (Article 30b of the proposal).

In the particular case:

- The beneficiaries may identify the dentist through the company's on-line platform;
- The nominal value and the type of the service are indicated on the voucher;
- The dentists' network issues periodical invoices to the company for the dental care services rendered to the end-users while the company in its turn issues periodical invoices to the employers for an amount equal to the sum of the nominal value shown on each voucher.

Figure 6: Example of dental care



According to some Member States, the transfer of the SPV by the service company to the employers in question should be subject to the same VAT treatment as that of the underlying service and therefore it should be exempt under Article 132(1)(e) of the VAT Directive.

The Commission services are however, of the opinion that the transfer of an SPV should only follow the VAT treatment attributable to the supply to which the voucher relates when such a treatment is determined by the nature of that supply (objective conditions).

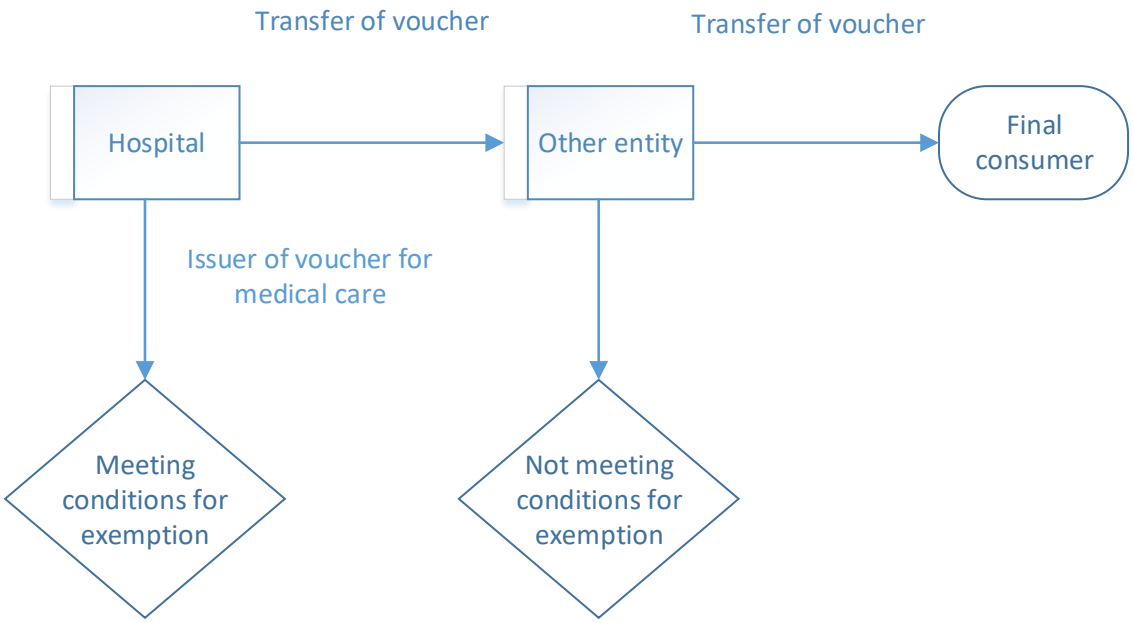
In the specific case, the company presumably transfers the SPV acting in its own name. If so, the company will, as set out in the first subparagraph of Article 30(1) of the VAT Directive, be regarded as having supplied the services to which the SPV relates (dental care). Had the services been supplied with no use being made of a voucher, the company would, as a result of the legal fiction to be found in Article 28 of the VAT Directive, also be seen as having received and supplied the services in question.

In order for the exemption provided for in Article 132(1)(e) of the VAT Directive to apply, the supplier, in this case the company, will have to meet the subjective condition, that is being a dentist or a dental technician acting in his professional capacity. If that is not the case, the company has to charge VAT on its invoices as only dentists and dental technicians are eligible for the exemption of dental care services supplied in return of an SPV.

