The treatment of vouchers: when does VAT become payable?

Indirect Tax



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Single-purpose vouchers can be taxed upon issue but because the end use of multi-purpose vouchers is subject to choice, their taxation has to await redemption.

Key Points

What is the issue?

In the EC’s proposal for the new directive on the VAT treatment of vouchers, the distinction between single-purpose and multi-purpose vouchers ‘hinges on whether the information is available to tax on issue or whether, because their end-use is subject to choice, taxation has to await redemption’.

What does it mean to me?

In the official records of the negotiations which informed the final draft of the directive, the European legislature also identified a number of commercial contexts where this new multi-purpose voucher legislation was expected to apply.

What can I take away?

Where businesses offer vouchers that give customers a choice of *what* to consume or *where* that offering might be consumed, they may need to consider whether VAT is chargeable at the time of the initial transaction or only when a customer in fact receives the underlying goods or services.

For years, the VAT treatment of vouchers has asked searching questions of businesses, advisers and perhaps even tax authorities. In the absence of binding EU legislation or case law from the Court of Justice of the European Union, the Value Added Tax Act (VATA) 1994 Sch 10A(1) defined a ‘face-value voucher’ as ‘a token, stamp or voucher (whether in physical or electronic form) that represents a right to receive goods or services to the value of an amount stated on it or recorded in it’. Other paragraphs within Sch 10A defined ‘retailer vouchers’, ‘credit vouchers’ and ‘single-purpose vouchers’.

These provisions were the exclusive creation of the UK Parliament and of the Finance Bill 2003, the notes to which explain that Sch 10A was introduced ‘to block leakage and avoidance of VAT on the sale of face value vouchers’. But did it create certainty for business?

The case law of the last 20 years suggests not. In well-known cases such as *Leisure Pass* [2008] EWHC 2158 (Ch), *Wiltonpark* [2016] EWCA Civ 1294, *Associated Newspapers* [2017] EWCA Civ 54, *FindMyPast* [2017] CSIH 59 and *London Clubs Management* [2020] UKSC 49, the application of the UK’s vouchers legislation to diverse commercial practices posed complicated questions of fact and law which frequently troubled the higher courts.

Single-purpose and multi-purpose vouchers

With similar scenarios repeating across the member states of the European Union, in 2012 the European Commission proposed a new directive to govern the VAT treatment of vouchers. Observing that ‘uncertainty about the correct tax treatment

can … be problematic for cross-border transactions' and that 'the absence of common rules' had created an 'inevitably uncoordinated' legislative landscape, this new directive sought not only to distinguish between 'vouchers and generalised payment instruments' but also to impose common definitions of different types of vouchers across the single market.

Since 2019, therefore, the Principal VAT Directive and VATA 1994 Sch 10B have defined vouchers – in more or less identical terms – as physical or electronic instruments which must be accepted as consideration for the provision of goods and services.

'Single-purpose vouchers' are vouchers where the place of supply and the applicable rate of VAT are known at the time such vouchers are issued, and each transfer of a single-purpose voucher is subject to tax.

Conversely, where either the place of supply or the applicable rate of VAT is unknown, such a voucher is a 'multi-purpose voucher', and VAT is not chargeable on a multi-purpose voucher until it is finally redeemed for the actual provision of goods and services.

As the European Commission explained in its proposal for the new directive, the distinction between single-purpose and multi-purpose vouchers 'hinges on whether the information is available to tax on issue or whether, because their end-use is subject to choice, taxation has to await redemption'. The Economic and Social Committee of the European Parliament reinforced this distinction during the legislative process when it observed that: 'In the case of multi-purpose vouchers only the redeemer of the voucher knows what has been supplied, when and where.'

In the official records of the negotiations which informed the final draft of the directive, the European legislature also identified a number of commercial contexts where this new multi-purpose voucher legislation was expected to apply. Noting that vouchers could be distributed by newspapers, intermediaries, supermarkets and other outlets, the Commission alighted on the example of 'an international hotel chain [which] seeks to promote its products through vouchers which can be redeemed for accommodation in its establishments in any of several member states'. This, of course, calls to mind the case of *Macdonald Resorts* (Case C-270/09), where uncertainty as to ***where*** consumers would spend timeshare 'points' meant that payments for those points were held to be preliminary transactions rather than

consideration for a supply.

The Commission also paid close attention to the telecommunications industry, suggesting that an obvious example of a multi-purpose voucher was where prepaid credit ‘could be used either for telecommunications (standard rated for VAT) or to pay for public transport (where a reduced rate may apply)’. On this point, the Commission then drew a distinction between ‘a multi-purpose voucher (where the holder has access to telecommunications services, as well as other specified services or goods) and a payment service (where the purpose is to facilitate the spending of a prepaid credit for the purchase of goods or services, notably including from third party providers)’, and that the distinction turned on whether the right to receive goods or services – of whatever description – was inherent to the issuance of the voucher.

The case of *DSAB Destination Stockholm*

Understandably, given that the Vouchers Directive came into force only in 2019, there is relatively little jurisprudence concerning its application. Indeed, in the UK, given the time that it can take to resolve disputes, even the most recent case which addressed the VAT treatment of vouchers – *Lucky Technology Limited* [2022] UKFTT 366 (TC) – concerned only the old Sch 10A.

In the CJEU, however, the case of *DSAB Destination Stockholm* (Case C-637/20) has provided valuable guidance on the interpretation of the new vouchers regime. Here, the taxpayer issued city cards to visitors to Stockholm which entitled consumers to visit more than 60 attractions and use various forms of public transport. In the taxpayer’s submission, the city cards were multi-purpose vouchers because when they were issued it was unknown which attractions a consumer would visit, and which rates of VAT would apply.

Rejecting the Advocate General’s suggestion that any ‘unused’ credit on such a city card could be construed as taxable consideration ‘for the distribution or promotion of services’, the CJEU agreed with the taxpayer that the cards amounted to multi-purpose vouchers for VAT purposes. This was because the city card gave consumers ‘access to various supplies of services, which are subject to different rates of VAT or are tax exempt’ and, consequently, it was ‘impossible to predict in advance which supplies of services will be selected by the cardholder’.

The court concluded, in language strikingly similar to the Commission's explanation of the multi-purpose voucher regime, that 'the VAT due on the services obtained by the cardholder is not known at the of issue of the card', and so VAT could not be charged on the full value of the city card when it was issued to a cardholder.

In conclusion

Because the referred questions in *Destination Stockholm* were registered with the CJEU before 31 December 2020, the judgment of the court has the status and binding authority of a judgment of the Court of Appeal. However, it remains to be seen how HMRC and the UK courts will interpret and apply the CJEU's conclusions because, at the time of writing, the case has not been cited in either HMRC's guidance or any published decisions.

Even so, where businesses make commercial offerings that give customers a choice of *what* to consume or where there is uncertainty over *where* that offering might be consumed, they should consider whether those offerings fall within the vouchers regime, and therefore whether VAT is chargeable at the time of the initial transaction or only when a customer in fact receives the underlying goods or services.

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