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The VAT treatment of vouchers in cross-border trade

by

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Summary

Under a long time in the European Union, the topic of taxation of vouchers have been highly discussed. Because of the lack of harmonized rules, the Member States have individually created both definitions of different types of vouchers, and rules on how to tax the different vouchers. However, the fact that the Member States use domestic rules is not a problem when the vouchers are used domestically. Nevertheless, when the vouchers are used in cross-border trade, problems such as what the taxable amount is occur. This thesis assesses the cross-border VAT treatment of vouchers by comparing the treatment when vouchers are distributed and used in domestic situations with cross-border situations.

When the examination of the VAT consequences of cross-border trade with vouchers is done, the conclusion is that there are three problems occurring. The first is that, in some cases, the VAT is not paid in the same Member State as it would be if no voucher was used. The solution to this problem is that a reclassification of the distribution of these vouchers is made. The two remaining problems is that in some cases a loss of tax revenue occurs, and in some cases more VAT than supposed is paid to the tax authorities. The solution to these two problems is that the problematic transactions falls outside the scope of VAT. If these adjustments are made to the VAT treatment of cross-border trade with vouchers, the rules would be harmonized within the European Union and furthermore neutral.

Preface

The inspiration to write this thesis came when reading the voucher Proposal. After a brainstorming session with Ben Terra, I decided to write a thesis about vouchers. My supervisor, Oskar Henkow, has been coaching me to reach the result that you soon will read. The conclusions made are worth reading since those could solve some of the issues occurring when vouchers are distributed and used in cross-border situations.

Apart from the help I have received from Lund University, I would like to thank all the nice people at KPMG Acor Tax in Denmark where I have had my thesis internship. They have given me tools and strength to write this thesis. The person that helped me come in contact with KPMG Acor Tax and Fredrik Lundgren was Peter Eyermann who deserves a warm thanks for his kindness to help me. I was introduced to the VAT department and Claus Bohn Jespersen who has been the person organising and supervising my internship. I am very grateful for everything he has done for me. I would also like to thank Flemming Lind Johansen who has given me valuable help during the writing of the thesis.

At last, I would like to thank all the persons at the VAT department at KPMG Acor Tax that has warmly welcomed me in to the group, it really means a lot to me. Again all the wonderful people at the office at KPMG Acor Tax deserves special thanks for making me laugh and continue in times I thought I was not going to make it.

I hope you enjoy reading the thesis you have in your hands.

Abbreviation list

AG	Advocate General
CJEU	Court of Justice of the European Union
EU	European Union
I.e	<i>Id est</i> , that is
MPV	Multi Purpose Voucher
MS	Member State
P.	Page
Para	Paragraph
Paras	Paragraphs
Pp.	Pages
SPV	Single Purpose Voucher
The Proposal	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, COM(2012)206
The Sixth Directive	Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment
The VAT Directive	Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
VAT	Value added tax

1. Introduction

1.1 Background

A topic discussed in the European Union (EU) is the treatment of vouchers.¹ Questions such as what the definition of a voucher is have been raised and discussed.² In the dictionary, a voucher is described as '*a piece of paper that can be used to pay for particular goods or services or that allows you to pay less than the usual price for them*'.³ Nevertheless, today it is known that this definition does not cover all types of vouchers. The lack of a voucher definition is not a major issue in domestic transactions, but when it comes to cross-border trade with vouchers, problems occur both for the trading companies and for the tax authorities.⁴ Because no harmonized definition exists, the Member States (MS) in the EU have different value added tax (VAT) treatment for vouchers and consequently companies face problems such as double taxation when using vouchers.⁵

Double taxation occurs when the voucher is taxed upon issuance in one Member State and also upon redemption in another Member State.⁶ It can also be a situation of non-taxation, if the situation is the contrary and the voucher is taxed neither in the first Member State nor in the second Member State.⁷ These situations can be eliminated if the different types of vouchers are defined and have harmonized treatments.

¹ See for example J. Bijl, 'VAT, Vouchers, Rights and Payments: the VAT Treatment of Vouchers', *EC Tax Review*, no. 3, 2013, p. 116 and 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, COM(2012)206 (The Proposal).

² J. Bijl, 'VAT, Vouchers, Rights and Payments: the VAT Treatment of Vouchers', *EC Tax Review*, no. 3, 2013, p. 115.

³ Cambridge Dictionaries Online, Definition of voucher (noun) from the Cambridge Advanced Learner's Dictionary © Cambridge University Press 2015, accessed 9 April 2015.

⁴ BUSINESSEUROPE position paper, comments on the vouchers consultation document, 2 February 2007, p 1.

⁵ J. Bijl, 'VAT, Vouchers, Rights and Payments: the VAT Treatment of Vouchers', *EC Tax Review*, no. 3, 2013, p. 116.

⁶ The Proposal, p 5-6.

⁷ The Proposal, p 5-6.

In 2012, the Commission came with a proposal⁸ for amending Directive 2006/112/EC⁹ (hereinafter 'the VAT Directive') regarding the rules relating to vouchers (hereinafter 'the Proposal'). The Proposal was made because the current rules created by the Court of Justice of the European Union (CJEU), and the existing rules in the VAT Directive are not clear. However, the Proposal has not been adopted because the MSs have been unable to agree on it as the common treatment of vouchers. One reason for that is the lacking rules regarding the taxation of vouchers used and distributed in cross-border situations.

The issues pertaining vouchers used and distributed in cross-border situations have to be solved in order for a harmonized VAT treatment to be applicable. This thesis assesses VAT treatment of vouchers in cross-border trade.

