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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 993

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 - further analysis**

1. INTRODUCTION

At its meeting on 2 December 2019, the VAT Committee had the occasion to examine and discuss[1] questions previously raised by a delegation and by stakeholders in another Commission Expert Group regarding the application of the new rules on vouchers[2] and their interaction with other rules of the VAT Directive[3].

From discussions, it seemed that Member States shared some of the views and concerns expressed by the Commission services but other aspects of the application of the voucher rules proved more controversial, and hence the need to examine the issue further. Apart from elaborating on some of the more controversial points, this paper also covers questions raised during the meeting, which were not specifically dealt with in the previous analysis.

2. SUBJECT MATTER

In the previous Working paper[4], the Commission services endeavoured to provide guidance on some aspects of the application of VAT rules on vouchers. To arrive at a common understanding of the concept of vouchers and reach a common approach by Member States as to their VAT treatment, further clarification is needed.

The scope of the new legislation, that is the Voucher Directive[5], and the notions included in it (e.g. difference between single-purpose vouchers (SPVs) and multi-purpose vouchers (MPVs)) were developed in Section 4 as the main part of that Working paper and should be considered as basis for the case-by-case assessment of each issue.

Although some issues were largely endorsed by the delegations recognising case-by-case assessment as the approach that should be taken, others still require further discussion oriented to the interaction with other rules of the VAT Directive.

The analysis on how to qualify utility tokens and payment services in the light of the Voucher Directive, was received with overall consensus. Therefore, with the aim to agree guidelines in that regard, the criteria to be used for the assessment will be clarified further.

The views set out on the interaction between the voucher rules and VAT special schemes, with particular regard to the SME scheme, were supported and therefore it is suitable to also provide an analysis of other special schemes that may have an impact on voucher rules, notably the travel agents scheme and the second-hand goods scheme.

The most controversial issue discussed was the VAT treatment of vouchers that incorporate services exempt under Article 132 of the VAT Directive, such as medical and dental care. Divergent views were expressed regarding the taxation of SPVs, including exempt services along the distribution chain. In particular, the issue of interaction between

1 See minutes of the 114th meeting (Working paper No 983).
2 Member States had to transpose these rules into national law by 1 January 2019.
3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).
4 Working paper No 983, *Questions raised following implementation of the Voucher Directive*.
5 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 voucher rules and intermediation activity which has an impact also on the application of the exemptions related to medical care was raised. Therefore, that issue will be further developed in the present paper.

3. THE COMMISSION SERVICES' OPINION

With a view to continue discussions, the Commission services have further examined the questions previously discussed with regard to vouchers:

- Criteria to distinguish vouchers from payment services and utilty tokens,
- Interaction between the rules for intermediaries and the voucher rules,
- Application of the medical and dental care exemption along the distribution chain of an SPV,
- Interaction of vouchers and other VAT special schemes.

3.1. Interaction between the rules governing vouchers and other rules

While there seemed to be overall agreement with the Commission services' analysis that a case-by-case assessment is needed, the opportunity should be taken to set some criteria to be used for such assessment.

3.1.1. Vouchers and payment services

Picking up from the discussions already had, it must be noted that the terms "payment services" and "payment instrument" should not be confused. Those terms have to be understood in accordance with the definitions set out by the EU legislature in points (3) and (14) of Article 4 of the Payment Service Directive[6] whereby:

- 'payment service' means any business activity set out in Annex I of the Payment Service Directive;
- 'payment instrument' means a personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order.

Albeit the said piece of legislation is not directly linked with taxation, there is no reason to disregard the concepts adopted in its provisions[7]. Moreover, the concept of payment service is included within the VAT Directive[8], while payment instrument is not, and its interpretation in the context of VAT legislation seems in line with that used in financial legislation.

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6 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).

7 See Opinion of Advocate General Bot of 2 May 2019, *Cardpoint*, C-42/18, EU:C:2019:360, paragraphs 36 and 47.

8 Article 135(1)(d) exempts "transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection".

In its judgment in the case *DPAS*[9], the Court of Justice of the European Union (CJEU) recalled that functional aspects are decisive for the purpose of determining whether a transaction is covered by the exemption for transactions concerning transfers or payments. Thus, a supply of services may be regarded as a 'transaction concerning transfers' or as a 'transaction concerning payments' only in the event that it fulfils the specific and essential functions of such transfers or payments, in so far as it has the effect of transferring funds and entails changes in the legal and financial situation resulting from that transfer[10].

