



TAX EXECUTIVES INSTITUTE, INC.

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Mr. Jeppe Tranholm-Mikkelsen
General Secretariat to the European Union
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Dear Mr. Tranholm-Mikkelsen:

LYNN MOEN
Vice President, Region I
Walton Global Investments Ltd.
Calgary, AB

Subject: The Treatment of Vouchers for Value Added Taxes

GARY P. STEINBERG
Vice President, Region II
Level 3 Communications, Inc.
Rochester, NY

In May 2012, the European Commission ("Commission") adopted a proposal to amend Directive 2006/112/EC ("VAT Directive"), which addresses the common system of value added tax ("VAT") in the European Union, as to the treatment of vouchers. The Council Working Party on Tax Questions has since discussed the VAT voucher dossier at length; however, the parties have not been able to reach a consensus sufficient to pass it to Ministers (via Coreper) for adoption by the Council of the European Union. The delay in finalizing this amendment to the VAT Directive is causing considerable concern in the business world, where vouchers are used extensively to meet many aims.

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Tax Executives Institute, Inc. ("TEI") urges the Council of the European Union to conclude the negotiations and adopt revised rules clearly setting out the VAT treatment for vouchers. We would be grateful if you would circulate this letter to the tax, internal market, and competition attachés in each of the 28 permanent representations to the EU.

KATHERINE C. CASTILLO
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About Tax Executives Institute

JANET L. KREILEIN
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Milwaukee, WI

Founded in 1944 to serve the professional needs of business tax professionals, TEI is the preeminent association of in-house tax professionals worldwide. TEI espouses organizational values and goals that include integrity, effectiveness, efficiency, and dedication to improving the tax system for the benefit of taxpayers and tax administrators.

JAMES A. KENNEDY
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Atlanta, GA

TEI's approximately 7,000 professionals manage the tax affairs of over 2,800 companies across all industry sectors around the world. Many of these members' companies have a business presence and/or sell into all 28 EU Member States and are involved in the sale and/or distribution of vouchers. TEI's members are accountants, lawyers, and other corporate and business

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employees responsible for the tax affairs of their employers in an executive, administrative, or managerial capacity, and continually monitor consumption tax developments around the world.

TEI believes it is critical to maintain a dialogue between businesses and revenue authorities when developing rules for VAT to ensure they are workable and not overly burdensome on business or tax authorities. It is also critical to protect the neutrality of the VAT system for cross-border transactions by ensuring supplies are not subject to double taxation or, indeed, unintentional non-taxation.

Comments Regarding Voucher Issue

Various Member States have taken very different positions regarding the time when VAT is due in relation to vouchers. This is less of an issue when the vouchers are redeemable in one Member State. However, when combined with the “place of supply” rules in cross border situations, the timing of when tax is due is critical to ensuring double taxation does not occur. This timing problem was exacerbated by the 1 January 2015 changes to the VAT rules addressing cross border supplies of telecoms, broadcasting, and electronically-supplied services to consumers, which now treat these services as taxable in the country of the consumer.

For example, some Member States tax all vouchers through the chain (that is, each time they are supplied), some Member States tax vouchers on issue (and not any further down the chain), and other Member States tax all vouchers on redemption. Double taxation occurs if the supplier is in a country where tax is due upon either of the first two options and the customer is in a country where the tax is due on redemption because both the countries of the supplier and customer expect VAT on the sale. The enclosed document sets out several real voucher scenarios to demonstrate more broadly the way the current rules distort the ability of business to operate commercially.

The EU has been discussing how to deal with vouchers since the late 1990s. Since May 2012, when a decision by the Court of Justice of the European Union resulted in the Commission fast tracking a proposal to change (and align) the VAT rules on vouchers, the debate has been at the technical level in the Council of the European Union working group addressing VAT matters. If the Council of the European Union is unable to clarify the rules through the proposal under negotiation, it is very likely that the Court of Justice of the European Union will continue to define the way the existing rules should be interpreted, which could easily have unintended consequences.

TEI’s members are increasingly concerned by the time the European Union is taking to conclude negotiations on the VAT voucher dossier. For example, the Commission launched its Digital Single Market Strategy¹ earlier this year with a view to opening up digital opportunities for

¹ <http://ec.europa.eu/digital-agenda/en/digital-single-market>

people and business and enhancing Europe's position as a world leader in the digital economy. However, the uncertainty of the voucher initiative affects the ability of business to make commercial decisions, and thus affects the ambitions of the Digital Single Market Strategy in a negative way.