1.2 Purpose

The purpose of this thesis is to assess the VAT consequences of cross-border distribution and usage of vouchers. In order to make the assessment a comparison of domestic and cross-border situations is made. An assessment of which MS that obtains the VAT when the vouchers are distributed cross-border is made. In addition, the thesis contains a clarification of how to determine the taxable amount when vouchers are used.

1.3 Method and material

The method used when writing this thesis is the legal dogmatic method. Different legal sources have been used when writing the thesis. The cases that are used have been selected because of their relevance with regard to the purpose of the thesis. This means that the cases selected addresses voucher issues. The cases used are selected in order to describe the stated situations as accurate as possible.

When it comes to the distribution of MPV's described in the thesis the Proposal's treatment of the vouchers is used. Therefore, in the examples

⁸ 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, COM(2012)206.

⁹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (The VAT Directive).

provided in the thesis regarding MPVs, there is a taxed distribution service provided in connection with the distribution of the MPV.

When it comes to SPV's, the assumption is made that the voucher is seen as a prepayment for the future supply of the goods and services. Arguments for this assumption is presented in the thesis.

1.4 Delimitation

In this thesis, there will be no examples of when the final consumer is a taxable person, the reason is that the final consumer in the case law used is mostly not a taxable person, and the aim is to show the treatment of the vouchers when applying the case law. The purpose of the thesis is not to classify the different types of vouchers, therefore no classifications will be made, and instead the classifications in the Proposal will be used. However, since the Proposal does not contain definitions that cover all types of vouchers discussed in the thesis, other recognized definitions and classification will be used.

The principle of neutrality is mentioned in the thesis but it is not the thesis purpose to assess this principle, therefore the thesis will not contain an explanation of its meaning and scope. For further explanation of the principle, see the CJEU's case law.

1.5 Outline

In order to understand the problems that may arise in connection to cross-border trade with vouchers, a legal background is given. The Proposal as it stands today is presented in order to understand the Commission's aim. In addition, a presentation of the classifications of vouchers that can be found in the Proposal is made. The reason for that is to be aware of the different types of vouchers that will be used in order to describe the possible issues pertaining vouchers in cross-border trade.

*Commission v Germany*¹⁰ is the case that first mentions the problems that may occur when vouchers are used in cross-border situations. Therefore, it is the first case in the thesis describing the possible issues arising. Subsequently

¹⁰ Case C-427/98 *Commission v Germany*.

other cases are described. The CJEU does not assess the cross-border situation in all the cases but even so, the judgments are applied in cross-border situations in order to recognise if it is possible to apply the rules from the CJEU's case law, or if it is necessary to provide new rules for the treatment of vouchers in cross-border situations.

After the description and discussion of the CJEU's interpretation of the rules, a conclusion if those rules are sufficient, or if amendments to the legislation are needed, is presented. The conclusion of the thesis contains the relevant issues described and discussed in the thesis, and the possible solution to these issues.

2. Legal background

This is a thesis in EU VAT that deals with the treatment of different types of vouchers. One of the main problems in the EU regarding the treatment of vouchers is to determine the taxable amount. This thesis will clarify the rules on how to determine the taxable amount when vouchers are used.

2.1 Current legislation

When it comes to the treatment of vouchers in present time, the rules relied on can be found in the VAT Directive. Two articles in the VAT Directive are used in connection with vouchers and the determination of the taxable amount when vouchers are used.

The first, is article 73 of the VAT Directive (previously article 11A(1)(a) of the Sixth Directive¹¹), which states the method used when determining the taxable amount. The taxable amount should be everything, which constitutes a consideration either from the customer or from a third party, in return for the supply.¹²

The other important article is article 90 (previously article 11(C) of the Sixth Directive). This article relates to the taxable amount if a rebate is given after the supply is made. If the price for a supply is reduced after the supply has taken place, the taxable amount should be reduced accordingly.¹³

The difficulties in treatment of vouchers is partly because of the lack of guidance in the VAT Directive and that is why the Commission has created a new set of rules which aim is to apply when vouchers are used, and consequently make the VAT treatment of vouchers easier.

2.2 The Proposal

In May 2012, the commission came with a proposal regarding the VAT treatment of vouchers. The reason for the proposal is the lack of harmonized

¹¹ Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment (The Sixth Directive).

¹² Article 73 of the VAT Directive.

¹³ Article 90(1) of the VAT Directive.

rules regarding vouchers in the EU.¹⁴ The Proposal was supposed to be adopted 1 January 2015 but was not because the MSs could not agree and come to a mutual decision regarding the VAT treatment of vouchers. The reason for that is that the first suggestion of new rules were not satisfactory enough; not all the problems that it was designed to eliminate was eliminated and some new problems arose. The Proposal has been changed many times since the first version was suggested.

In the latest public note on the Proposal¹⁵ from the Precedency to the Working Party¹⁶, it is stated that an amendment to the VAT Directive is needed in order to ensure the uniform treatment of VAT applying to vouchers to be able to avoid inconsistencies, distortion of competition and double or non-taxation. What is new in this latest note is that since new rules are applicable for telecommunication services as from 1 January 2015¹⁷, there should be a common treatment for telecommunication vouchers in order to ensure that no mismatches occur in respect of prepaid telecommunication vouchers supplied between different MSs. That treatment should also apply to vouchers that have similar features as these prepaid telecommunication vouchers.

