



16 April 2013

**BUSINESSEUROPE COMMENTS REGARDING THE PROPOSAL FOR A COUNCIL DIRECTIVE
AMENDING DIRECTIVE 2006/112/EC ON THE COMMON SYSTEM OF VALUE ADDED TAX AS
REGARDS THE TREATMENT OF VOUCHERS**

BUSINESSEUROPE supports the European Commission in its endeavours to provide for common rules on the treatment of transactions involving vouchers, and urges the adoption of consistent and uniform rules for all the kinds of vouchers before the implementation of the new Business to Consumer (B2C) rules in 2015.

Being able to easily trade within the European Internal Market is essential for the European Industry. Unfortunately, the reality is different. This is also due to the lack of clarity and consistency in VAT legislation.

The VAT Directive 2006/112/EC does not provide for any rules or clarity on the treatment of vouchers. Uncertainty about the correct treatment can be problematic for cross-border transactions, and for chain transactions in the commercial distribution of vouchers. This affects many businesses, including telecommunications, general retail and also other businesses involved in the supply chain of goods and services (e.g. commodity markets).

For telecommunications businesses, the current proposal is of utmost importance. These businesses are currently responsible for over 70% of all the vouchers in circulation. In light of the new rules as per 1 January 2015, and the implementation of a mini one-stop-shop (MOSS), an agreement will have to be reached before 1 January 2014. This will be crucial in order to meet the timetable required to implement the B2C 2015 rules and the MOSS.

Although the treatment of telecom vouchers is of great importance, BUSINESSEUROPE is concerned that the discussions about the current proposal are mainly focused on these vouchers. It is important to recognise that, for instance, retail businesses also have to deal with a myriad of vouchers, both self-funded, 3rd party funded (e.g. manufacturer or supplier coupons) and as both principal and agent.

For all the sectors, it is also important that the treatment of vouchers takes into account the risk of fraud.

In the Annex to this letter, BUSINESSEUROPE outlines the most important problems currently identified in the current proposal for most of the industries.

Yours sincerely,

Kristian Koktvedgaard
Chairman of the BUSINESSEUROPE VAT Group



ANNEX

Distinction between a voucher and a means of payment

BUSINESSEUROPE strongly supports the proposed distinction between vouchers and payment instruments. For example, the primary purpose of a telecommunication voucher is to develop the market and to confer a specific right to receive telephony services; it is not necessarily intended as a means of payment. Furthermore, it should be mentioned that telecommunication businesses apparently have no interest in issuing telecommunication vouchers combined with unlimited payment services and there will be no business model supporting this combination.

BUSINESSEUROPE recognizes that it is not always clear what should fall under the definition of a voucher.

- Payment for unrestricted entitlement to a discount over a period of time (e.g. public transport reduction cards)
- Rights distributed in the commodity markets
- Gift vouchers (replacement of money: out of scope)

Kind of vouchers - SPVs -v- MPVs

The VAT treatment of any supply of vouchers prior to redemption must recognise the commercial nature of the contract / supply chain involved. There are situations where there is a true buy/sell arrangement, but also a true agency where the intermediary(ies) pass back the value of the voucher after deduction of their contractual commission.

Single Purpose Vouchers (SPVs)

There needs to be a clear definition of SPVs. The definition given in the Consultation Document, with slight variances, seems appropriate viz.

An SPV entitles the holder to receive identified goods or services, in circumstances when the following can be identified from the outset:

- The level of taxation (in particular, the rate of VAT)
- The supplier's identity, and
- The Member State in which the underlying supply takes place

In our view the Tax Point would follow the basic time of supply rules in the Directive:

- Article 62
For the purposes of this Directive:
'Chargeable event' shall mean the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled;



- Article 65

Where a payment is to be made on account before the goods or services are supplied, VAT shall become chargeable on receipt of the payment and on the amount received.

BUSINESSEUROPE believes that the definition and the conditions of a prepayment have been made clear by the European Court of Justice in the BUPA Hospitals case¹ and also recently the Lebara case². In case of a prepayment, there is a taxable (or exempt) supply or service for VAT purposes. If not, the relevant VAT treatment can only be determined upon redemption of the voucher, including the place of supply and the taxable amount.

For the sake of completeness and clarity BUSINESSEUROPE would like to mention these examples in the proposal and explain whether or not they fall under the definition of a voucher, and if not what would be the VAT consequences of transactions with these 'non-vouchers'.

In this respect it is clear that we need clarity on whether tickets to events are, in themselves SPVs. Any cross-border sale through a supply chain creates significant issues based on the place of supply rules.

Multi-Purpose Vouchers (MPVs)

Anything which is not a method of payment or an SPV should be treated as an MPV. VAT will fall to be due on these at the point of redemption i.e. when the underlying goods or services are known and both the underlying time and place of supply can be identified. Tax will be charged on the Face Value of the voucher.

- Telecommunication voucher including content, such as gaming service, lottery, parking service.
- Gift vouchers for commercial reasons (e.g. temporary close of store, products are temporarily sold out or unhappy customer) entitle customers to purchase goods at own stores or other stores (whereby different rates apply).

Discount vouchers distributed by manufacturer

Under the current proposal the treatment of discount vouchers distributed by a manufacturer to a customer may in national situations lead to a significant loss of margins at the level of the retailer where the discount voucher relates to products that fall under the reduced or zero rate. This has already been acknowledged by the European Commission.

¹ Case C-419/02 (21 February 2006).

² Case C-520/10



The retailer will have to charge the gross amount of the discount to the manufacturer, but has to account for VAT too. Where the retailer takes into account a reduced (or zero) rate when he sells the related product to the customer (so his net price is (say) 100/106 of the sales price, he now has to charge this gross amount (the discount) to the manufacturer subject to the standard rate (say 21%). This means that he will only receive 100/121 of the amount of the discount.