The functional approach suits as well the interpretation of the notion of voucher, which entails the obligation of accepting it as a consideration for a supply of goods or services. In that sense, a voucher is a *limited-purpose instrument* as it can be used only in relation to the supplies of goods or services included at the time the voucher is issued. This means that a voucher that is issued for example for medical care services cannot change its objective once it is not redeemed and then be used for buying food products. In other words, the purpose must be consistent with what is indicated in the voucher itself.

Comparing the two notions through use of the functional criterion it is evident that the objectives are different. On the one hand, the payment service is only related to the transfer of a sum of money. The value of the voucher on the other hand constitutes the consideration for the supply of goods and/or services embedded in it.

However, it must be noted that being the consideration of a supply does not signify payment for VAT purposes. The redemption of a voucher against goods or services cannot be considered as a payment because the payment must take place upon issuance or purchase before the voucher is given to the final consumer. Therefore, the redemption must rather be considered the exercise of a right subsequent to the payment by the purchaser of the voucher. Such right of the purchaser corresponds to the obligation of the redeemer to accept it as consideration, which was made when the voucher was first acquired or changed hands.

In conclusion, the Commission services take the view that, under the EU legal framework, 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 (e.g. functional criterion) and that there is no payment underlying the redemption.

3.1.2. Vouchers and tokens

Given that there is no common taxonomy of crypto-assets in use by international standard-setting bodies, the Commission services will refer to the criteria outlined by the European Banking Authority (EBA) in its report[11]. The basic taxonomy of crypto-assets comprises three main categories of crypto-asset: (1) payment/exchange/currency tokens; (2) investment tokens; and (3) utility tokens. For such digital assets, there cannot be a clear-cut classification given their hybrid nature. However, some guidance can be found by following certain criteria.

9 CJEU, judgment of 25 July 2018, *DPAS*, C-5/17, EU:C:2018:592.

10 See the Opinion of Advocate General Bot, *Cardpoint*, paragraph 32.

11 Report with advice for the European Commission on cryptoassets of 9 January 2019 (cryptoassets report), p. 7.

As a preliminary remark, it must be noted that according to the competent authorities crypto-assets and cryptocurrencies are in principle different from e-money[12]. However, there might be certain crypto currencies or assets that could be qualified as e-money[13].

Whether a utility token might be considered as a voucher depends on several factors given their hybrid nature. It is nevertheless not possible to establish *a priori* when they could be qualified as cryptocurrency instead of a negotiable instrument or a security.

To the extent that utility tokens are comparable to cryptocurrencies, their treatment for VAT purposes should follow the interpretation provided by the CJEU in the case *Hedqvist*[14] that considered the exchange of traditional currencies for units of the 'bitcoin' virtual currency and *vice versa* to be exempt supplies of services falling under Article 135 of the VAT Directive depending on the use made of the instrument[15]. It has to be noted that the same conclusion was reached by the VAT Committee on the VAT treatment of Bitcoin[16].

Another reasoning should be followed if the utility token cannot be considered a cryptocurrency or just a transfer of money. In order for a utility token to be treated as a voucher, the main characteristic of the utility token would need to be the entitlement to be exchanged with goods or services. In that scenario, it is still necessary to verify if all the conditions laid down by the definition given of a voucher for VAT purposes are met. As outlined in Working paper No 983, 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.

After the discussion held during the 114th meeting, the potential lack of redemption of the utility token[17] cannot be seen as a criterion useful to distinguish it from a voucher. A voucher might not be redeemed either. However, it must be noted that the ability of a utility token to be transformed into another instrument would seem to be in conflict with the nature of a voucher that has a specific purpose at the moment it is issued, i.e. knowledge of the goods or services to be supplied or indication of the identity of potential suppliers is required.

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12 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7). According to the e-money Directive: "'*electronic money' means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer*".

13 Cryptoassets report, p. 13.

14 CJEU, judgment of 22 October 2015 *Hedqvist*, C-264/14, EU:C:2015:718.

15 CJEU, judgment of 3 October 2019, *Cardpoint*, C-42/18, EU:C:2019:822, paragraph 21.

16 Working papers Nos 811 and 854, *VAT treatment of Bitcoin and digital currencies*.

17 Tokens can be used only on a designated token platform and will be limited to a certain community involved in a specific process. The issuer of a utility token may end up not delivering the goods or services as the token represents goods or services, which do not exist at the moment of its issue and these may in fact never materialize. In such circumstances, 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.