Further on the note states that the Proposal should only be targeting vouchers taxed up on redemption. For discount vouchers separate rules should be available. It is still important to define vouchers in order to know what type of voucher that should apply on the rules in the Proposal. If it is possible to determine that there will be a supply of goods or services already when the voucher is issued, the VAT should be paid at this point and not upon redemption of the voucher. If this is not possible to determine, the VAT should be charged at the time when the voucher is redeemed and the goods or services are supplied. These latter type of vouchers should not be subject to VAT if transferring them in prior transactions.

¹⁴ The Proposal, p 2.

¹⁵ Note on 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, Document number ST 15348 2014 INIT, 11 November 2014.

¹⁶ Working Party on Tax Questions – Indirect Taxation (VAT), 11 November 2014.

¹⁷ Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services, Article 5.

If there are intermediary supplies of the vouchers, distributors that act in their own name and on behalf of someone else, should be regarded as having received the goods or services to which the vouchers relate. On the other hand, if a distributor of the vouchers act in the name and on behalf of another taxable person, that distributor would not be regarded as having taken part of the supply of services or goods. With this background, it can be said that only the intermediary services should be subject to VAT.

The latest note also have a section describing what the taxable amount should be, which is relevant for the thesis. When supplying goods or services there can be either direct payment or payment with a voucher. To ensure the neutrality of a transaction where the supplier accepts a voucher in return for a supply of services or goods the taxable amount should be determined by the goods or services supplied in return for the voucher and by the amount that the purchaser paid for the voucher. The amount that the purchaser paid for the voucher is either the amount stated on the voucher, i.e. the face value of the voucher or the amount that can be proven that the purchaser has paid for the voucher, i.e. the consideration.

2.3 Definition of vouchers

In the proposal the Commission has, as mentioned, defined the different types of vouchers that are used within the EU. As stated above, there will be no new attempt to classify different vouchers in this thesis but instead the classifications made in the Proposal will be used throughout the thesis. Apart from the definitions made in the Proposal two more classifications will be used, which are defined below.

2.3.1 The definition of free discount vouchers

There are three types of vouchers defined in the Proposal. One of the defined vouchers is the discount voucher. In this thesis, there will be two distinctions of the discount voucher; the first distinction is the free discount voucher. The reason for two different types of discount vouchers is that besides the fact that a voucher can be obtained free of charge, i.e. the free discount voucher; the discount voucher can also be distributed through a chain against consideration, and will then be defined as a paid-for discount voucher. An

example of a free discount voucher is a voucher that can be cut out from a milk carton or a newspaper and that entitles the holder of the voucher to obtain a discount on a good or a service at redemption of the voucher.

The free discount voucher entitles the holder at redemption of the voucher to obtain certain goods or services at a discount.¹⁸ When the free discount voucher is redeemed, the issuer of the voucher will obtain a reduction in the taxable amount of the same value as the discount given to the final consumer, VAT exclusive.¹⁹

The goods to which a free discount voucher relate, often passes through a distribution chain before reaching the final consumer.²⁰ If the issuer and the redeemer of the voucher is not the same person, the issuer of the voucher often reimburses the redeemer an amount equal to the discount given to the final consumer by using the voucher. In other words, the redeemer will get a reimbursement equal to the face value of the voucher or if the voucher has a rebate stated in per cent, the amount that the final consumer obtained as a rebate. This means that if the manufacturer issues a voucher the manufacturer will also reimburse for instance the retailer for redeeming the voucher.²¹ This type of voucher is called a money-off voucher.

The circumstances can also be as such, that the final consumer pays the stated price²² to the retailer for the goods, and thereafter receives a rebate or a discount by sending the voucher to the manufacturer upon redemption and by that receiving a remuneration corresponding to the discount stated on the voucher.²³ The latter type of voucher is called a cash-back voucher.

2.3.2 The definition of paid-for discount vouchers

The paid-for discount voucher is not defined in the Proposal. This voucher is the same type of voucher as the free discount voucher, but it has passed through a distribution chain. What is interesting about this type of voucher is

¹⁸ The Proposal, p 8.

¹⁹ The Proposal, p 8.

²⁰ The Proposal p, 8.

²¹ Money-off voucher, see Case C-317/94 *Elida Gibbs v Commissioners of Customs and Excise*.

²² The store price stated on the price tag for a certain good or service.

²³ Cash-back voucher, see Case C-317/94 *Elida Gibbs v Commissioners of Customs and Excise*.

what the distribution of such a voucher will be classified as. It can be a good, a service, or merely a right. The classification will be determined when describing different cases dealing with the paid-for discount voucher. An example of a paid-for discount voucher can be vouchers that are a part of a coupon book. In the coupon book, there are often different kinds of vouchers that can be used as a full or partial payment when obtaining different kinds of goods and services. The coupon books are often supplied against consideration.

2.3.3 The definition of single purpose vouchers

Under the different classifications of vouchers in the Proposal the single purpose voucher (SPV) is defined. According to the Proposal the SPV should be taxed at issuance, in other words when it is paid for.²⁴ The SPV entitles the holder of it to receive identified goods and services within a specific period of time.²⁵ This is why the SPV is to be taxed at issuance, because it is known what type of good or service that will be received. In other words, the SPV can be seen as a prepayment. The SPV is often distributed through a distribution chain, but because of the defined time of taxation, their distribution is relatively straightforward.²⁶ An example of an SPV can be a voucher that entitles the holder of the voucher to download an e-book from the internet.