If, as an intermediary, the company were to act in the name of the dentists' network, the exemption would be applicable to the transfer made by the company to employers of the end-users as it would be regarded as a supply made by the dentists' network according to the second subparagraph of Article 30b(1) of the VAT Directive. The outcome would be the same if there were no voucher used as the legal fiction of Article 28 of the VAT Directive is not applicable.

Another example could be one where a hospital issues an SPV relating to pre-determined medical services to be provided by qualified medical personnel of the hospital.

Figure 7: Example of medical care



In that case, it is difficult to see how the exemption under Article 132(1)(b) of the VAT Directive could apply to the transfer of the SPV made by the hospital, whether or not it is acting in its own name. That is so since application of the exemption is always conditioned on a subjective constraint lying in the relation between the medical personnel and the patient[30]. The hospital is the only one in the transfers made of the voucher that meets with the subjective condition but as the exemption only applies to medical care supplied directly to the patient in need of attention and this only happens when the voucher is redeemed, the basic condition of exemption is unlikely to be met. As the entity to which

[30] On the relation between the medical personnel and the patient justifying the application of the exemption reference should be made to CJEU, judgment of 18 September 2019, C-700/17, *Peters*, EU:C:2019:753. From this case, it could be inferred that in all transactions where such relation between patient and practitioner is absent the exemption may not be applied.

the SPV is transferred is not in that situation, it could not benefit from exemption either. It is not clear whether the exemption could be sustained if in transferring the voucher the entity would act in the name of the hospital.

The reason why only the supply of medical care services between a hospital, paramedics or other qualified entities and the patient is VAT exempt lies in the need of strict application of the exception to the general rule. The moment anyone or anything falls outside of the context of points (b) or (c) of Article 132(1), there is no right to exemption. For instance, vouchers do not fall within the scope of medical care, nor are hospitals or paramedics upon issue of a voucher actually providing medical care. As confirmed by the interpretation given by the CJEU the delegation or auxiliary provision of VAT exempt medical services is not possible by the provision itself, even when considering vouchers. This reasoning stems from the case law on medical services provided by third parties which is subject to VAT[31].

4.3.3. Vouchers and special schemes

Before turning to the question raised in regard to one of the special schemes to be found in the VAT Directive, preliminary remarks should be made taking into account the legal system of VAT as a whole. It is common ground that different VAT rules may be seen as overlapping when it comes to the treatment of complex issues. However, the structure and the system of the VAT Directive impose certain criteria for the application of its provisions that prevent one rule from overriding another based on a case-by-case analysis.

In particular, there is a need to clarify how special schemes, which are derogations to the general rules addressing certain economic activities or certain persons, interact with the rules which clarify the VAT treatment of transactions involving vouchers.

The special schemes are an exception to the normal rules and should therefore only be applied to the extent required to achieve the objectives aimed at by each scheme[32].

In addition, the CJEU has held that special schemes should be applied in a consistent manner to ensure the neutrality of the VAT system[33].

As explained in section 4.3.1, the provisions regarding vouchers are general rules and therefore they cannot be interpreted as an exception that must be applied strictly.

The Commission services, in this context, are of the view that in order to achieve the objectives of a special scheme, its rules may, if need be, prevail over the application of the voucher rules.

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31 CJEU, judgment of 20 November 2003, *d'Ambrumenil*, C-307/01, paragraph 61 where the CJEU considered that the principal purpose of the service is not to protect the health of the person to whom the report relates, even if the person carrying out the service must make use of her medical competence and perform an examination of the person in question.

32 CJEU, judgment of 29 July 2019, case C-388/18 *B (Chiffre d'affaires du revendeur de véhicules d'occasion)*, EU:C:2019:642, paragraphs 37-40

33 This position takes into account settled CJEU case-law dealing with the interaction between special schemes and the general rules of the VAT Directive, in particular CJEU, judgment of 2 May 2019, case C-265/18, *Jarmuškienė*, paragraph 27, EU:C:2019:348.

