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

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Brussels, 20 February 2023

VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1062

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN:	**Denmark**
REFERENCES:	**Articles 30a, 30b and 73a**
SUBJECT:	**Vouchers in the form of City Cards – follow-up**

1. INTRODUCTION

City cards are among the issues arising from the Voucher Directive[1] previously discussed by the VAT Committee, with discussion being inconclusive. It is an issue on which the Danish delegation now comes back and, based on the facts of a case on which the Danish Tax Assessment Council issued a pre-ruling, asks the VAT Committee to look at that particular matter once again.

The text of the question is annexed to this document.

2. SUBJECT MATTER

So-called city cards are instruments whose purpose is to promote a specific region by typically granting the cardholder the right to access several touristic attractions and/or use its public or private transport services once purchased. After BusinessEurope on behalf of some of its member federations had first evoked the issue of city cards in the EU VAT Forum looking to establish whether these would qualify as vouchers for the purposes of Article 30a of the VAT Directive[2] and, if so, which type of voucher, the topic was brought to the VAT Committee at its 112th meeting[3]. Discussion was pursued when, at its 114th meeting, the VAT Committee first examined various issues arising from the Voucher Directive[4].

As noted, the discussion on the VAT treatment of city cards was inconclusive[5]. Given the lack of details on the business models used to operate such city cards, delegations did not on that occasion find it possible to draw any firm conclusions.

Subsequent to that discussion, touching on the issue of city cards, a case was submitted to the Court of Justice of the European Union (CJEU)[6]. For that reason, in line with long-standing practice, the discussion was put on hold. With that case decided[7], it is now possible for the VAT Committee to resume the discussion first started on city cards. That is a discussion which will be informed not only by the details on one type of city card provided by the Danish delegation but also those gleaned from the *DSAB Destination Stockholm* case on another type.

3. COMMISSION SERVICES' OPINION

3.1. Introduction

The Commission services note that, although Member States may submit to the VAT Committee questions arising from concrete cases, the VAT Committee is not the

[1] 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).
[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] Information paper *VAT treatment of "city cards"* (taxud.c.1(2019)2690215).
[4] Based on Working paper No 983 *Questions raised following implementation of the Voucher Directive*.
[5] See Working paper No 987 *Minutes of the 114th meeting*.
[6] Case C-637/20 *DSAB Destination Stockholm* submitted on 25 November 2020.
[7] CJEU, judgment of 28 April 2022 in the *DSAB Destination Stockholm* case (EU:C:2022:304).

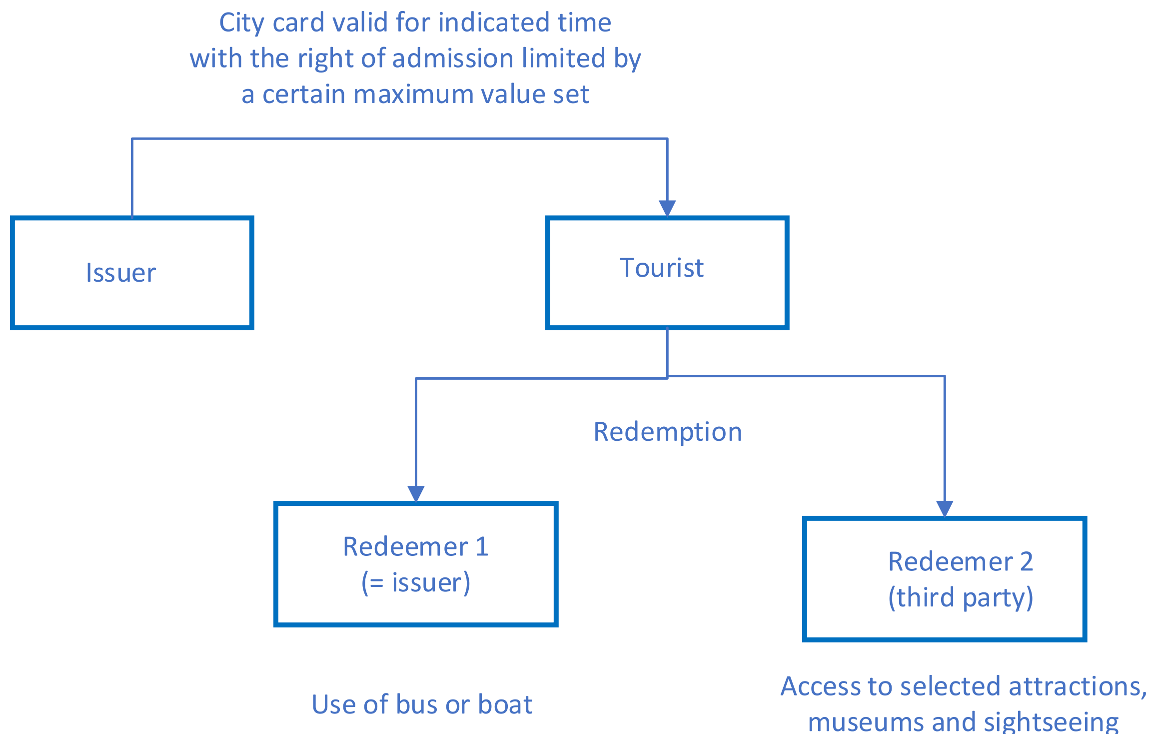
appropriate forum to decide on concrete cases. Therefore any discussion performed at this level should only take place where it can provide some guidance at EU level for a harmonised interpretation of the VAT Directive.

That is met here as the concrete case only serves as a backdrop to the issues raised by the Danish delegation and the factual circumstances of that case simply serve to illustrate the operation of one of the business models put in place for city cards. This, together with the decision taken by the CJEU in the *DSAB Destination Stockholm* case, provides an opportunity to shed more light on how to interpret the rules of the Voucher Directive in regard to city cards. In this regard, the views of the Commission services and the opinion of the VAT Committee should be seen as aiming to provide general guidance on the application of VAT rules through a concrete case, rather than adjudicating on the case as presented.

3.2. Case scenarios

Despite similarities, the factual circumstances governing the city card that was the subject of the *DSAB Destination Stockholm* case ruled by the CJEU ("city card 1") and that on which the Danish Tax Assessment Council has issued a pre-ruling ("city card 2") are not identical.