2.3.4 The definition of multi purpose vouchers

The multi purpose voucher (MPV) is the last voucher defined in the Proposal and can be described as the opposite to the SPV. The definition of the MPV is a voucher that is taxed upon redemption.²⁷ When an MPV is issued it is not stated when the voucher have to be redeemed nor the specific goods or services that the voucher can be exchanged for.²⁸ An example of an MPV is a gift card. The final consumer pays the amount that is desired to be the value that can be exchanged for goods of services. Sometimes the gift card can already be loaded with a certain amount of money and then the final consumer

²⁴ The Proposal, p 4.

²⁵ The Proposal, p 6.

²⁶ The Proposal, p 7.

²⁷ The Proposal, p 13.

²⁸ The proposal, p 6.

does not pay for the full amount that the voucher can be redeemed for. The gift card can be used to purchase non-specified goods or services.

The MPV is, like the SPV, often distributed through a distribution chain.²⁹ This means that the price that the first distributor pays the issuer will differ from the consideration that the final consumer pays for the voucher.³⁰ The difference will be considered as a distribution service, which will be taxed at every stage of the distribution chain.³¹

2.3.5 Other types of vouchers

There are vouchers that do not fall within the scope of the definitions of the vouchers mentioned above. These types of vouchers will be defined as other types of vouchers, because those vouchers are not distributed in a way where the taxable amount is calculated because of a direct link between the consideration paid for the vouchers and the goods or services obtained by using the voucher. One example of a case concerning these types of voucher is *Granton Advertising*³².

The voucher in this case was seen as the right to get a reduction of the price when purchasing a good or a service in the future.³³ The result of using the voucher in *Granton Advertising* was that the voucher reduced the taxable amount of the goods at hand and subsequently the taxable amount of the voucher was the consideration the final consumer paid for the voucher. The reason for the reduction of the taxable amount was that the retailer providing the goods or services to the final consumer in exchange for the voucher as a part payment did not get a compensation from the issuer of the voucher, i.e. the retailer did not obtain a third party payment. The retailer accepted the voucher without getting any compensation because its intention was to promote its business.³⁴ In *Granton Advertising*, the voucher at issue was a 'granton card' that entitled the holder of the card to a discount that could be

²⁹ The proposal, p 7.

³⁰ The Proposal, p 7.

³¹ The Proposal, p 8.

³² Case C-461/12 *Granton Advertising*.

³³ Case C-461/12 *Granton Advertising*, para 31.

³⁴ Case C-461/12 *Granton Advertising*, para 8.

used at hotels, restaurants and theatres. The usual discount given was the opportunity to obtain two services to the price of one.

This type of voucher will not be discussed any further since it is not relevant for the purpose of the thesis, but the definition of the voucher deserved to be mentioned in order to give a full picture of the variety of vouchers.

3. Free discount vouchers

The case *Commission v Germany*³⁵ deals with the taxation of discount vouchers. In the term discount vouchers, money-off vouchers and cash-back vouchers are included. The case is a follow up on the case *Elida Gibbs*³⁶ where the CJEU made a judgment stating that the manufacturer was allowed to adjust the VAT paid to the tax authorities in connection with the issuance of discount vouchers. The rules created in *Elida Gibbs* has been considered difficult and cumbersome to follow,³⁷ and therefore the CJEU had the opportunity to make a judgment with additional or other rules in *Commission v Germany*. In *Commission v Germany*, the German and the United Kingdom governments held that there would be a loss of tax revenue if the discount vouchers would be distributed cross-border.³⁸ The definition of a tax loss is when there was supposed to be a collection of tax by the tax authorities, but because of some circumstances, the tax was not collected.³⁹

In order to demonstrate what the German and the United Kingdom governments meant, the tax loss will be shown in a diagram. In order to understand the difference, when a tax loss occurs and when it does not, several examples will be shown. First, an example of a domestic supply will be shown in figure 1, and second, an example of a supply in a cross-border situation will be shown in figure 2. In that way, the VAT treatment of the vouchers in the different situations will be shown along with the argued tax loss.

In the first example shown in figure 1, there is a supply chain with four parties, a manufacturer, a wholesaler, a retailer and a final consumer. The discount voucher used in this example will be a cash-back voucher. The redemption of the voucher is shown with a dotted arrow. The type of discount voucher that is used does not affect the result in the example, in other words, a money-off voucher would give the same result.

³⁵ Case C-427/98 *Commission v Germany*.

³⁶ Case C-317/94 *Elida Gibbs v Commissioners of Customs and Excise*.

³⁷ J. Bijl, 'VAT: 'Money Off Vouchers' and 'Cash Back Schemes' – What Are the Problems and How Can They Be Solved?', *EC Tax Review*, no. 5, 2012, p. 270.

³⁸ Case C-427/98 *Commission v Germany*, para 61.

³⁹ Opinion of Advocate General Jacobs in Case C-427/98 *Commission v Germany*, para 76.