Albeit the question is raised in regard to the SME scheme in particular[34], this hierarchy of the rules should be followed also when other special schemes are involved (e.g. second-hand scheme, investment gold scheme and travel agent scheme).

Regarding the travel agent scheme set out in Articles 306 to 310 of the VAT Directive where vouchers often play a major role, it should be noted that it is a particular scheme which is mandatory. That is due to the specific nature of the activity of travel agents that entails practical difficulties for the application of the normal rules on place of taxation, taxable amount and deduction of input tax[35]. The main objective of that special scheme is simplification of the rules for the travel industry due to its unique nature. Although the package of services provided by travel agents could appear comparable to the services provided through certain vouchers (e.g. city cards), it must be borne in mind that the special scheme can be applied only where certain conditions are met (which are different from the conditions provided for vouchers) and it has as a main effect that the travel agent acts as a collection point for the (mainly foreign) tax charged by the various suppliers to whom the travel agent entrusts elements of the travel package[36]. That main effect is completely different from the taxation mechanism applied to vouchers[37].

Therefore, the Commission services, also for the sake of consistency with the original proposal for the Voucher Directive, are of the view that where the conditions for the travel agent scheme to apply are met the voucher rules cannot be applied even if goods supplied or services provided by way of a voucher could be seen as comparable[38]. Otherwise, the voucher rules would override what is a mandatory scheme.

4.3.4. Interaction with the SME scheme

A question is raised in relation to the "simplified" VAT scheme laid down in Articles 281 *et sec.* of the VAT Directive. In particular, the question relates to the issue or transfer of an SPV by a taxable person who avails himself of the exemption scheme. The view taken 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.

According to the Commission services, various scenarios could arise. Some of those are featured below.

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34 The objective of the SME scheme is to simplify accounting requirements of small businesses aimed at strengthening their creation, activity and competitiveness. See on this point CJEU, judgment of 29 July 2019, case C-388/18, *B (Chiffre d'affaires du revendeur de véhicules d'occasion)*, paragraph 42, EU:C:2019:642 and CJEU, judgment of 2 May 2019, case C-265/18, Jarmuškienė, paragraph 37, EU:C:2019:348.

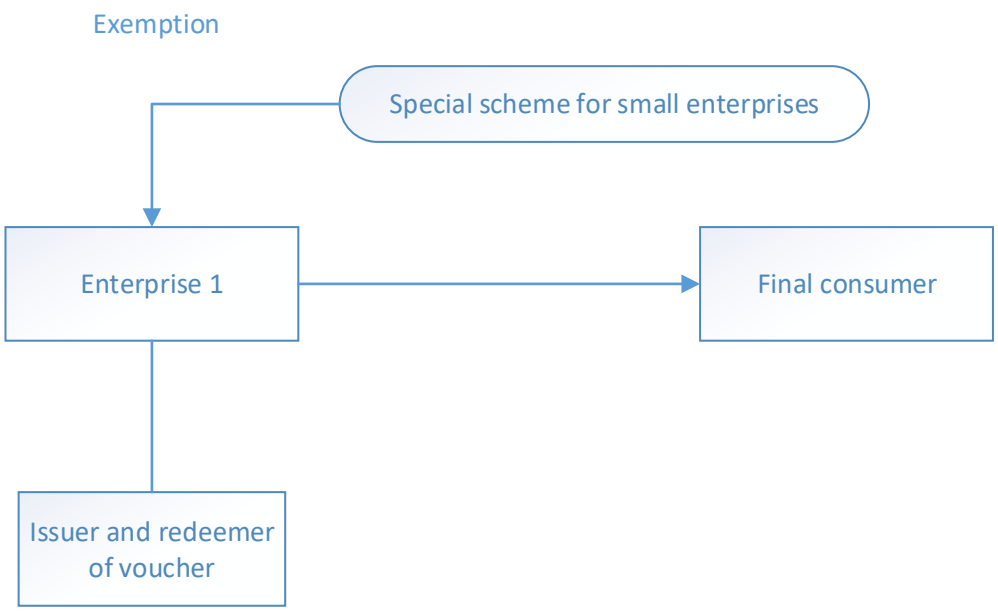
35 Study on the review of the VAT Special Scheme for travel agents and options for reform, page 26.