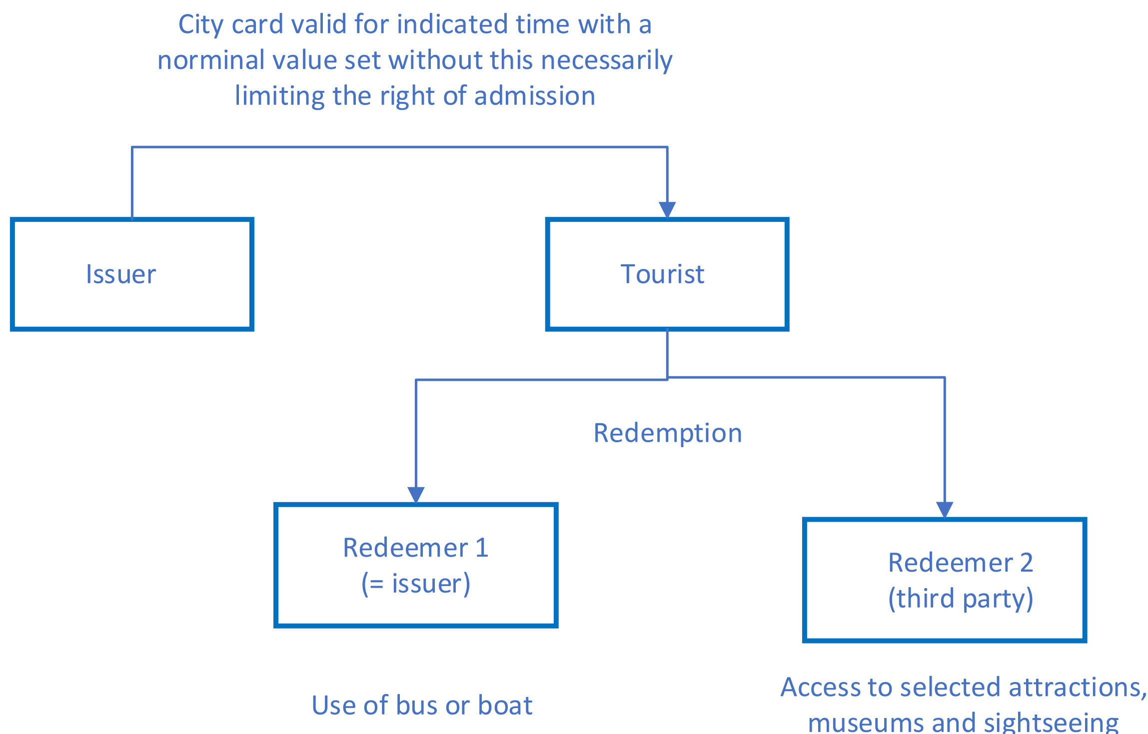
Figure 1: City card 1



- issued by DSAB (running Hop-on-Hop-off buses and boats)
- gives cardholder the right of admission (attractions such as sights and museums) and other services (tours by 'Hop-on-Hop-off' buses and boats and sightseeing tours)
- right for a limited period of time and up to a certain value
- once value limit is reached, the card can no longer be used by the cardholder
- services provided by DSAB or by other suppliers

- supplier receives a percentage of the normal price of each admission/use
- no obligation for supplier to grant access to its services more than once
- no minimum number of visitors guaranteed
- some services subject to VAT at rates ranging from 6% to 25%; others exempt from VAT

Figure 2: City card 2



- issued by company (running Hop-on-Hop-off buses and boats)
- gives cardholder the right of admission (attractions, museums and sightseeing) and other services (tours by 'Hop-on-Hop-off' buses and boats and sightseeing tours)
- right for limited period of time starting when first activated
- this right not limited by the nominal value having been exceeded
- services provided by company issuing the card or by others
- supplier receives a percentage of the normal price and is only required to allow for one visit
- issuer only obliged to ensure access to the services but not the supply thereof
- acts as a valid entrance ticket counting as full payment for access
- some services subject to VAT at the rate of 25%; others exempt from VAT

3.3. Issues at stake

When first discussed in substance at the 114th meeting of the VAT Committee, focus was first and foremost on whether in general a city card could qualify as a voucher and should that be the case, if the city card would be seen as an SPV or an MPV. Other than seeking to pursue the discussion on city cards for which time has now come, the Danish delegation is also looking for clarification on how to calculate the consideration of such city cards.

As terms and conditions differ from business model to business model, it is suggested to discuss both the scenario where the issuer is seen as the redeemer and that where the

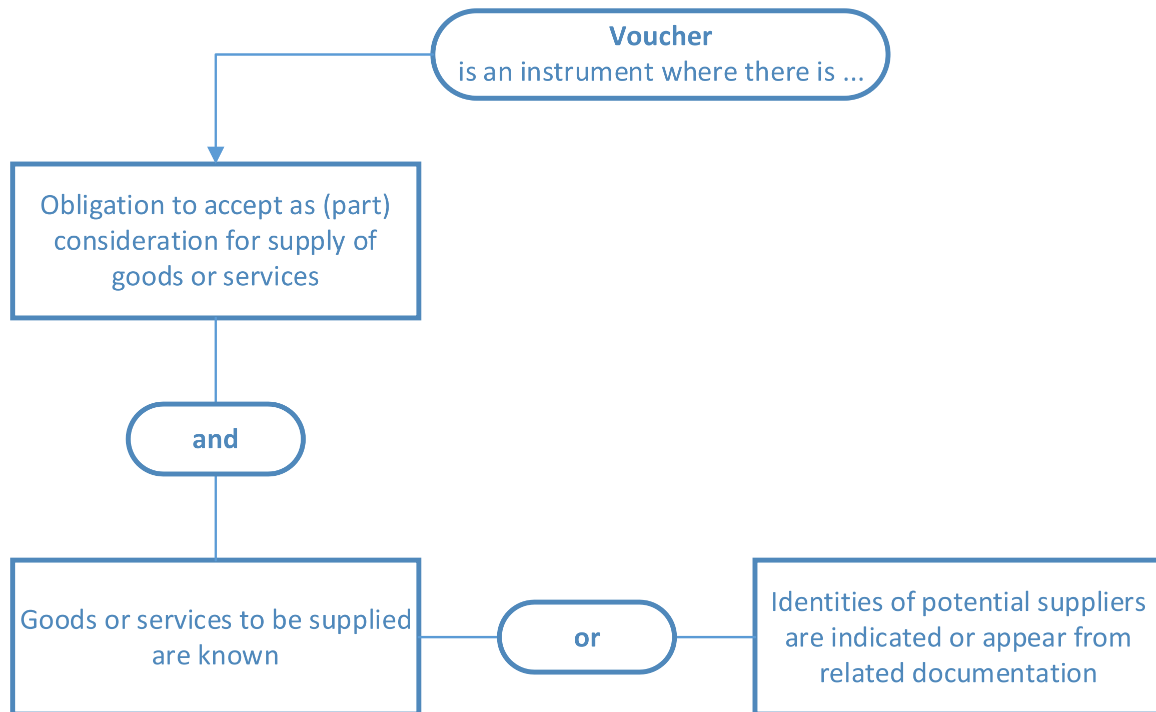
issuer is not, at least not in relation to services provided by other suppliers. This seems to be on the assumption that services could be supplied by other suppliers to the issuer or, alternatively, by those other suppliers directly to the cardholder.

3.3.1. Can a city card be said to qualify as a voucher?

The basic question asked but not answered in full when first discussed was how to qualify city cards for VAT purposes. Given the lack of clarity on the operation of such instruments, that discussion mainly served to explore whether a city card qualifies as a voucher or if instead it had to be seen as a service not captured as a voucher.

In the *DSAB Destination Stockholm* case, the CJEU faced that very question following a disagreement between the Swedish tax authorities and the issuer of the city card at issue (namely city card 1). According to the CJEU, to assess whether a city card falls under Article 30a of the VAT Directive, it must be ascertained, on the one hand, whether such an instrument entails an obligation to accept it as consideration or part consideration for a supply of goods or services, and, on the other hand, whether the instrument or related document specifies the goods or services to be supplied or the identity of the potential suppliers thereof[8]. Those are cumulative conditions both of which therefore must be met for an instrument to be classified as a voucher (as can also be seen from the below illustration).

Figure 3: Voucher



Even if it is impossible for an average consumer to take advantage of all the services offered, having regard to the limited validity period of that card[9], the CJEU found that an instrument which gives the bearer thereof the right to benefit from various services at a given place, for a limited period and up to a certain amount, may constitute a voucher.

[8] *DSAB Destination Stockholm*, paragraph 21.
[9] *DSAB Destination Stockholm*, paragraph 23.

While it obviously serves to clarify the VAT treatment of city cards, it is not possible to take the ruling in the *DSAB Destination Stockholm* case to mean that all city cards are automatically vouchers given the variety of such cards available[10]. For a particular city card to qualify as a voucher, it will still have to meet the cumulative conditions for this to be the conclusion. That can only be decided on a case-by-case basis.

One such test case is the city card with which the Danish tax authorities have been confronted and on which the Danish Tax Assessment Council on 27 August 2019 issued a pre-ruling (namely city card 2). This city card is said to act as a valid entrance ticket for the cardholder counting as full payment for access to use the service that the attraction provides. In that regard, reference is made to recital 5 of the Voucher Directive according to which "*[t]he 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*".