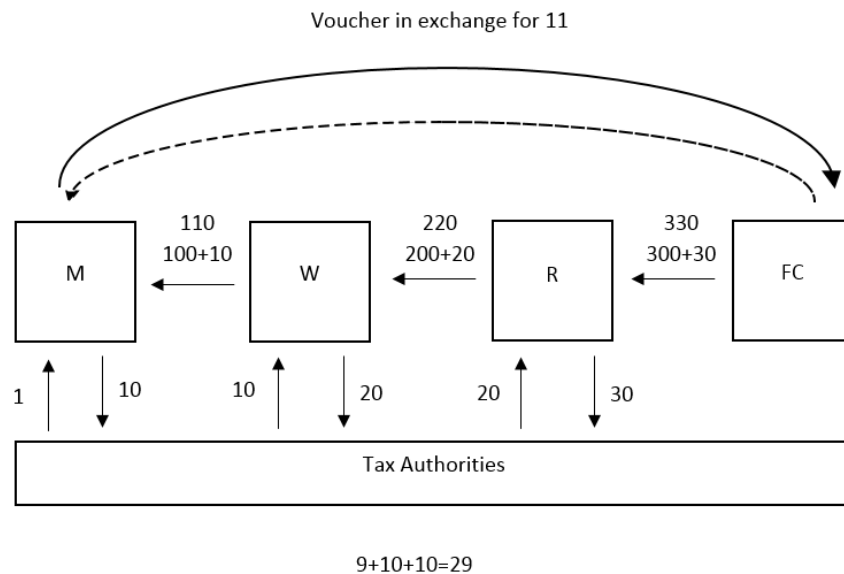


Figure 1

In figure 1, the goods will increase in price with 100 every time sold, and the VAT rate is 10 per cent. Firstly, the manufacturer sells goods to the wholesaler for 100 plus 10 in VAT; the final price paid will be 110. Secondly, the wholesaler sells the goods to the retailer for 200 plus 20 in VAT and the final price will be 220. At last, the retailer sells the goods to the final consumer for a price of 300 plus 30 in VAT; the final price paid to the retailer by the consumer will be 330. The final transaction is specific for the cash-back voucher. If it had been a money-off voucher at issue, the final price paid by the final consumer to the retailer had been 330 less the face value of the voucher.

The voucher provided in the example is a cash-back voucher that the final consumer will use to get a discount on the goods purchased from the retailer. In order to receive the discount the final consumer will send the cash-back voucher to the manufacturer and get a reimbursement corresponding to the face value of the voucher. In this case, the face value of the voucher is 11 VAT inclusive. That means that the VAT included in the voucher is 1.

If using the judgment in *Commission v Germany*, the manufacturer will have the opportunity to adjust the taxable amount. The taxable amount will be the

stated price charged by the manufacturer, less the face value of the voucher.⁴⁰ The result will be that the manufacturer has an output VAT of 9 instead of 10 and consequently the VAT that the tax authorities receive relating to the transactions will be 29 instead of 30.

In *Elida Gibbs*, the CJEU stated that the basic principle of the VAT system is that the VAT collected by the tax authorities cannot exceed the VAT paid by the final consumer.⁴¹ The amount that the final consumer actually pays for the goods is 330 less the face value of the voucher, which is 11, that will be an amount of 319 in total and of which 29 is VAT. Figure 1 shows that the amount of VAT paid to the tax authorities is 29 and therefore it will be no loss of tax revenue in a domestic supply when using discount vouchers.

If the voucher is issued and redeemed in MS 1 and the final consumer is situated in MS 2 there will be a cross-border situation, as shown in figure 2. Since an intra-Community supply of goods is exempt from VAT, the wholesaler will be able to deduct the VAT paid on the purchased goods.⁴² This means that in MS 1, 10 will be paid to the tax authorities as output VAT and 11 will be refunded. Consequently, there will be a loss of tax revenue of 1 in MS 1.

The reason for the differences in the VAT paid to the tax authorities in connection with the sale of the goods from the manufacturer to the wholesaler, and the VAT finally obtained by the tax authorities in connection with the transaction of the voucher, is the possibility for the manufacturer to make the adjustment. If the adjustment is not allowed, the manufacturer pays 10 in VAT to the tax authorities and the wholesaler is able to deduct 10, which is neutral. However, the adjustment the manufacturer is allowed to make according to the CJEU is based on article 90 of the VAT directive. This is one reason for why an amendment of the VAT Directive is needed, so that the principle of neutrality can be ensured.

⁴⁰ Article 90 of the VAT Directive.

⁴¹ Case C-317/94 *Elida Gibbs v Commissioners of Customs and Excise*, para 19.

⁴² Articles 138 and 169(b) of the VAT Directive.

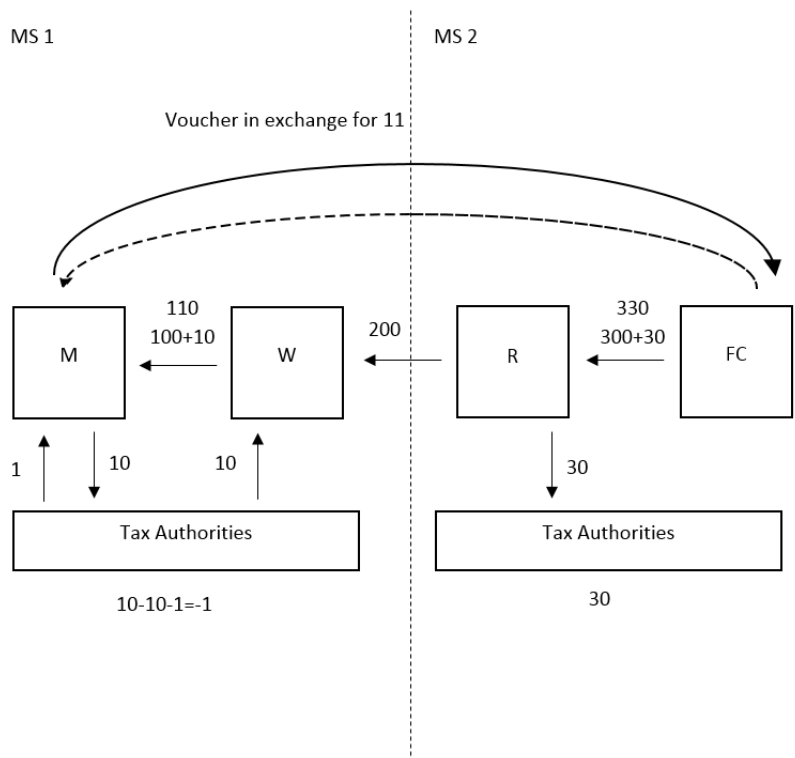


Figure 2

If the border had been placed between the retailer and the final consumer instead, another set of rules would apply. Since all the parties in the supply chain would be situated in MS 1 and only the final consumer would be situated in MS 2 it would be a case of distance selling.⁴³