The Commission services believe that a transformation consequent to the non use of the utility token is the main reason for not considering such instruments falling within the scope of VAT voucher provisions as the purpose of a voucher must be set when it is issued and it cannot change.

In the absence of a link between the supply related to the token and its consideration, the comparison with a voucher is not possible according to VAT rules. Moreover, a voucher cannot change its purpose in case it is not used. Therefore, the first condition related to considering the token as consideration for a supply of goods or services is unlikely to be met. For the sake of consistency, it has to be noted that this conclusion is in line also with the functional approach laid down by the CJEU in case of payment services and endorsed in the conclusions on the *Cardpoint* case.

As regards the second condition provided by the Voucher Directive, on the details provided in relation to the goods or services exchanged or the identity of the potential suppliers, it has to be noted that such details are not required for the use of such virtual 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.

In conclusion, the Commission services are of the opinion that tokens shall not be considered vouchers within the meaning of the Voucher Directive because:

– in certain situations they operate as cryptocurrencies in which case they could rather be considered to be payment services;

– redemption of the right embedded in the virtual instrument is not the only purpose of the token, as its purpose is susceptible to change and so the function of the instrument is not set definitively at the moment of its issue;

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

3.2. 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.

3.2.1. Vouchers and intermediaries

The VAT rules pertaining to vouchers involve the participation of an entity that issues the voucher, an entity that purchases and consumes the voucher and an entity that redeems it, although only two entities are strictly essential for the application of the rules given that the issuer could also be the redeemer.

However, reality shows that such a particular kind of transactions often implies the participation of other subjects along the chain between the issuance and the consumption of what is represented by a voucher.

During the 114th meeting, further clarification was requested regarding that participation of other subjects in the distribution chain of a voucher. In particular, it was argued that the rules for intermediaries involved in the supply of services had inspired the rules related to SPVs.

Article 28 of the VAT Directive establishes a presumption according to which "*where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself*".

That rule has the practical effect that every subject taking part in a supply of services will be considered at one and the same time to be the recipient and the real supplier of the services, if he is acting in his own name but on behalf of another taxable person. The *fictio iuris* created is of having two identical supplies provided consecutively[18]. Since Article 28 of the VAT Directive comes under Title IV of that directive, entitled 'Taxable transactions', it must be found that if the supply of services in which an operator takes part is subject to VAT, the legal relationship between that operator and the operator on behalf of whom he acts must also be subject to VAT[19].

As the fictitious supplies are to be treated in the same manner for VAT purposes, it could be assumed that if the principal supply is exempt the following one should be exempt as well. However, it may well be argued that equal treatment of the principal and the subsequent supply could not be extended to the subjective qualification of the parties. That may in turn have an impact on whether exemption would in fact be available.

The scope of the undisclosed agent rule described above is limited to supplies of services. It has likely served as inspiration for the Voucher Directive as a distribution rule in order to ensure its correct application in the case of SPVs. The result of its inclusion, as explained in section 4.1.2 of Working paper No 983, is that Article 30b(1) of the VAT Directive also 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*).

The rule works differently depending on the type of voucher. In case of an SPV, the effect is the same as that for supplies of services in general and will kick in when the supplier is not the issuer. Where the transfer is made by a disclosed agent, then the supply is attributed to the taxable person on behalf of which the agent is acting. For MPVs, the legal fiction has no place as in any case the voucher is taxed only upon redemption.

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18 CJEU, judgment of 19 December 2019, *Amărăşti Land Investment SRL*, C-707/185, EU:C:2019:1136, paragraphs 36-38.

19 CJEU, judgment of 4 May 2017, *Commission v Luxembourg*, C-274/15, EU:C:2017:333, paragraph 87.

As the rules on intermediaries work in a different way in the context of general supplies of services and vouchers, in particular SPVs, it raises the issue as to the possibility of changing the tax treatment of the voucher along the distribution chain. That issue will be addressed below.