While this was not an argument made by any of the parties in the *DSAB Destination Stockholm* case itself, this point was in fact addressed. The General Advocate in her opinion argued that a city card simply creates a possibility to acquire a ticket and therefore, if the cumulative conditions are met, it should qualify as a voucher[11]. This is a view to which the Commission services can subscribe.

Where an instrument meets the cumulative conditions laid down in point (1) of Article 30a, its qualification as a voucher cannot in itself be put into question by recital 5 of the Voucher Directive[12]. In the *DSAB Destination Stockholm* case, the General Advocate found that a voucher such as the city card merely creates a possibility to acquire a ticket while creating the obligation for the supplier of such a ticket to accept it as consideration[13]. It is indeed difficult to see how city card 2 which is quite similar to city card 1 would not qualify as a voucher. That is also the point of view reached by the Danish delegation which considers that the card cannot be seen as a travel document, entrance ticket, a stamp or the like in the sense of the said recital 5.

3.3.2. Would the city card be an SPV or an MPV?

If and when a city card qualifies as a voucher, there will be a need to determine whether it is a single-purpose (SPV) or a multi-purpose voucher (MPV). While both concepts are defined by points (2) and (3) of Article 30a of the VAT Directive respectively, the CJEU acknowledges that the definition of the latter is residual in scope[14]. This is derived from the fact that all vouchers other than those which are SPVs constitute MPVs.

What is of essence, therefore, is to ascertain whether a city card meets the conditions for being an SPV. That is, as can be seen from the below figure, the case where the place of supply of the goods or services to which the city card relates, and the VAT due on those goods or services, are known at the time of its issue.

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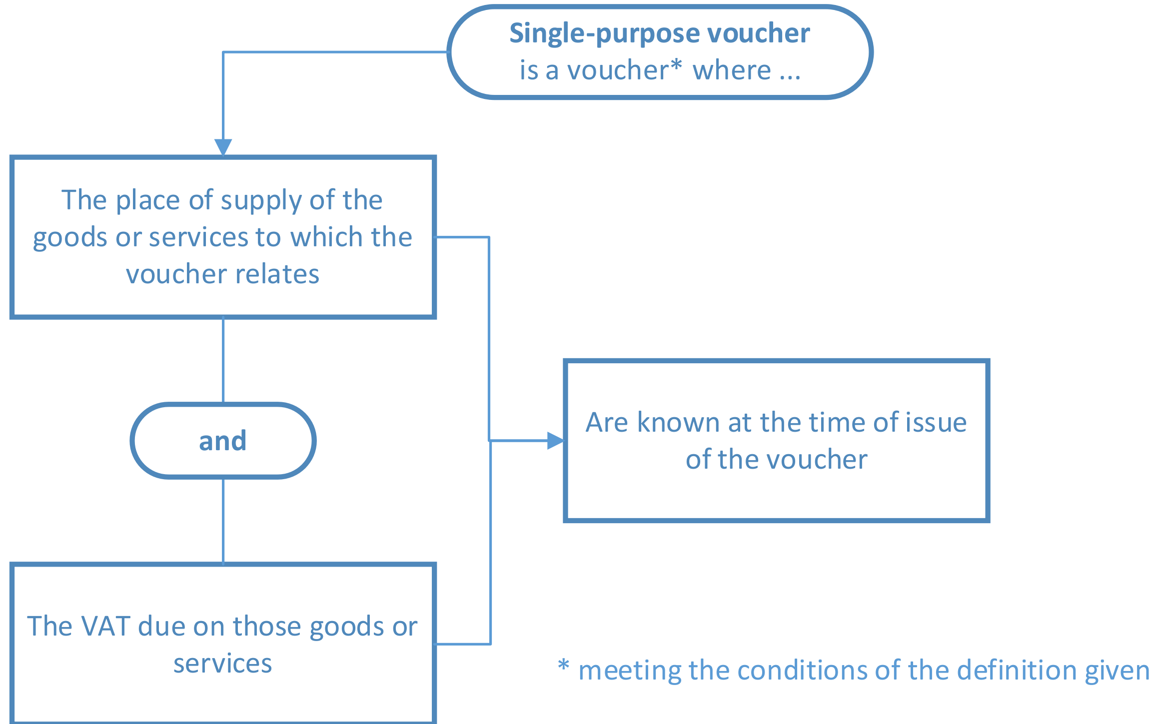
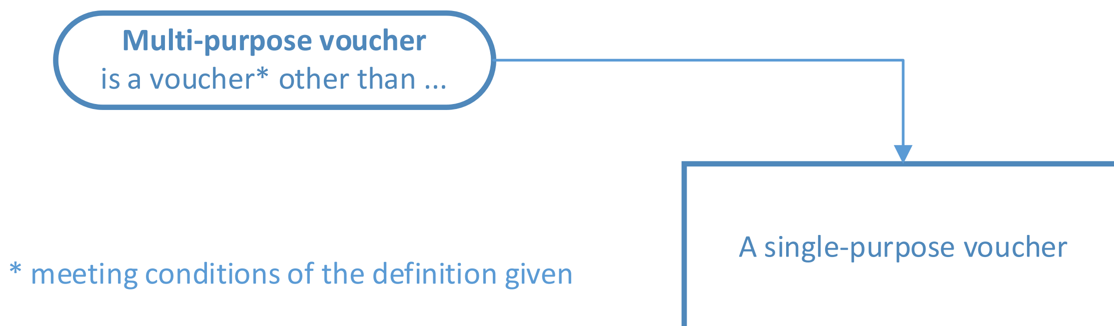
[10] CJEU, opinion of Advocate General Capeta of 24 February 2022 (EU:C:2022:131), point 48.
[11] *DSAB Destination Stockholm*, opinion, points 59-60.
[12] According to recital 5 of the Voucher Directive, "*[t]he provisions regarding vouchers should not trigger any change in the VAT treatment of transport tickets, admission tickets to cinemas and museums, postage stamps or similar*". That said, the Voucher Directive does not, however, include any provision explicitly excluding tickets from the scope of the rules introduced.
[13] *DSAB Destination Stockholm*, opinion, point 60.
[14] *DSAB Destination Stockholm*, paragraph 28.

Figure 4: Single-purpose voucher



With its ruling in *DSAB Destination Stockholm*, the CJEU concluded that the VAT due on the services obtained by the holder of the card at issue (city card 1) is not known at the time of issue. The card in fact allows access to various supplies of services, which are subject to different rates of VAT or are tax exempt and it is impossible to predict in advance which supplies would be selected. As the conditions are not met to regard it as an SPV, the city card instead had to be classified as an MPV (consistent with the below illustration).

Figure 5: Multi-purpose voucher



Insofar as the city card operated in Denmark (city card 2), while the business model adopted may not be identical to that on which the CJEU already ruled, it still stands to reason that one would arrive at the same conclusion. The holder of this city card can also gain access to various supplies of services, some of which are subject to VAT while others are tax exempt. Just as was the case with city card 1, it really is not possible to know which supplies the holder of city card 2 will ultimately select. It must therefore also be classified as an MPV.

To conclude that all city cards will qualify as MPVs is however taking it a step too far. If all of the supplies offered under the city card are subject to the same rate of VAT and none of them tax exempt, the city card could still be an SPV. It would obviously require that the place of these supplies is known at the time of issue of the city card in question. For a city card to be confirmed as an MPV, it is therefore necessary for this not to be captured by the definition of an SPV.