When it comes to distributing discount vouchers cross-border there will be a loss of tax revenue in the country where the voucher is issued and further on redeemed by the issuer. The result will be the same if the voucher distributed is a money-off voucher instead of a cash-back voucher; there will be a loss of tax revenue. In the examples in figure 1 and 2, the VAT rate is 10 per cent in both MS. Even if different VAT rates would apply in each MS, the proportion of the tax loss would be the same.

Even though, there will clearly be a loss of tax revenue if the CJEU's ruling in *Elida Gibbs* is used the CJEU followed *Elida Gibbs* in *Commission v Germany* and argued that the tax authorities are able to prevent the manufacturer from deducting what would be a fictitious amount of input

⁴³ Article 33 of the VAT Directive.

VAT.⁴⁴ With that statement, the CJEU decided that there is no problem with the VAT treatment when using free discount vouchers in cross-border situations and therefore does not assess the issue regarding the loss of tax revenue further.

The case *Yorkshire Co-operatives*⁴⁵ is a case that also concerns the VAT treatment of free discount vouchers, specifically money-off vouchers, similar to *Elida Gibbs* and *Commission v Germany*. However, *Yorkshire Co-operatives* deals with the retailer's taxable amount instead of the manufacturer's taxable amount as in the previous mentioned cases. The CJEU concludes that the face value of the voucher used in the transaction must be included in the retailer's taxable amount.⁴⁶ The amount paid from the manufacturer to the retailer upon redemption of the voucher should be seen as a third party payment, and consequently as a part payment of the goods supplied to the final consumer. This is shown in figure 3.

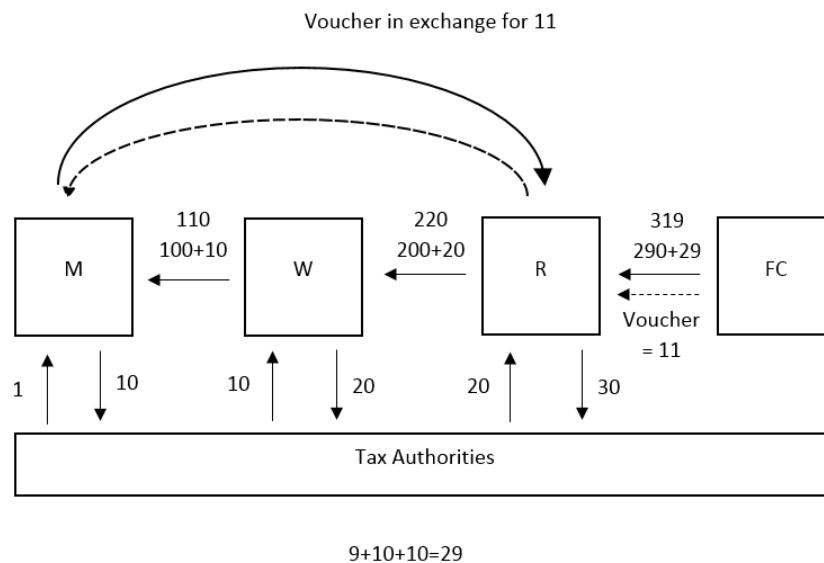


Figure 3

The manufacturer sells the goods to the wholesaler for an amount of 110, VAT inclusive. The wholesaler sells the goods to the retailer for an amount

⁴⁴ Case C-427/98 *Commission v Germany*, para 65.

⁴⁵ Case C-398/99 *Yorkshire Co-operatives*.

⁴⁶ Case C-398/99 *Yorkshire Co-operative*, para 23.

of 220, VAT inclusive. The retailer sells the goods to the final consumer for an amount of 330, VAT inclusive. The final consumer however pays the retailer with a voucher with the face value of 11 VAT inclusive, and the rest by cash. The retailer sends the money-off voucher to the manufacturer that reimburses the retailer with an amount equal to the face value of the voucher of 11. The reimbursement is seen as a third party payment.⁴⁷

In *Yorkshire Co-operatives*, it is confirmed that the manufacturer's taxable amount is calculated on the amount the goods are sold for to the wholesaler, less the face value of the voucher that the manufacturer pays upon redemption of the voucher. Subsequently the manufacturer has the right to adjust its taxable amount to 9 instead of 10. The redemption of the voucher is seen as a third party payment and therefore it is seen as a part of the consideration paid in exchange for the goods.⁴⁸

The conclusion that can be made is that the case *Yorkshire Co-operatives* does not change the treatment of free discount vouchers used in cross-border situations. Nevertheless, the treatment of free discount vouchers that the CJEU has set out is not neutral when used in cross-border situations. There will be a loss of tax revenue when the vouchers are used in cross-border situations, which differs from the result when the vouchers are used domestically, where there will be no loss of tax revenue. Because of the lack of neutrality in the cross-border situation, rules regarding this matter is needed in the VAT legislation.