3.2.2. Vouchers and exemptions

From discussions on the Working paper presented during the 114th meeting, it seems that some of the views and concerns expressed by the Commission services are shared while other aspects – notably in relation to the application of exemptions – are proving more controversial, and hence the need to examine the issue further.

In particular, clarification was requested in regard to the distribution chain of an SPV[20], questioning if the qualification of such voucher as an SPV when it is subsequently distributed in a chain where a supplier at a later stage does not fulfil the subjective conditions for claiming the exemption. In other words, the controversial point is whether an exempt transaction first integrated in a voucher could (or should) be taxed if subjects taking part in the distribution of that voucher qualifying as an SPV when first issued are not eligible for exemption although the beneficiary receives a supply that would, if not supplied under an SPV, have been exempt.

Some may take the view that any transfer of an SPV incorporating an exempt supply should automatically follow the same VAT treatment of that supply and therefore remain exempt from VAT irrespective of whether the taxable person transferring the voucher meets the subjective conditions for exemption to apply (e.g. medical services). In practice, the objective nature of the supply is the criterion that must be regarded along all the passages as the recipient of the service will receive it from a subject entitled to the exemption in any case. Therefore, it could be argued that the actual redeemer of the voucher should be the person that has to qualify for the exemption. Such position could be said to find support in the settled CJEU case law which establishes that: "*the requirement of strict interpretation does not mean that the terms used to specify those exemptions should be construed in such a way as to deprive them of their intended effect, having particular regard to the underlying purpose of the exemption in question*"[21].With particular regard to the exemption laid down in Article 132(1)(m) of the VAT Directive, it has to be noted that "*The provision is to be interpreted not literally, but so as to ensure the effective application of the exemption for which it provides, on the basis of the supply of services in question and that, therefore, regard must be had not only to the formal, legal recipient of that supply, but also to its material recipient or effective beneficiary*"[22].

Indeed, it would be contrary to the neutrality principle precluding, in particular, economic operators who effect the same transactions being treated differently in respect of the levying of VAT. Moreover, the CJEU explained that in the case of services closely linked to sport or physical education, it is not allowed to limit the exemption under Article 132(1)(m) of the VAT Directive by reference to the recipients of the services in question. Therefore, the intermediary recipients of the exempt service, which are not consuming the service but just passing it on the actual recipient should benefit from the

[20] As the transfer of an MPV is not subject to VAT, the question raised is relevant only as concerns SPVs.

[21] CJEU, judgment of 16 October 2008, *Canterbury Hockey Club*, C-253/07, EU:C:2008:571, paragraph 17.

[22] *Canterbury Hockey Club*, paragraph 25.

exemption as well. This outcome is also in line with the interpretation of the rules on intermediation services outlined above, where the *fictio iuris* laid down by Article 28 of the VAT Directive provides that both transactions are treated equally, even if the intermediary does not meet the subjective condition itself as he is not the material provider of the exempt supply.

However, according to the Commission services, 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. The scope of the exemptions laid down in Article 132 of the VAT Directive cannot be expanded through the use of an instrument such as vouchers. Assuming that the tax treatment of a voucher depends on the fulfilment of all the conditions required by the exemptions, objective and subjective, it should be looked at whether the rules for intermediaries involved in supply of services should be applied for dental and medical care supplies as well. It might be found that the effective beneficiary criterion taken into account above is not sufficient on its own to lead to the exemption of dental and medical care supplies expanding the scope of their application. In the specific case of dental care discussed in the previous meeting[23], the company presumably transfers the SPV acting in its own name. If so, the company will be regarded, as set out in the first subparagraph of Article 30(1) of the VAT Directive, as having supplied itself 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 service 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. That is so whether or not these services are supplied in return of an SPV.

If, as an intermediary, the company were to act in the name of a 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 would not be applicable.

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[24]. 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

[23] See section 4.3.1 of Working paper No 983.

[24] 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, *Peters*, C-700/17, 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.

to which 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) of the VAT Directive, there is no right to exemption. For instance, vouchers do not fall within 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[25].

3.2.3. Vouchers and special schemes

In Working paper No 983, the Commission services endeavoured to provide guidance on the interaction between vouchers and special schemes.

The position advocated as regards the question raised in regard to the SME scheme found general support, and believing that the hierarchy of the rules analysed should be followed, it is opportune to provide the same legal assessment also regarding other special schemes (e.g. travel agents scheme and second-hand goods scheme). Albeit the conclusion may in theory be the same, a practical remedy to the overlap between the voucher rules and special schemes still has to be found.