36 CJEU, judgment of 26 September 2013, case C-189/11 *Commission v Spain*, paragraphs 58-59, EU:C:2013:587.

37 The taxable amount is the profit margin realised by the agent on the supply i.e. the difference between the price paid by the traveller (exclusive of VAT) and the actual cost to the agent of supplies and services provided by other taxable persons where these transactions are for the direct benefit of the traveller.

38 "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", see Article 30b of the initial proposal (COM(2012) 206 final).

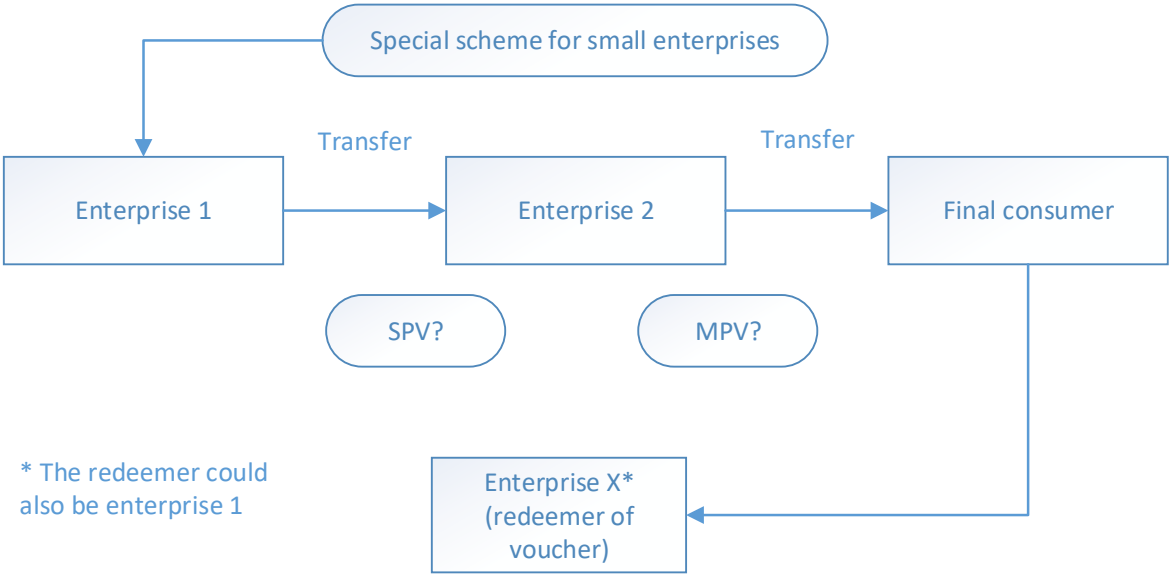
Figure 8: Case where SME exemption is not affected



As the special scheme is connected to the status of the taxable person requiring certain conditions to be met for exemption to apply, and that person in this case scenario is the issuer and redeemer of the voucher which is transferred directly to its user, it is reasonable to consider that the goods or services included into the voucher will be exempt. The exemption is not, in the given scenario, affected by the use of a voucher, be it an SPV or an MPV.

Should the voucher be an MPV which could be so if the place of supply is not known upon issue of the voucher, attention should however be paid to the delay that sees it subject to VAT (or not) only upon actual handing out of the goods or actual provision of the services, that is when the MPV is redeemed. That could see a shift in the tax treatment if, at that moment in time, the taxable person is no longer eligible for exemption.

Figure 9: Case where SME exemption could be affected



As the special scheme is connected to the status of the taxable person requiring certain conditions to be met for exemption to apply, and that person is the issuer of the voucher, it is reasonable to consider that when the goods or services are included into the voucher, they are exempt.