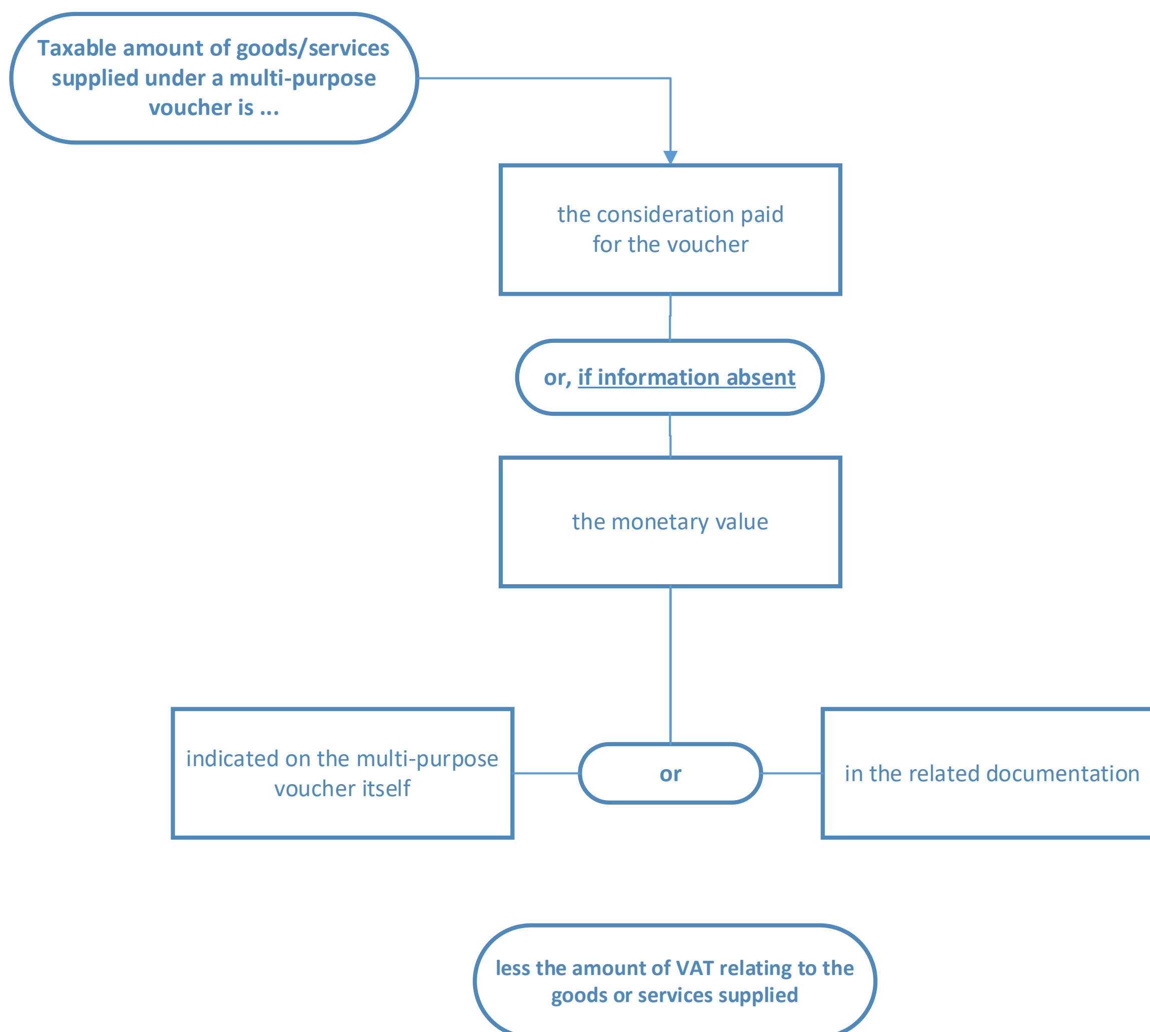
3.3.3. How to calculate the taxable amount?

Where a city card qualifies as an MPV, VAT on the underlying supply of goods or services is only to be charged when those goods or services are actually handed over or provided to the cardholder (so upon redemption) while each preceding transfer of the MPV will not be subject to VAT. The supplier will hand over the goods or services in return for an MPV that is accepted as (part) consideration. It will be for that supplier to account for the VAT based on the consideration paid for the MPV, in the case(s) at hand to the issuer.

With a view to ensure that the amount of VAT is accurate when goods or services are supplied in return for an MPV[15], Article 73a of the VAT Directive stipulates that the taxable amount is equal to the consideration paid for the MPV or, in the absence of information on that consideration, the monetary value indicated on the MPV itself or in the related documentation, less the amount of VAT relating to the goods or services supplied.

[15] See recital 11 of the Voucher Directive which clarifies that "*[i]n the case of multi-purpose vouchers, to ensure that the amount of VAT paid in respect of multi-purpose vouchers where VAT on the underlying supply of goods or services is charged only upon redemption is accurate, without prejudice to Article 73 of Directive 2006/112/EC, the supplier of the goods or services should account for the VAT based on the consideration paid for the multi-purpose voucher. In the absence of such information the taxable amount should be equal to the monetary value indicated on the multi-purpose voucher itself or in the related documentation, less the amount of VAT relating to the goods or services supplied. Where a multi-purpose voucher is used partially in respect of the supply of goods or services, the taxable amount should be equal to the corresponding part of the consideration or the monetary value, less the amount of VAT relating to the goods or services supplied.*".

Figure 6: Taxable amount



The purpose of the new Article 73a of the VAT Directive is to address particular challenges faced where a supply is made in return of an MPV. With the MPV accepted as consideration for the goods or services supplied, the question is how to translate that in monetary terms, keeping in mind that payment for that voucher is not made to the supplier.

Article 73a of the VAT Directive stipulates that for a supply of goods or services provided in respect of an MPV, the taxable amount should be equal to the consideration paid for the MPV, less the amount of VAT relating to the goods or services supplied. It is only in absence of information on that consideration that recourse should be made to the monetary value indicated on the multi-purpose voucher itself or in the related documentation.

The national court with its question in *DSAB Destination Stockholm* focused on whether the city card in question qualified as a voucher and if so, whether it was an SPV or an MPV. In looking at taxation of city cards as MPVs, the General Advocate did refer to the issue of the taxable amount[16]. Given the question submitted this was not, however, an issue ruled upon by the CJEU.

[16] *DSAB Destination Stockholm*, opinion, points 67-77.