In a recent survey undertaken by Ecommerce Europe,² VAT was reported as the third largest barrier to growth for businesses trying to trade cross border, behind legal and logistics challenges. One of the key comments made by respondents to the European Commission's 2010 green paper on the future of VAT³ was that it was easier to trade with non-EU countries than with EU countries. If the challenges VAT poses when business sell within the EU are not addressed, those barriers will remain and will compromise the credibility of the Digital Single Market Strategy.

The current lack of clarity not only impacts cross border trade in the internal market, it also gives rise to competition issues. A business selling only in one country is not subject to double taxation, whereas one selling cross border will be subject to double taxation selling into certain countries. This issue affects businesses whether they are large or small, and across a wide spectrum of trade, because vouchers are used to facilitate business.

Some Member States do not think there are any VAT issues in practice with vouchers. While this may be true when vouchers are sold and transacted within one taxing jurisdiction, increasingly vouchers are seen as tools to growing market share cross border, and it is when the rules of different Member States collide that most issues seem to arise. While the cross border use of vouchers is by no means restricted to online sellers, vouchers have opened up those markets greatly in countries where the use of credit cards is less prevalent or there is greater suspicion about buying online using a credit card. The current situation means businesses are unable to develop their offerings as they would like to for fear of double taxation or find that they need to set up different voucher processes in each Member State. This further undermines the credibility of the European Commission's Digital Single Market Strategy.

We urge all Member States to come together and to agree upon a common approach to the value added taxation of vouchers as a matter of urgency, and to adopt the above-mentioned Directive without further delay. We would thus be grateful if you would circulate this letter to the tax, internal market, and competition attachés in each of the 28 permanent representations to the EU.

* * *

TEI's comments were prepared by TEI's European Indirect Tax Committee, whose chair is Paula Regales. If you have questions about TEI's comments, please contact Ms. Regales at +34

² <http://www.ecommerce-europe.eu/about>

³ http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_11_future_vat_en.htm

(91) 426 35 57 or paula.regales@jci.com, or Pilar Mata of TEI's legal staff at +1 202 464 8346 or pmata@tei.org.

Respectfully submitted,
Tax Executives Institute, Inc.



C. N. (Sandy) Macfarlane
International President

Scenario 1a: Conflict between EU/national legislations in VAT treatment for resellers – impossibility to sell MPV across border into the UK

A German-based retailer sells vouchers across the EU, redeemable against a number of different websites. The vouchers are sold to intermediaries in different EU Member States, for redemption against different language websites operating in different currencies. The vouchers can be redeemed against physical goods, digital goods, or services. The retailer will not know where the intermediary sells the vouchers, and the goods or services can be supplied to any country, not necessarily where the intermediary or retailer is based.

Some of these intermediaries are based in the UK and require notional VAT invoices, which the German-based retailer cannot issue without a ruling from HMRC.

Scenario 1b: Conflict between EU/national legislations in VAT treatment for resellers – higher VAT collection in the UK compared to other EU MS

A UK-based retailer sells vouchers across the EU, redeemable against a number of different websites. The vouchers are sold to intermediaries in different EU Member States, for redemption against different language websites operating in different currencies. The vouchers can be redeemed against physical goods, digital goods, or services. The retailer will not know where the intermediary sells the vouchers, and the goods or services can be supplied to any country, not necessarily where the intermediary or retailer is based.

The various non-UK tax authorities gain VAT on the achieved income value of the vouchers to the retailer – even if they are sold at a discount.

In the UK, the UK tax authorities gain VAT on the full face value of the voucher – partly from the retailer, partly from the reseller.

Example: GBP50 voucher sold for GBP45

Sale to non-UK reseller – VAT applies at redemption on GBP45

Sale to UK reseller – Sch 10A means VAT applies on the margin, and on the cash achieved/redemption value to the retailer

Scenario 1c: Conflict between EU/national legislations in VAT treatment for resellers – irrecoverable input VAT in the UK compared to other EU MS

As per 1b above – retailer selling MPVs through a supply chain featuring resellers.