However, in cross-border situations the reverse charge should apply and cognisance of the economic impact to the participants must be taken into account when determining the amount to be charged.

The proposed treatment should therefore be adapted. It will not be easy to find ‘one-size-fits-all solution’ because of the administrative complexity. Furthermore a certain period of time should be allowed for businesses to adapt their IT-systems.

A possible solution in national situations could be to allow the redeemer (the retailer) to charge the issuer of the voucher (the manufacturer or another party in the distribution chain) for the amount of the voucher (the discount) at the VAT rate applicable to the underlying supply of goods or services. Should the underlying supply of goods and services consist of goods or services that are subject to both reduced rates and standard rate, the redeemer will have to proportionally charge this to the issuer. The aforementioned solution would only require a small change of the current text in the proposal, but will increase the administrative complexity at the level of the retailers.

In cross-border situations³ the reverse charge should apply, whereby it is not yet clear whether the reverse charge will be added to the amount of the voucher (the discount) or that the retailer has to exclude the amount of VAT from the gross amount and charge a net amount plus VAT under the reverse charge regime. It seems that based on the current proposal the retailer will – in cross-border situations – receive the gross amount ‘VAT-free’ as the additional VAT charge will not affect the margin.

Cash-back promotions by Manufacturers

There are many examples where manufacturers offer promotional discounts of a “cash-back” nature. A customer of a retailer buys a product for say £200 and is given a manufacturer’s voucher enabling him to claim a specified sum as a cash-back from the manufacturer. In these cases the manufacturer must be able to treat the cash-back as a discount against his original sale and be able to adjust VAT accordingly. This follows the European Court decision in Elida Gibbs case⁴

Promotional schemes (loyalty schemes)

³ Cross-border situations mean within EU, but also EU to non-EU and vice versa.

⁴ C317/94



In retail business it is common practice to have all kind of schemes to bind the customers to their businesses (to generate ‘traffic’). Retail business combines direct discounts (for instance buy-one-get-one-free) and discounts in arrears (cash backs and loyalty schemes). Moreover, retail business very often acts as agents for other businesses that sell all kind of vouchers (e.g. gift cards, hotel vouchers, entrance vouchers for an attraction such as a zoo or theme park).

It is essential that there is clear guidance confirming that such promotional or loyalty schemes are covered by the current proposal.

In article 30a of the proposal a relation is required between the underlying transaction (‘with regard to a supply’) and the subsequent discount. With loyalty schemes such relation will not always be visible or traceable, especially if there are a number of issuers and redeemers involved, though it is quite obvious that those retailers intend to provide the customer with a discount (in arrears). It should be recognized that in retail business “there is no such thing as a free lunch”. These vouchers are issued and used solely for business purposes and are designed to generate traffic – for a longer period of time – in the stores either via discounts to a subsequent sale or a provision of alternative loyalty rewards, as identified in the Loyalty Management UK case ⁵.

BUSINESSEUROPE would like to point out that from a business perspective there is no difference between immediate discounts or those given in arrears.

Where a business allows a customer to redeem vouchers for the full value of an item either directly or through other parties the goods or services acquired should not be treated as “free gifts” or “third party consideration” as decided in the *Kuwait Petroleum* case⁶ or the *Loyalty Management UK* case but should be recognised as being equivalent to a discount.

Redemption of vouchers and change of VAT rates

BUSINESSEUROPE would like to stress that an MPV should be taxed only on redemption (and only for the amount of the redemption). Any change of VAT rates will not affect the MPV as such as VAT will be due upon (partly) redemption of the MPV at the applicable rate at the moment of redemption. No (additional) VAT should be due if the MPV remains (partly) unredeemed.

BUSINESSEUROPE would also like to mention that there can only be one chargeable event for SPVs which is at the time of the sale of the SPV. Any change of VAT rates between this tax point and the redemption of the SPV should not lead to any additional VAT or any refund of VAT paid. We would like to advise to explicitly mention this in the proposal, as this VAT treatment has not been recognised as such by all Member States.

⁵ Case C53/09

⁶ Case C-48/97 (27 April 1999)



- Customer buys ticket for sports game, but does not go there
 - Seller charges the amount including VAT due at the time of the sale to customer;
 - No additional VAT consequences
- Customer buys ticket for sports game, but returns the ticket to seller before the game takes place
 - Seller charges the amount including VAT due at the time of the sale to customer;
 - Upon returning the ticket by customer, seller refunds the total amount including VAT due at the time of the prior sale to customer;
 - Seller is entitled to a refund of the VAT amount
- Customer books into hotel, but does not show up
 - The hotel charges the total amount for the first night, but there is no VAT due.

Volume discounts and group discounts

BUSINESSEUROPE assumes that volume discounts and group discounts do not fall under the scope of this proposal.

Volume discounts are rebates granted by the supplier of goods to the recipient of the goods if the supplies exceed a certain level as agreed by both parties. Since volume discounts are corrections of the sales price, the discounts will be subject to VAT. In case of cross-border situations the same rules apply as to the underlying supply.

Group discounts are discounts – in most cases – granted by the head office of the supplier to the head office of the recipient. These discounts come on top of volume discounts and all other arrangements that are agreed on national/bilateral level. There is (very often) no direct relationship between the group discount and the underlying supplies of goods. Many Member States therefore assume group discounts are to be out of scope of VAT. However, some Member States take the approach that the head office of the recipient supplies a taxable service to the head office of the supplier, where such service is deemed to be a kind of broker service; the head office of the recipient directs its subsidiaries to purchase from subsidiaries of the head office of the supplier. BUSINESSEUROPE is of the opinion that some clarification is needed in this respect.

O-O-O