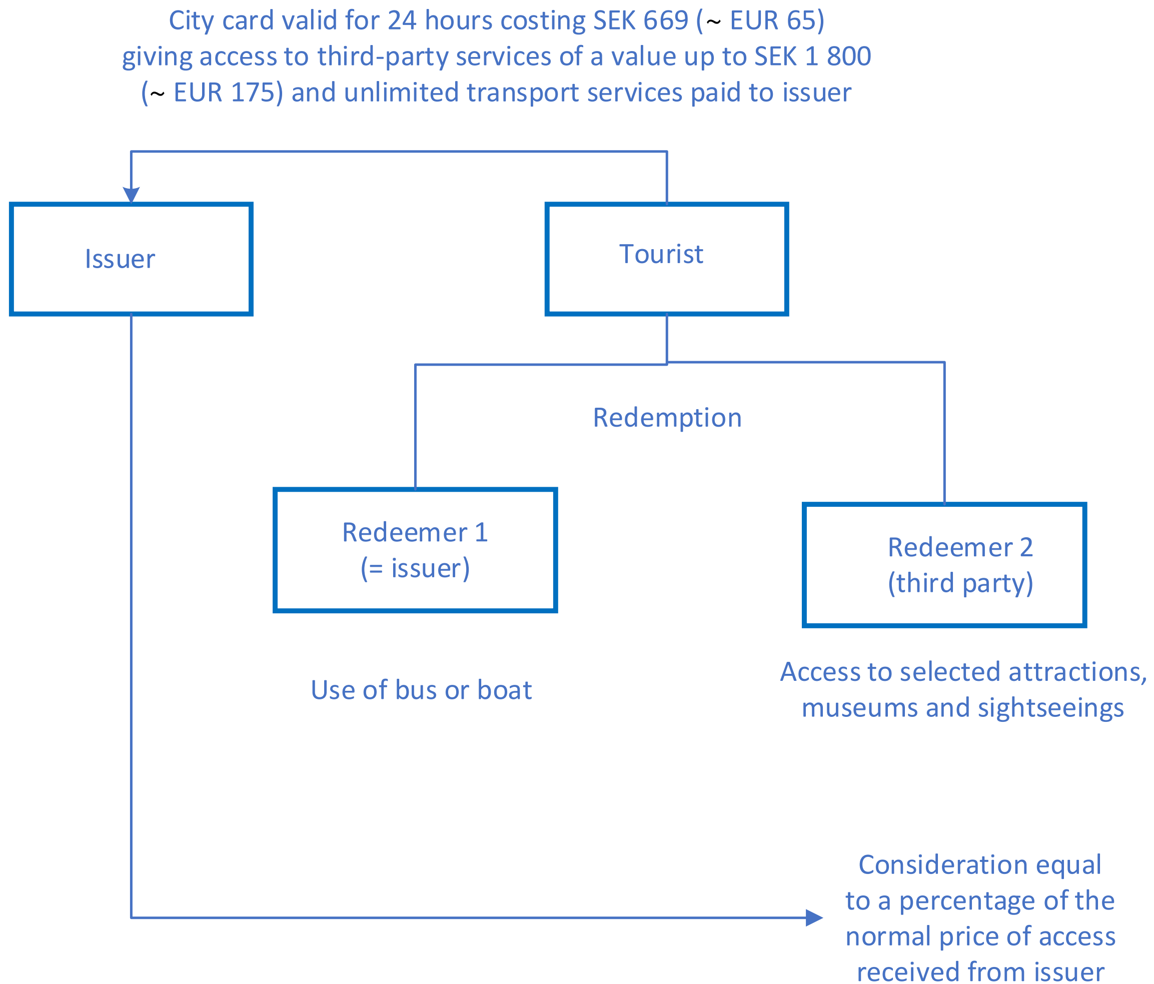
That therefore leaves the question of how to calculate the taxable amount of the various services supplied in respect of a voucher, such as city cards 1 and 2, where it is qualified as an MPV.

- **Services of third-party suppliers**

Whether or not featured on the card, it would seem likely from looking at either of the city cards that the overall price charged to the cardholder should be public knowledge. From that, it could in principle be possible, as envisaged under Article 73a of the VAT Directive, to pinpoint the consideration paid for either of these city cards. That consideration less the amount of VAT relating to services supplied would then make up the taxable amount.

What should be kept in mind, however, is that for any supply made in respect of a city card, the city card is used as part consideration only. It entails that the taxable amount for each such supply cannot be based on the full consideration paid for the city card. Rather, it would have to equal only part of that consideration. Not knowing what the total use will be made of the city card, it is difficult to see how the supplier of an individual service should be able to determine what his part of the consideration actually amounts to in monetary terms. Even if knowing the price paid for the city card, no system has been put in place allowing the supplier to identify that part. It is in fact dependent upon the overall number of services the cardholder will have enjoyed within the set time limit and the supplier has it would seem no access to this information.

Figure 7: Payment streams taking the example of card 1



In the absence of (sufficient) information (to be able to apportion the consideration between the various services supplied in respect of the city card), Article 73a of the VAT Directive stipulates that the taxable amount should instead be based on the monetary value indicated on the MPV itself or in the related documentation. Both for the use of the city card at the center of the *DSAB Destination Stockholm* case (city card 1) and that for which the Danish Tax Assessment Council issued a pre-ruling (city card 2), an upper value is set. This upper value which exceeds the price paid for the city card in question must be taken to be its monetary value. Even if the monetary value is indicated on the card itself, it should still be kept in mind that there is nothing to suggest that the supplier is able to determine what is his part of the monetary value.

While the monetary value may not necessarily be indicated on the card itself, it can certainly be found in the related documentation. That documentation even appears to allow identifying the part due allocated to each supply of service made in respect of the city card. Indeed, where used as part consideration only, taxation could not be based on the monetary value in its entirety. Instead, there would be a need to resort to the related documentation. According to the information available, the supplier is to receive a percentage of the fee normally charged for entry to the attraction, i.e. the normal price. That amount makes up part of the monetary value and could be seen to constitute the taxable amount of the service so provided.

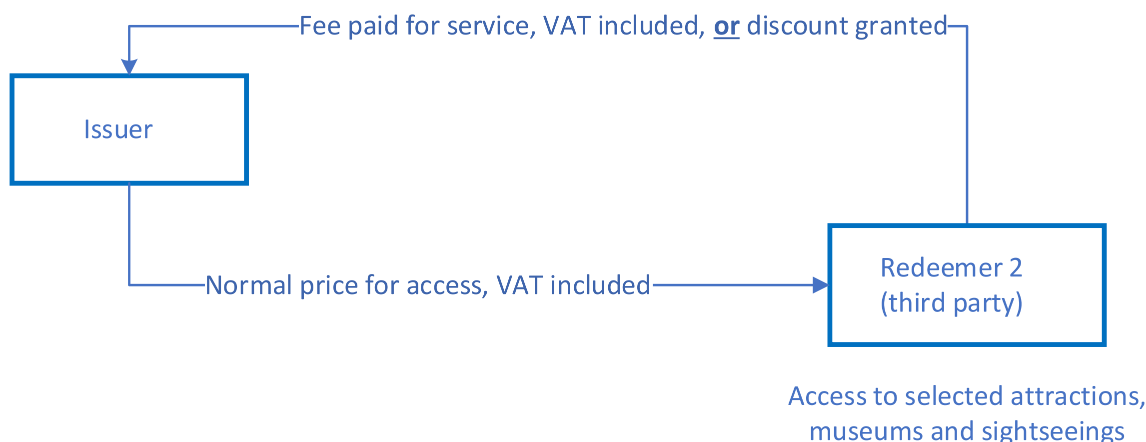
With the monetary value being considerably higher than the consideration paid, in the instance of the 24 hours version of city card 1 that consideration is SEK 669 while the monetary value is SEK 1 800, this method of calculation leaves room for taxation to reflect the consideration that the supplier of each individual service receives.

Looking at what is received by the supplier from the issuer of the city card, it is worth noting that under the business model adopted (be it for city cards 1 and 2) the issuer will not be paying the full value of the service. What is received will instead be a percentage of the normal price only.

That reduction could be taken to translate into the issuer retaining a fee as the consideration of a service rendered to and paid for by the supplier. If seen as a promotion service, it would be subject to VAT by way of the second subparagraph of Article 30b(2) of the VAT Directive. Rather than upfront payment, any fee paid is settled by offsetting it against the consideration paid for access to the attraction run by the supplier. That would seem to suggest, if a service can be identified to which the fee pertains, that for the calculation of the taxable amount under Article 73a of the VAT Directive, the supplier would need to base himself on what is the normal price rather than one that is reduced as the result of netting off.

Alternatively, the reduction could be seen to constitute a price discount obtained at the time of the supply. In setting the taxable amount of any transaction, price discounts are not, according to point (b) of the first paragraph of Article 79 of the VAT Directive, supposed to be included. It stands to reason that if a price discount can be identified and this is seen as granted to the customer which in this instance must be taken to be the cardholder, account should be taken of this in the calculation of the taxable amount under Article 73a of the VAT Directive which shall apply without prejudice to Article 73. That would see the supplier base himself on the reduced price.