The examples provided for above have involved the situation when the discount vouchers are distributed to the final consumer free of charge. Next. There will be an examination when the discount vouchers are distributed in exchange for consideration, i.e. the paid-for discount vouchers.

⁴⁷ Case C-317/94 *Elida Gibbs v Commissioners of Customs and Excise*, para 31.

⁴⁸ Article 73 of the VAT Directive.

4. Paid-for discount vouchers

The case *Argos*⁴⁹ dealt with discount vouchers as described in the examples above. The difference in this case, in relation to the above-mentioned cases, is that the discount vouchers were supplied in exchange for consideration instead of free of charge. The question examined in the case was, what the taxable amount was when the discount vouchers were sold by the issuer further on to the other distributors in the distribution chain, and thereafter redeemed as the full or part payment for goods. The tax authorities were of the opinion that the taxable amount should be the face value of the voucher and that no consideration should be taken to the amount actually paid for the voucher.⁵⁰ However, the CJEU concluded that the taxable amount should be, in addition to any cash paid, the consideration actually received for the voucher no matter what the face value of the voucher was.⁵¹ Since every voucher was marked with a serial number, it was possible to identify the consideration paid for the voucher at the initial purchase of it.⁵²

In order to show and explain a proper distribution chain there is one more matter that has to be addressed. That is the nature of the transaction. What should be noted is that the transaction at issue is the transaction where the manufacturer supplies the goods in exchange for a voucher and additional cash payment, if needed.⁵³ In *Argos* and in the case *Boots*⁵⁴, which also deals with discount vouchers, the CJEU stated that the voucher is no more than a document that shows the manufacturer's obligation to accept the voucher instead of money.⁵⁵ If applying that statement, the purchase of the voucher should be seen as the right to obtain a discount on the goods or services or the actual goods or services depending on the value of the voucher and the goods or services. Subsequently, the voucher should be seen as a receipt for that right to obtain either a discount or the goods or services. Again, the

⁴⁹ Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*.

⁵⁰ Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 9.

⁵¹ Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 23.

⁵² Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 22.

⁵³ Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 15.

⁵⁴ Case C-126/88 *Boots v Commissioners of Customs and Excise*.

⁵⁵ Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 19 and Case C-126/88 *Boots v Commissioners of Customs and Excise*, para 21.

transaction at issue is the transaction when the manufacturer supplies the goods in exchange for the voucher. If the purchase of the voucher is equal to the right to obtain either a discount on the goods or services or, the goods or services, the supply of goods shall be seen as the usage of that right.

According to the judgment in the case *Astra Zenica*⁵⁶, the consideration for the goods that later on will be exchanged against the voucher is paid when the first purchase of the voucher is made.⁵⁷ According to the Advocate General (AG) of the mentioned case the voucher should be seen as a future right to obtain a good or a service.⁵⁸ Furthermore, it is stated in *Astra Zenica* that the supply of the voucher cannot be seen as a supply of goods and therefore it should be seen as a supply of service.⁵⁹ Everything that is not a supply of goods is a supply of services.⁶⁰

This means that when showing examples with the paid-for discount vouchers the distribution of the voucher shall be seen as a distribution of a service. The service constitutes the right to, in the future, obtain a discount of the goods or services, depending on the face value of the voucher.

The paid-for voucher's distribution chain will now be shown in examples. First in figure 4, a domestic distribution of paid-for discount vouchers is shown in order to demonstrate how the VAT is charged and paid on the sale of the vouchers. Second in figure 5, an example with different numbers will be shown in order to demonstrate what happens when the voucher is supplied against a value lower than its face value. Third in figure 6, there will be an example where the distribution of the voucher will take place cross-border in order to show the difference of a domestic and cross-border distribution, if there is any. The last example in figure 7 will also show a cross-border distribution of the vouchers but with the same numbers as in the example in figure 5. Four examples are made in order to show potential differences in the VAT treatment and if so, what the differences depends on. The VAT rate in

⁵⁶ Case C-40/09 *Astra Zenica UK*.

⁵⁷ Case C-40/09 *Astra Zenica UK*, para 33.

⁵⁸ Opinion of Advocate General Mengozzi in Case C-40/09 *Astra Zenica UK*, para 31.

⁵⁹ Case C-40/09 *Astra Zenica UK*, para 26.

⁶⁰ Article 24 of the VAT Directive.

both MSs is 10 per cent and the dotted arrows shows the redemption of the voucher.

