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By PwC Deutschland | 22 April 2024

ECJ: VAT treatment of prepaid cards or voucher codes for purchase of digital content

In a request for a preliminary ruling from the Supreme Tax Court the European Court of Justice was asked to comment on the classification and VAT liability regarding the marketing of prepaid cards or voucher codes used to purchase digital content in an online shop. Specifically, the focus was on the distinction between single-purpose vouchers and multi-purpose vouchers.

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Background

During 2019 M-GbR (a German non-trading company) marketed via its online shop prepaid cards or voucher codes enabling ‘user accounts’ to be loaded for the purchase of digital content in online shop X (‘shop X’). Those cards, known as ‘X cards’, enabled purchasers to use shop X (‘X user account’) with a certain nominal value in euros. Once such an account had been loaded, the account holder could purchase digital content from shop X at the prices indicated there. Shop X was managed by company Y, established in the United Kingdom. Y was responsible for issuing X cards and marketing them in the EU, with different ‘country’ codes, through various intermediaries. X cards with the ‘country’ code DE were intended exclusively for customers who had both their domicile or habitual residence in Germany and a German X user account. When opening an X user account, customers were required to provide accurate information enabling their place of domicile or habitual residence to be determined.

The German tax authorities took the view that the X cards constitutedsingle-purpose vouchers, since they could be used only by customers domiciled in Germany who had a German X user account, so that the place of supply, within the meaning of Paragraph 3a(5) of the German VAT Act, was in Germany (more on the dispute in the main proceedings to be found in para. 20 et seq. of the judgment).

In its request the Supreme Tax Court submitted the following questions to the ECJ:

1. *Does a single-purpose voucher exist (…) where the services to which the voucher relates is to be supplied to final consumers within the territory of a Member State, even though the fiction of the first subparagraph of Article 30b(1) first sentence of the VAT Directive means that* ***the transfer*** *of the voucher* ***between taxable persons*** *is considered to be a service supplied in the territory of another Member State?*

2. *If the first question is answered in the negative (and hence a multi-purpose voucher exists): Does subparagraph 1 of Article 30b(2) of the VAT Directive, according to which the actual provision of the services in return for a multi-purpose voucher is subject to VAT, whereas each preceding transfer of that multi-purpose voucher is not subject to VAT, preclude a tax liability arising from other grounds? With this latter question* ***the Supreme Tax Court refers to the ECJ judgment of 3 May 2012, case C-520/10 Lebara****, which dealt with phonecards: Both the initial sale of a phonecard and its subsequent resale were held by the ECJ to be taxable transactions.*

The response of the ECJ to the questions referred:

The answer to the **first question** is that the classification of a voucher as a ‘single-purpose voucher’ within the meaning of Article 30a(2) VAT Directive solely depends on the conditions laid down in that provision, which includes the requirement that the place of supply of services to end consumers, to which that voucher relates, must be known at the time of the issue of that voucher, irrespective of the fact that the voucher is the subject of transfers between taxable persons acting in their own name and established in the territory of Member States other than that in which those end consumers are located (judgment, paragraphs 28 – 55).

In response to the **second question** the ECJ held that Article 30b(2) of the VAT Directive must be

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interpreted as meaning that the resale by a taxable person of ‘multi-purpose vouchers’, within the meaning of Article 30a(3), may be subject to VAT, provided that it is classified as a supply of services to the taxable person who, in return for those vouchers, carries out the actual handing over of the goods or the actual provision of the services to the end consumer (judgment, paragraphs 56 to 65).

With regard to X cards and provided that those instruments are classified as ‘multi-purpose vouchers’ it cannot be ruled out that, when reselling those vouchers, M-GbR may be carrying out an independent supply of services, such as a supply of distribution or promotion services for the benefit of the taxable person. It is for the Supreme Tax Court to determine whether, in the specific circumstances of the case in dispute, M-GbR’s transactions should be classified as such for VAT purposes.

The ECJ further points out that this current interpretation is not in contradiction to the judgment of 3 May 2012, *Lebara* (C?520/10), to which the Supreme Tax Court referred, and which concerned the tax treatment of prepaid cards for telecommunication services. As is apparent from paragraph 28 of the *Lebara* judgment, its scope is clearly limited to the situation at issue, which in any event predates the provisions of the VAT Directive inserted by Directive 2016/1065, as it concerned services and VAT already identified at the time of the issue of those prepaid cards. Accordingly, that judgment relates to instruments that should now, under the current provisions of the VAT Directive, be classified as ‘single-purpose vouchers’.

Reference:

ECJ, judgment of 18 April 2024 (**C?68/23**), *Finanzamt O*.

Keywords

digital platform operators, multiple-purpose voucher