Figure 8: Payment streams broken down



- **Services of the issuer**

A special feature of the city cards at hand is that in addition to the services supplied by third parties, the tourist will be able, for as long as the city card is valid, to make use of the busses and boats operated by the issuer of the card. That use is unlimited and has been compared to a subscription for transport services but as the city card only enables its

holder to acquire such subscription when (and if) the card is used as consideration for the transport, this is not seen to stand in the way of the card being classified as a voucher[17].

As above, where goods are handed out or services are provided, it will be for the supplier to account for the VAT based on the consideration paid for the city card. In this particular instance, the supplier and the issuer are however one and the same. That entails access not only to information on what is paid for the city card but also on what must be paid to other suppliers of services. When used as part consideration, there should not be any obstacle in this particular instance for the supplier to determine the part attributable to the transport provided. That in fact should be made up by what remains of the consideration paid for the city card less the amount of VAT relating to the transport itself. Should it be that the city card is only used for the supply of transport, be it by bus or by boat, the taxable amount would be based on the full consideration.

It is the heterogeneous nature of the city cards at stake that leads to this divergence in approach. That divergence flows from Article 73a of the VAT Directive. Had all of the services for which the city card is susceptible to serve as consideration been offered by third parties only, it is difficult to imagine this to have been the case. That is so as it would have required a price set on the transport.

- **Distribution or promotion services**

In spite of what is said above, doubts are susceptible to linger on. It could for example be so if the overall use of services in respect of a city card were to leave part of the consideration paid for that card untaxed. That is not the case where, as with the city cards at stake, services are also being supplied by the issuer himself as that would in any event see the city card taxed in full.

Should a city card be left unused, it is not clear what the avenue for taxation will be. While provision has been made, under the second subparagraph of Article 31b(2) of the VAT Directive, for services of distribution and promotion to be subject to VAT, this is limited to the situation where the MPV is transferred by a taxable person other than that carrying out the transaction. If the consideration paid for the city card cannot be attributed supplies made as the card is left unused, there could nevertheless be scope for seeing this payment for promotion services provided to third-party suppliers whose supplies are being put forward.

Where a city card only involves services provided by third-party suppliers, there would be scope for part of the consideration paid for the city card to be attributed as payment for a promotion services taxable under the second subparagraph of Article 31b(2) of the VAT Directive.

There could, *in extremis*, be cases where use could see the city card taxed at an amount greater than the consideration paid to the issuer. Subject to in-built restrictions, it seems that third-party suppliers will receive what they are due. If, in total, that amounts to more than the consideration paid for the city card, the excess could possibly, by virtue of Article 73 of the VAT Directive, be seen as a third-party consideration. It should be kept in mind that the new Article 73a setting out the taxable amount of goods or services

[17] *DSAB Destination Stockholm*, opinion, points 54-55.

supplied under an MPV applies without prejudice to the basic rule of Article 73 of the VAT Directive.

3.4. Conclusions

Based on the cases at hand and with a view to the conclusions reached by the CJEU in the *DSAB Destination Stockholm* case, it is possible to conclude, subject to a case-by-case verification, that:

1) a city card can be said to satisfy the conditions laid down in Article 30a(1) of the VAT Directive for being a voucher;

2) the city card must be seen to be an MPV falling under Article 30a(3) of the VAT Directive as the services to be supplied are unknown at the time of purchase and given that the difference in VAT treatment, it is impossible to determine the VAT due required for it to qualify as an SPV captured by Article 30a(2) of the VAT Directive;

3) in the absence of sufficient information, third-party suppliers in calculating the taxable amount of the supply made in return of the city card would need to rely on the related documentation to determine their part of the monetary value while the issuer for its supply must base itself on the consideration paid for the city less payments made to other suppliers, this based on Article 73a of the VAT Directive.

4. DELEGATIONS' OPINION

Delegations are asked to express their opinion on the Commission services' opinion.

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ANNEX

Question from Denmark

Consultation of the VAT Committee – The Voucher Directive – City Cards

At the 114th meeting of the VAT Committee, it was not possible for the committee to reach a conclusion on the VAT treatment of city cards. There was consensus that more detail was needed on the schemes used in order to draw any firm conclusions.

In order to achieve a level playing field in the internal market and a common application of the VAT legislation, especially the Voucher Directive (Directive (EU) 2016/1065), the Danish delegation in January 2021 expressed the wish to have the matter discussed again at the next meeting in the committee.

In order to ensure a basis for the discussions the Danish delegation suggested that the discussions could be based on the facts in the public ruling of the Danish Tax Assessment Council published as SKM2019.428.SR (attached). We also attached an unofficial courtesy translation of parts of the ruling (Beskrivelse af de faktiske forhold (Description of the actual conditions) and Skattestyrelsens indstilling og begrundelse (The Danish Tax Agency's recommendation and justification))[*].

Due to the fact that the case C-637/20, DSAB Destination Stockholm AB, was pending before the CJEU at the time it was the view of the Commission Services that long-standing practice did not allow for the Danish consultation to be brought before the Committee.

The Danish delegation would like to once more ask for the Committee to look at this matter.

There are two reasons for this. Firstly, there is a difference between the facts of the case in case C-637/20 and the facts in SKM2019.428.SR. Secondly, the CJEU did not in case C-637/20 deal with the second question in the Danish consultation.

Description of the facts

The facts in the case were:

The city card gives the tourist the opportunity to use busses and boats and gives access to several selected attractions, museums and sightseeing within a given period of time.

The city card acts as a valid entrance ticket for the tourist, as it counts as full payment for access to use of the service that the attraction provides.

The tourist can either purchase the city card online from home or in one of the issuers physical ticket sales. The city card works via a scanning and QR coding system, and it activates the first time when it is scanned at an attraction, after which it is valid for the number of hours indicated on it.

[*] See appendix.

It may occasionally happen that an individual tourist receives supplies with a total value that exceeds the nominal value of the card/the purchase price of the card. Unlike in case C-637/20 the right of the cardholder to be admitted to the attractions is not limited to the nominal value of the card (or any other value).

The majority of the attractions etc. that the city card provides access to, are exempt from VAT, mainly museums and the issuers own busses that run at scheduled times and thus are exempt from VAT. Other attractions, e.g. access to an amusement park, is liable to VAT.

The attraction is entitled to consideration for one visit for every registered access through the city card, with a percentage of the attraction's normal entrance fee incl. VAT.

At the time when the issuer sells the city card it is unknown how the tourist will actually be using the city card. It is therefore unknown whether the tourist will use the city card as redemption at a VAT-exempt or a VAT-liable attraction.

The issuer operates within the field of tourism and excursions in larger cities in several countries. But at the time of the ruling the tourist was only able to redeem the particular city card in the case in Denmark. However, the issuer was considering whether to make it possible for tourists also to redeem the card in other countries.

The city card could be redeemed by the tourist both in relation to services supplied by the issuer (busses and boats) and in relation to services supplied by other suppliers. As the Danish delegation understands the facts in the case, then the obligations of the issuer towards the tourist in relation to the services supplied by other suppliers was limited to an obligation to ensure that the supplier would grant access to the attraction etc. of the other supplier, but did not cover the supply of the service itself.

However, the parties concerned may or may not agree with this reading of the terms and conditions applicable. Although it seems – based on the issuer's illustration of the payment flows in the description of the facts – that the issuer shared the view of the delegation.

As terms and conditions may differ from issuer to issuer, we, however, suggest that the question of the correct VAT treatment be discussed under both the assumption that the issuer should be considered the redeemer and the assumption that the issuer should not be considered the redeemer in relation to the services supplied by other suppliers. That is to say both under the assumption that the services were supplied by the other suppliers to the issuer and that the services were supplied by the other suppliers directly to the tourist.

Does the Voucher Directive apply? - The legal view of the Danish delegation

Recital no. 5 in the preamble to Directive 2016/1065 is worded as follows:

"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."