The exemption provided for under the special scheme should however not impact the nature of a voucher according to Article 30a of the VAT Directive.

Whether the exemption could be affected in the above case scenario, which involves a distribution chain will largely depend on the status of the voucher. If it is an SPV, the transfer made by enterprise 1, covered by the special scheme, will be exempt of VAT whilst the transfer by enterprise 2 will not, unless that enterprise is also covered. Should it instead be an MPV which, as said above, could be the case if the place of supply is not known, enterprise 1 should be able to avail of exemption when, as a supplier, it hands over the goods or provides the services in return for the voucher. If the MPV is redeemed by someone else who is not eligible for exemption under the special scheme, that would not be the case.

4.4. Vouchers and the special case of city cards

During the 112th meeting of the VAT Committee, brief exchanges were also held on issues related to the VAT treatment of so-called city cards[39]. Member States were invited to share their views on the topic and to express whether in their opinion the VAT treatment of city cards merited a closer examination by the VAT Committee in the future.

Following the initial responses of Member States, different views on the VAT treatment of city cards are possible: while some suggest a case-by-case approach, others question the application of the voucher rules *per se* in the case of city cards.

Therefore, the Commission services consider it appropriate to examine the existing rules applicable in the case of city cards and potential questions one could face when applying those rules.

4.4.1. What is a city card?

A city card is an instrument whose purpose is to promote a specific region by typically granting its holder the right to visit several touristic attractions and/or use its public or private transport services.

In most cases, city cards can be purchased for one or several days and include one or more of the following:

- Private or public transport
- Free or reduced price for access to touristic attractions such as museums, amusement parks, other sights
- Gifts
- Reductions when purchasing goods or services

[39] Information paper on the VAT treatment of "city cards" (taxud.c.1(2019)2690215).

The question concerns the VAT treatment of so-called "city cards", which typically grant their holders the right to access several touristic attractions once purchased and consequently goods and services subject to different rates, some of which could even be exempt of VAT, which are supplied within the same territory. This could lead to practical difficulties in determining how much of the price has to be allocated to each attraction included. In particular, it is tabled whether such instruments would qualify as vouchers for the purposes of Article 30a of the VAT Directive and, if so, which type of voucher (i.e. SPV or MPV). According to those having put forward this issue, divergences in the VAT treatment of such products could lead to double taxation.

It should be noted that the Voucher Directive, contrary to the original proposal[40], excludes from its scope any instrument that entitles the holder to a discount upon purchase of goods or services, without giving the right to receive such goods or services[41]. The exclusion is based on the assumption that although a discount showing on the voucher may be granted at the moment of the purchase, the discount in itself cannot be considered the consideration for the purchase.

That does not entail that a city card which contains an obligation for it to be accepted as consideration whilst also enabling the holder to obtain a discount, would not qualify as a voucher. It is all in the nature of a voucher to grant access to reduced prices as this is an instrument often used to promote the supply of goods or services embedded in the voucher. In case a city card only entitles its holder to obtain a reduction in price of touristic attractions without granting actual access, the city card cannot be considered a voucher for VAT purposes as it does not meet the conditions as explained in section 4.1 of this paper. Therefore, that type city card will not be addressed in the following analysis.

4.4.2. Does it qualify as a voucher and if so, is it an SPV or an MPV?

Before the entry into force of the Voucher Directive in 2019, the main question concerning the VAT treatment of a city card was whether it could be qualified as a voucher or whether it only concerns the transfer of a right which is to be treated as a service.

Although this dates back quite a while, the issue is not new to the VAT Committee that already discussed how to deal with travel and entertainment cards issued by certain organisations[42]. At that time, the cards enabled the holders to purchase, in a number of shops and in a number of countries, goods and services without paying cash at the time of purchase. The organisation issuing the cards subsequently paid to the seller of goods or services the money due to him, while the holder of the card was only obliged to pay his debt to the issuer. In this context, the VAT Committee was in favour of qualifying the granting of credit for those services, supplied by the issuing organisation to the cardholder,

[40] The proposal included a special provision for discount vouchers which was not retained.