If the voucher is sold to a taxable person who subsequently gives away the voucher, they are not entitled to recover the VAT. This irrecoverable VAT does not arise in other EU MS. [Associated Newspapers]

Scenario 2: Conflict in use and VAT treatment between national legislations and information available to distributors and redeemers

A French-based voucher website sells vouchers across the EU, redeemable against a number of different websites. The vouchers are sold to a VAT registered airline in Ireland, for redemption against different language websites operating in different currencies. The airline uses these vouchers as incentive for using their flights and travel agency services. The vouchers can be redeemed against physical goods, digital goods, or services. The voucher website operator will not know where or how the airline ultimately hands out the vouchers, and the goods or services can be supplied to any country, not necessarily where the airline or voucher retailer is based.

Scenario 3: Domestic confusion for Bricks & Mortar business

A UK-based shopping centre sells vouchers to customers, for use in the shopping centre. The vouchers can be used against any shop in the centre, including on a retail website, which operates through an online portal/booth in the shopping centre. The website offers a wide range of goods, targeting home office users and small and large businesses (both VAT and non-VAT registered). The

vouchers, however, can be purchased by B2B and B2C customers. The goods can be delivered in the UK, Channel Islands, and Republic of Ireland.

Scenario 4: A discount in one country is a service in another country

A Luxembourg internet retailer sells vouchers at a discount, redeemable against a number of different websites, operated by that retailer. The vouchers are sold to intermediaries in different EU Member States, for redemption against different language websites operating in different currencies. The vouchers can be redeemed against physical goods, digital goods, or services. The retailer will not know where the intermediary sells the vouchers, and the goods or services can be supplied to any country, not necessarily where the intermediary or retailer is based.

The retailer subsequently discovers resellers in Germany consider the discount to be a commission for services, and have been reporting this as a taxable transaction based on German national legislation. There is no obligation to provide a service, and the retailer is uninvolved in the services being provided.

Scenario 5: Gift vouchers and Discount vouchers

A Luxembourg internet retailer sells vouchers redeemable against a number of different websites. The vouchers are sold to intermediaries in different EU Member States, for redemption against different language websites operating in different currencies. The vouchers can be redeemed against physical goods, digital goods, or services. The retailer will not know where the intermediary sells the vouchers, and the goods or services can be supplied to any country, not necessarily where the intermediary or retailer is based.

When the ultimate customer redeems the voucher, they are also given an additional voucher that can be used for all purchases on the retailer's websites and is indistinguishable to a 'paid for' voucher from the customer's point of view.

Scenario 6: Business impact, refusal to engage in resale contracts

A business engaged in the sale of online games sells vouchers for access to their games and the purchase of additional content (e.g. EUR20 credit for the purchase of weapons in an online role playing game). The vouchers are sold through various retailers on and offline. The vouchers are redeemable on role playing websites, which are global and not European or country specific. The online games business sells through distributors and does not know where the retailers or customers are based. Due to the confusion and complexity of the rules on vouchers, the VAT treatment of these cards is not known to the online gaming provider at the time of the initial sale.

In this scenario, some businesses move away from reseller models and towards an undisclosed agency model.

Scenario 7: Double taxation being experienced by an SME tech start up

M operates a "gamified shopping" site. Customers (private individuals) purchase credits which are either used to take part in the auction or, in the alternative, to purchase a variety of goods in the M online shop (the latter being a traditional commerce arrangement). Furthermore, where the credits are used to bid in an auction, the customer either wins the auction (and pays a small additional postage sum) and acquires the goods, or loses the auction. In the latter scenario, the value of the credits used to bid are lost or can be used by the [losing] customer towards the purchase of goods in the M shop.

In the UK, HMRC have taken the view that the purchase of the credits is the purchase of a right to take part in an auction - a taxable supply of services. Until January 2015, these services would therefore be subject to UK VAT irrespective of the location of the customer. HMRC accept that any purchase of goods from M would be taxable in the UK or a distance sale to the EU.

Germany, Italy; and likely Spain and France (still in discussions) have argued where credits are used towards either the purchase of goods or an auction win, the value of the credits is part of the value of the goods supplied, and hence VAT is due on the credit sum and any payment towards the goods (post and packing). This has led to double taxation in Germany and Italy, and is likely to lead to the same in France/Spain.

M argues the credits are multi-purpose vouchers, redeemable for any goods in the M shop or to be used in the auction. Even if M's argument is successful in the UK, Germany and Italy will continue to pursue their positions, ignoring that the voucher rules change the VAT analysis.

M has a pending tribunal decision (first tier) on the voucher point, but is also requesting a referral to the ECJ since the latter would address how the double taxation should be resolved in light of the voucher argument.