In the opinion of the Danish delegation, the voucher definition in Article 30a, no. 1, does not include these transport tickets, entrance tickets, stamps or the like. In the delegation's view, the recital serves two purposes:

- A clarification of Article 30a, no. 1.
- A simplification purpose.

In the opinion of the delegation, this simplification is intended to ensure an administrative simplification, which consists of travel documents, entrance tickets, stamps or similar being exempted from the voucher rules, instead being treated according to the rules applied before Directive 2016/1065. Before and after this amending directive, travel documents, entrance tickets, stamps or the like were covered by the provisions on advance payment in article 65 of the VAT Directive.

We therefore find that in case of doubt as to whether an instrument such as a travel document, entrance ticket, a stamp or similar should not be considered a voucher, emphasis can be placed on whether the instrument is a payment on account in the sense used in Article 65.

It follows from case-law that if the VAT is to be due already at the advance payment, it is necessary that all relevant details regarding the circumstance that triggers the onset of the VAT liability, ie. the future delivery or the future service is already known at the time the prepayment is made. It requires that the goods or services are specifically stated at the time the prepayment is made. It also requires that the goods or services are subject to only a single tax rate and that the place of delivery is known in advance. Cf. Judgements of the European Court of Justice in Case C-419/02, BUPA Hospitals Ltd., C-270/09, MacDonald Resorts Ltd. and 520/10, Lebara Ltd.

We find that Article 65 does not apply to the sale of cards to cardholders in cases such as the case in the public ruling. Neither the issuer, the cardholder nor the affiliated service providers have, at the time of the sale, knowledge of which supplies of goods and services will later take place. The VAT treatment of the supplies is therefore not known at the time of sale. The affiliated service providers only obtain compensation from the issuer to the extent that the cardholders actually visit the attraction. Which means that the affiliated service provider does not even know if there will be a supply for consideration.

The cards sold by the issuer cannot in our view be considered a travel document, entrance ticket, a stamp or the like in the sense that the terms are used in recital 5 in the preamble to Directive 2016/1065.

The card can therefore be considered a voucher covered by the definition in Article 30a. The fact that the card serves as a valid entrance ticket cannot justify another result, as Article 65 does not apply.

The card can be considered a multi-purpose voucher', as defined in Article 30a.

In our view the VAT treatment should on this point be the same, both under the assumption that the issuer should be considered the redeemer and the assumption that the issuer should not be considered the redeemer in relation to the services supplied by other suppliers. Under the first assumption we find that the fact that the card can be redeemed by the cardholder/tourist both when receiving taxable services, exempt services and a mix

of taxable and exempt services means that Article 65 does not apply even though there will be no uncertainty regarding the identity of the supplier.

We find that our legal analysis is supported by the judgment of the CJEU in case C-637/20. I.e., that the differences in the facts do not lead to another result.

How to calculate the consideration?

In the public ruling the issuer did not ask for a clarification of a rather important issue: How to calculate the taxable amount in relation to the supplies made by the other suppliers (the affiliated service providers).

No answer was therefore given. In the view of the Danish delegation then it is however important to clarify the issue. The problem at hand is that as mentioned it may occasionally happen that an individual tourist receives supplies with a total value that exceeds the nominal value of the card/the purchase price of the card. This could lead to situations where the issuer will have to pay the affiliated service providers a total consideration which exceeds the consideration received from the tourist by the issuer.

The consideration for the services will de facto consist of both the amount paid for the card and an amount paid by a third party (the issuer).

The European Court of Justice has in, among other, Case C-16/93 Tolsma, paragraph 13, stated that the VAT basis for a service consists of everything received in return for the service when there is an agreement between the service provider and the recipient on a reciprocal exchange of services.

In the European Court of Justice's Case C-149/01, First Choice Holidays, the European Court of Justice has also stated in paragraphs 30-31 that the taxable amount for a service consists of everything received in return for the service, and there must therefore be a direct link between the service provided and the consideration received. This direct connection can also exist when part of the consideration is received from a third party.

In our view the individual supplier will have to pay VAT on the total consideration received even though the suppliers receive a total consideration which exceeds the price for the voucher or the nominal value of the voucher. Article 73a of the VAT Directive cannot justify another result.

According to Article 73a then, without prejudice to Article 73, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher shall be equal to the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value indicated on the multi-purpose voucher itself or in the related documentation, less the amount of VAT relating to the goods or services supplied.

The purpose of Article 73a must be seen as dealing with the problem that redeemer sometimes does not know the price paid for the voucher. In such cases then the nominal value should be uses as the tax base for the supply.

Article 73a does not deal explicitly with the situation where a multi-purpose can be redeemed – partially – in order to receive more than one underlying supply of goods or services.

In situations where multi-purpose vouchers are not redeemed at once, but can be redeemed in part in several installments, then normally the nominal value of the voucher is written off on an ongoing and proportionate basis. The nominal value of the voucher is thus adjusted downwards after each partial redemption. VAT is then calculated proportionally based on the total nominal value of the voucher, or the total consideration if known, and the reduction of the nominal value following the partial redemption of the voucher.

In the case in the public ruling and in similar cases, the value of the voucher is not lowered with each partial redemption. Sometimes the voucher can be used indefinitely (within a given period of time). Sometimes they can be used only once at each affiliated service provider. In such situations we find that the tax base of the affiliated service providers should be determined in accordance with the caselaw of the CJEU. That is to say that the tax base should be everything received by the affiliated service provider in return for the service supplied.

Another problem is that it may very often happen that an individual tourist receives supplies with a total value that is lower than the nominal value of the card/the purchase price of the card. This could lead to situations where the issuer will pay the affiliated service providers a total consideration which is lower than the consideration received from the tourist by the issuer. Also in that situation, it is our view that the tax base should be everything received by the affiliated service provider in return for the service supplied. Even if that means that the tax base will be lower than the consideration received from the tourist by the issuer.

We hope it will be possible to discuss the issues described above at the next meeting of the VAT Committee.

APPENDIX

Description of the actual conditions

The Inquirer operates within the field of tourism and excursions in larger cities in several countries. In Denmark, the Inquirer offers sightseeing trips with busses (running at scheduled speeds) and canal boats at different places.

The Inquirer has developed a "Tourist card" that the Inquirer will begin to offer in the coming tourist season. The Tourist card gives the tourist the opportunity to use the Inquirer's busses and boats together with giving access to several selected attractions, museums and sightseeing within a given period of time.

The purpose of the Tourist card is to help increase the number of visitors as well as to attractions and museums through the marketing that the company does for Tourist card. In the long term, the idea is to expand the geographical scope of the Tourist card so that a card bought in Denmark can be used abroad and vice versa.

The Tourist card acts as a valid entrance ticket for the tourist, as it counts as full payment for access to use of the service that the attraction provides.

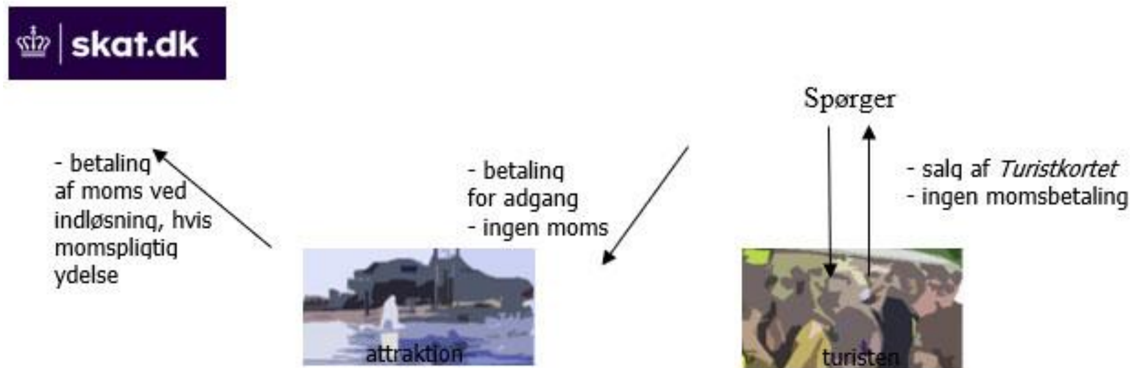
The tourist can either purchase the Tourist card online from home or in one of the Inquirer's physical ticket sales. The Tourist card works via a scanning and QR coding system, and it activates the first time when it is scanned at an attraction, after which it is valid for the number of hours indicated on it.