[41] Recital 4: "*Only vouchers which can be used for redemption against goods or services should be targeted by these rules. However, instruments entitling the holder to a discount upon purchase of goods or services but carrying no right to receive such goods or services should not be targeted by these rules*".

[42] Working paper No 19 *Common VAT arrangements applicable to "travel and entertainment cards" issued by certain organisations*

as exempt[43]. However, a guideline on the main elements that must be an essential part of a city card was never agreed.

As set out in the explanatory memorandum of the proposal "*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*".

The hybrid nature of city cards that could include the entitlement to enjoy various goods or services, which may be subject to different VAT treatment (rates, exemptions), adds complexity to the qualification of any such instrument and the determination of the related taxable amount. This is the reason why Member States took different views on how to qualify city cards. This situation shows that there is no common understanding of the basic content of what for commercial purposes is considered a city card. The overarching question in this context is how it is possible to include into the scope of specific rules on the tax treatment of certain supplies something that has no precise legal structure as city cards.

In the await of more clarity on the operation of such instruments, two main options might be explored as possible treatment of city cards for VAT purposes: (i) city card as a voucher; (ii) city card as a service not captured as a voucher.

(i) City card as a voucher

The rules laid down in the Voucher Directive require that certain conditions are met for their application as explained in section 4.1.

City cards are likely to meet the conditions for qualifying as vouchers. While this may be so, it is not possible to determine *a priori* whether city cards must be seen as SPVs or MPVs. It has not been possible to find a correspondence between the instrument represented by city cards and the range of supplies and their exact nature that could be offered by such cards.

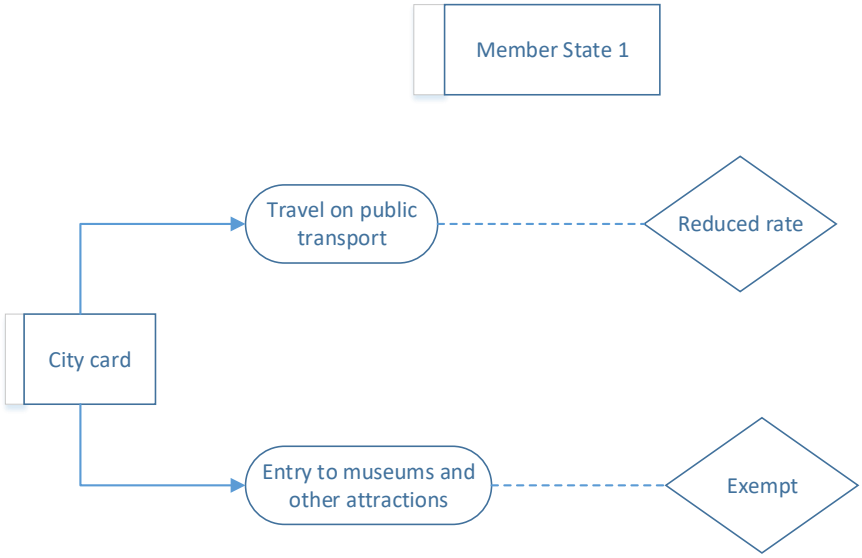
Should a city card only cover goods and services that are taxed at the same rate, it is likely to qualify as an SPV. Where, on the other hand, a city card grants access to a mix of taxed and exempt supplies, such would favour it being qualified as an MPV. Still, as the composition of what is offered through city cards varies and information is lacking about the conditions governing the construction, it is not possible to reach a final conclusion.

Another criterion that should be taken into account for the qualification of a city card as an SPV is that the place of supply must be known at the time of the issue of the voucher (i.e. the place where the goods are actually supplied or services are actually provided). If this information is not available, the city card would instead need to be considered an MPV. In

[43] Guidelines resulting from the 10th meeting of 23-24 October 1980 XV/353/80:"*The Committee was in favour of exempting under Article 13(B)(d)(1) (granting of credit) of the 6th Directive those services supplied by the issuing organisation to the card holder. The large majority of delegations were also in favour of exempting under Article 13(B)(d)(2) (guarantee of payment) supplies of services between issuing organisations and dealers. The Committee did however state that option under Article 13(C) might result in inevitable distortions*".

that context, also the VAT due is influenced, as it does not depend only on the rate applied.