Travel agents scheme

Regarding the travel agents scheme set out in Articles 306 to 310 of the VAT Directive, the Commission services confirm what was expressed in the previous Working paper. It should be recalled that this scheme is mandatory and where the conditions for the application of the scheme have been met, the voucher rules should not be applied.

The travel agents scheme is a simplification measure that treats packages as a single supply. It overrules voucher rules not simply because it is mandatory when the conditions are met. The reason behind such special rules is to overcome difficulties to apply the normal rules on the place of taxation, the taxable amount and deduction of input tax due to the complexity and location of the services provided. In particular, the place of taxation rule for the travel agent's supply is that it is taxable where he has established his business or has a fixed establishment from which he provides the service or, failing this, the place where he has his permanent address or usually resides.

As the vouchers rules do not ensure such simplification in those circumstances, they must be disregarded in order to prevent possible abusive application of voucher rules to travel services as that might lead to double taxation or non-taxation of such supplies at EU level. In fact, it could happen that if a travel service is taxed according to vouchers rules

[25] 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 related, even if the person carrying out the service must make use of her medical competence and perform an examination of the person in question.

– an SPV is taxed where it is issued which could be different from the place where the travel agent is established.

– an MPV is taxed where it is redeemed which could be different from the place where the travel agent is established.

In the light of this, the Commission services take the view that the rules on MPVs cannot be applied to a voucher issued by a travel agent acting in his own name falling under the special scheme, in order to ensure the correct application of the place of taxation rule laid down for the special scheme. Following the same logic, it cannot be excluded that the rules on SPVs might be applied to a voucher issued by a travel agent acting within the special scheme, as the rules of the place of supply would in that case be the same.

Regarding the taxable amount rule, the special scheme provides for taxation of the profit margin of the travel agent, while following the voucher rules it could be taxed based either on the consideration or on the face value of the instrument.

Finally, the CJEU clarified that the special scheme is not limited to travel agents and tour operators but must equally apply to any person supplying travel under the circumstances envisaged[26].

Therefore, given that the travel agents scheme is a special scheme whose rules are aimed at regulating selected issues, the Commission services are of the opinion that the rules of the special scheme will prevail on any general rules, such as those on vouchers, that might conflict with its correct application and its objectives.

Second-hand goods scheme

Having regard to the second-hand goods scheme provided by Article 311 of the VAT Directive, it is aimed at eliminating all forms of double taxation[27] which previously stemmed from the application of different systems by Member States to sales of second-hand goods. It is an optional scheme which regards: (i) the ordinary VAT arrangements under which tax is paid on the total price, with deduction of input tax, and (ii) the arrangements under which tax is paid on the vendor's profit margin with no deduction of VAT.

Such scheme represents a derogation from the general VAT rules. Therefore, like other special schemes, where the conditions for that scheme to apply are met, and the taxable dealer applied for it, the voucher rules cannot be applied even if the goods supplied by way of a voucher could be seen as comparable.

The main effect of this special scheme is on the rules on the taxable amount and the right of deduction. The taxable amount in respect of the supply of the goods falling under the special scheme is the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

Also in this context, the VAT Directive lays down special rules that prevail on the voucher rules with regard to the taxable amount related to the goods supplied under the special scheme. As the voucher rules require taxation based either on the consideration or on the

[26] CJEU, judgment of 19 December 2018, *Skarpa Travel*, C-422/17, EU:C:2018:1029, and judgment of 13 October 2005, *iSt*, C-200/04, EU:C:2005:608.

[27] CJEU, judgment of 18 May 2017, *Litdana*, C-624/15, EU:C:2017:389, paragraph 25.

face value of the instrument, they would be contrary to taxation limited to the profit margin made by the taxable dealer.

Therefore, the Commission services are of the opinion that to the extent that the second-hand goods scheme is applied the voucher rules must be disregarded. The voucher rules which are general rules cannot be applied to any supply covered by the margin scheme as the rules of that special scheme will prevail.

It should be noted, however, that Article 319 of the VAT Directive provides that the taxable dealer may apply the normal VAT arrangements to any supply covered by the margin scheme. Should that be the case, there may be room for the voucher rules to apply.

4. DELEGATIONS' OPINION

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

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