The majority of the attractions etc. that the Tourist card provides access to, are VAT-free, mainly museums and The Inquirer's own busses that run at scheduled times and thus are VAT-free. On the other hand, e.g. access to an amusement park is VAT-liable.

The attraction is entitled to compensation for one visit for every registered access through the Tourist card, with a percentage of the attraction's normal entrance fee incl. VAT.

At the time when the Inquirer sells the Tourist card it is unknown how the tourist will actually be using the Tourist card. It is therefore unknown whether the tourist will use the Tourist card as redemption at a VAT-free or a VAT-liable attraction. Furthermore, it is unknown whether the tourist will be using the Tourist card at an attraction abroad or in Denmark, and whether the underlying service is thereby subject to VAT abroad or in Denmark. And should the service be subject to VAT abroad, which has differentiated VAT rates, it is unknown what VAT rate that applies.

The expected payment flow can be illustrated as this:



Turistkort - Voucher til flere formål i momsmæssig forstand - Skat.dk

* Text to pictures (left to right):

Inquirer – Tourist:

- Sale of Tourist Card

- No payment of VAT

Inquirer – Attraction:

- Payment for access

- No VAT

Attraction – Danish Tax Agency:

- payment of VAT on redemption if the service is subject to VAT*

The Inquirer wants a clarification of the VAT treatment of the sales, before the sale of the Tourist card begins.

The Danish Tax Agency's recommendation and justification

Question 1

It is requested to have confirmed that the Tourist card is covered by the Danish VAT act's definition of vouchers for multiple purposes, cf. § 73 b, no. 3 of the Danish VAT Act.

Justification

According to § 73 b, no. 3 of the Danish VAT Act, a voucher serving multiple purposes is viewed as a voucher that not only has one purpose. Thus, it can only be a voucher for multiple purposes, if it is an instrument that according to § 73 b, no. 3 of the Danish VAT Act is a voucher. This provision is a voucher in the case of an instrument in which there is an obligation to accept it as a full or partial consideration for the supply of goods and services and in which the goods or services to be supplied, or the identity of their potential

suppliers, is either indicated on the instrument or in the accompanying documentation, including the terms and conditions of use of such an instrument.

§ 73 b, no. 1 of the Act corresponds to Article 30a, no. 1 of the VAT Directive, as inserted by Directive 2016/1065 of June 2016. Recital no. 5 in the preamble to Directive 2016/1065 is worded as follows:

"The provisions on vouchers should not lead to any changes in the VAT treatment of travel documents, entrance tickets to cinemas and museums, stamps or similar". In the opinion of the Danish Tax Agency, it is the consideration that the voucher definition in Article 30a, no. 1, does not include these travel documents, entrance tickets, stamps or the like. In the Agency's view, the consideration serves two purposes:

- A clarification of Article 30a, no. 1.
- A simplification purpose.

In the opinion of the Danish Tax Agency, this purpose of simplification is intended to ensure an administrative simplification, which consists of travel documents, entrance tickets, stamps or similar being exempted from the voucher rules, however, instead treated according to the rules that applied before Directive 2016/1065. Before and after this amending directive, travel documents, entrance tickets, stamps or the like were covered by the provisions on advance payment in § 23, stk. 3. of the Danish VAT Act. According to this provision, the time of payment is considered the time of supply if the payment takes place in whole or in part before supply.

The Danish Tax Agency therefore assesses that in case of doubt as to whether an instrument such as a travel document, entrance ticket, a stamp or similar should not be considered a voucher, emphasis can be placed on whether the instrument is an advance payment in the sense as the term is used in § 23, stk. 3.

It follows from practice that if the VAT is to fall due already at the advance payment, it is necessary that all relevant details regarding the circumstance that triggers the onset of the VAT liability, ie. the future supply or the future service is already known at the time the prepayment is made. It requires that the goods or services are specifically stated at the time the prepayment is made. It also requires that the goods or services are subject to only a single tax rate and that the place of supply is known in advance. Cf. Judgements of the European Court of Justice in Case C-419/02, BUPA Hospitals Ltd., C-270/09, MacDonald Resorts Ltd. and 520/10, Lebara Ltd.

After an overall concrete assessment, the Danish Tax Agency is of the opinion that § 23, stk. 3, does not apply to the Inquirer's sale of cards to cardholders. It is emphasized that neither the Inquirer, the cardholder nor the affiliated service providers at the time of the sale have knowledge of which supplies of goods and services will later happen. The VAT treatment of the supplies is therefore not known at the time of sale. In the long run, it will also not be known in which country there will be a place of supply. It is further emphasized that the affiliated service providers only obtain compensation from the Inquirer to the extent that the cardholders actually visit the attraction.

The situation is therefore not comparable to the situation in SKM2008.356.SR, where a museum sold tickets that also gave access to a neighboring museum. The entrance fee was then divided between the two museums. In the binding ruling, the Tax Assessment

Council took a position on the question of whether the administrative cooperation in connection with the joint ticket sale was covered by the VAT exemption in § 13, stk. 1, nr. 6, of the Danish VAT Act for museum activities. In a situation such as in SKM2008.356.SR, in the opinion of the Danish Tax Agency, this will be a (combination) ticket that is not covered by the voucher rules. In the opinion of the Danish Tax Agency, this will also be the case if, contrary to the situation in SKM2008.356.SR, there is freedom of choice between buying a combination ticket and a ticket only for the individual museum.

After an overall, concrete assessment, the Danish Tax Agency assesses that the cards sold by the Inquirer cannot be considered a travel document, entrance ticket, a stamp or the like in the sense that the terms are used in recital 5 in the preamble to Directive 2016/1065.

The card can therefore be considered a voucher covered by the definition in § 73 b, no. 1 of the Danish VAT Act. The fact that the card serves as a valid entrance ticket cannot justify another result, as § 23, stk. 3 of the Danish VAT Act, as mentioned in the opinion of the Danish Tax Agency, does not apply to the Inquirer's sale of cards to cardholders.

At the same time, the Agency does not assess the card as considered covered by the definition in § 73 b, no. 2, on a voucher for one purpose. It is also emphasized in this connection that neither the Inquirer, the cardholder nor the affiliated service providers at the time of the sale have knowledge of which supplies of goods and services will take place later. The VAT treatment of the supply is therefore not known at the time of sale.

The card can therefore be considered a multi-purpose voucher, as defined in § 73 b, no. 3 of the Danish VAT Act.

Directive 2016/1065 aims to create a uniform VAT treatment of vouchers in EU countries. However, the new rules may give rise to new issues which will require clarification in a dialogue between the Commission (Directorate-General for Taxation and Customs Union) and the Member States. In this connection, the Danish Tax Agency assesses that there is uncertainty as to whether the Commission and other member states will have the same interpretation as the Danish Tax Agency in connection to cards corresponding to the Inquirer's card. The Danish Tax Agency therefore assesses that the binding period for the binding ruling should be determined such that the period expires on 30 June 2021, cf. § 25, stk. 1, 4. pkt. of the Tax Administration Act.

Recommendation.

The Danish Tax Agency recommends that question 1 is answered with a “Yes”.