Figure 10: One possible scenario of city cards



For that reason, the Commission services believe that only a case-by-case analysis approach could ensure a neutral application of VAT rules. Factual circumstances are crucial in order to assess the bundle of elements characterising each individual city card and to qualify its operation as an SPV or an MPV.

It should be noted that most city cards include what could be perceived as tickets for admission and transport, which according to the Voucher Directive, should follow the general treatment provided by the VAT Directive for supplies of goods and services. However, the fact that a city card does not only give right to admission and/or transport services, but also to a whole range of other goods or services should be taken into account. In such case, there should be no splitting and the treatment should be unique for the whole city card: here again, it will depend on the concrete features of each city card.

(ii) City card as a service not captured as a voucher

The other possible qualification of a city card is as a service related to the visit and enjoyment of certain places. It has to be noted that the VAT Directive provides specific rules[44] on the place of supply of transport services or for the admission to cultural and entertainment events that are considered supplies of services as well. The general rule is that such services are to be taxed where the transport takes place or where the event actually takes place. Consequently, the rate that should be applied is the rate of the Member State where the service is provided. Moreover, a city card could be considered a supply of services where VAT is paid upon purchase.

This scenario that may imply the city card not being seen as a voucher could lead to the qualification of certain services as a ticket. However, it should be borne in mind that the VAT Directive and the related case law does not provide for any notion of tickets that could be used for the qualification of certain supplies of services.

[44] See Chapter III, subsections 3 and 4 of the VAT Directive.

For that reason, recalling recital 5 of the Voucher Directive which states that the provisions regarding vouchers should not trigger any change in the VAT treatment of transport tickets, admission tickets to cinemas and museums, postage stamps or similar, is not helpful for the qualification of transactions stemming from a city card. Such instruments are considered to represent proof that a payment was made for a future transaction (e.g. admission to a means of transport that ensures that the holder is transported to the agreed destination; admission to a cinema to watch a certain film on a certain date at a certain time; to be admitted to a museum and to have mail sent to a specific destination).

The recital reflects the position of the Council that adopted the proposal in that regard. However, as the CJEU clarified in its interpretation in a recent case "*it is settled case-law that the preamble to an EU-law act has no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording*"[45].

Therefore, even if the Commission services believe that the rules on the treatment of vouchers and treatment of transport tickets should not interfere with each other, it does not mean that if a city card cannot be qualified as a voucher, it should be treated as a ticket or *vice versa*. In other words, the rule applicable to each case should be the rule that ensures the highest level of neutrality and legal certainty.

It could be argued that application of the voucher rules addresses the need to find an arrangement for the taxation of multiple supplies. However, in case of multiple supplies provided through a city card it has to be recalled that the settled case law of the CJEU related to complex and ancillary supplies[46]. The mentioned doctrine developed by the CJEU, even if not codified, is binding, and can be considered a useful tool for the determination of the VAT applicable to such composite supplies, also where different rates are applicable to different goods or services.

In conclusion, the Commission services are of the opinion that, if according to the factual circumstances, a city card can be qualified as a multiple supply of services, the case law on complex supplies should be followed.

5. DELEGATIONS' OPINION

Delegations are invited to give their opinion on the various questions.

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[45] CJEU, judgment of 13 March 2019, case C-647/17 *Srf konsulterna*, EU:C:2019:195, paragraph 32, and judgment of 13 September 2018, Česká pojišťovna, C-287/17, EU:C:2018:707, paragraph 33.

[46] CJEU judgment of 18 January 2018, case C-463/16, *Stadion Amsterdam*, EU:C:2018:22.