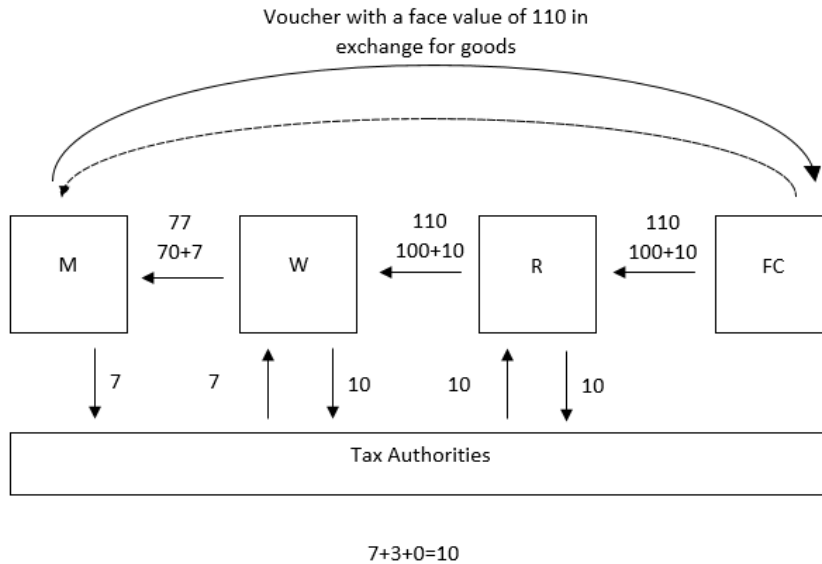


Figure 4

The face value of the voucher is 110 and when the manufacturer sells the voucher to the wholesaler a discount is given at 30 per cent, it means that the voucher is supplied in exchange for a consideration of 77. The judgment in *Argos* states that the taxable amount for the supply of goods in exchange for a voucher is the consideration paid for the voucher when the manufacturer sells the voucher to the wholesaler. Therefore, the taxable amount for the supply of goods from the manufacturer to the final consumer is 77. The VAT subsequently paid by the manufacturer to the tax authorities is 7.

The wholesaler and the retailer thereafter sells the voucher, which is a future right to obtain a discount or possibly the goods or services depending on the value of the voucher, when it is redeemed. The consideration that the retailer has to pay for that right is 110, which is the same amount as the face value of the voucher. Since the consideration for the service is 110, the VAT paid for that service is 10. The consideration that the retailer pays for obtaining the future right to a rebate or possibly a supply of goods or service upon

redemption of the voucher is also 110, which means that the VAT paid to the tax authorities is 10.

The manufacturer supplies goods for an amount of 110 to the final consumer but the VAT paid to the tax authorities is accounted on a lower amount; the consideration received by the manufacturer in exchange for the voucher. However, the total amount of VAT attributable to the distribution of the voucher that is paid to the tax authorities is equal to the amount of VAT that should have been paid even if no discount was granted on the first sale of the voucher, i.e. 10. The wholesaler and the manufacturer supplies the voucher for an amount equal to the face value of the voucher and therefore the VAT paid to the tax authorities is no more or less than the amount of VAT that the final consumer pays when purchasing the goods, which is in line with the basic principle of VAT.⁶¹

The situation will be different if both the wholesaler and the retailer equal to the manufacturer supplies the voucher for an amount lower than the face value of the voucher, which is shown in figure 5. In other words, when the consideration for the supply of the voucher is lower than the value stated on the voucher, the consequence is that the tax paid to the tax authorities is an amount lower than it would be if the voucher was not used and the final consumer paid the goods with cash to the manufacturer. The explanation is that the taxable amount is the consideration paid for the voucher and not the face value of the voucher according to the judgment in *Argos*.

⁶¹ Case C-317/94 *Elida Gibbs v Commissioners of Customs and Excise*, para 19.

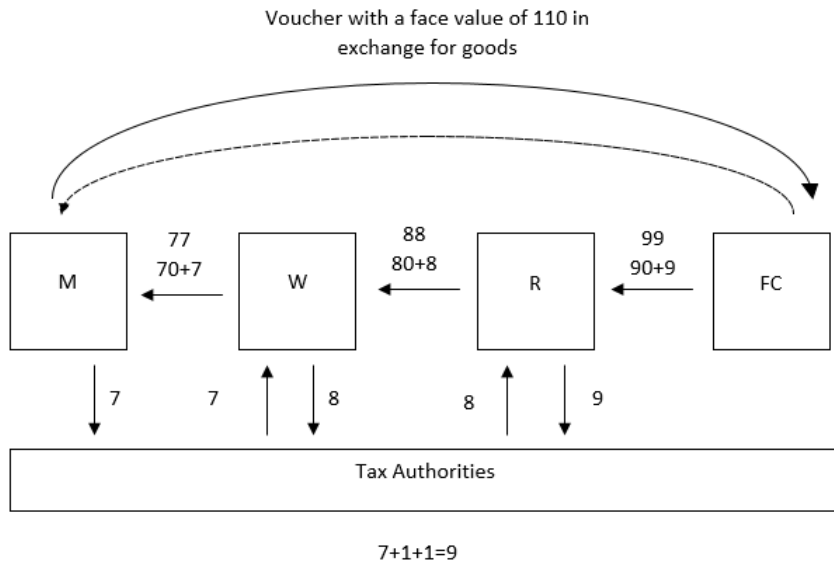


Figure 5

As stated above, the transaction at issue in *Argos* is the transaction where the manufacturer supplies the goods upon redemption of the voucher to the final consumer.⁶² The value of that transaction is 110, which is the value of the goods that the final consumer obtains in exchange for the voucher with a face value of 110. However, the taxable amount for that transaction is only 7 since that is the consideration paid when the voucher is sold by the manufacturer to the wholesaler. The total VAT paid to the tax authorities is 9 as a result of the supply of the voucher through a distribution chain. However, if the final consumer had bought the goods directly from the manufacturer and paid 110 in cash for the goods the taxable amount would have been 110 and the VAT received by the tax authorities would be 10.

The conclusion that can be made is that the CJEU's judgment in *Argos* is that the VAT paid to the tax authorities is not dependant on the face value of the voucher but instead the consideration paid for the voucher. Naturally, the taxable amount is lower when a rebate is given. Furthermore, when a paid-for distribution voucher is distributed domestically there is no loss of tax revenue.

⁶² Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 15.

The example in figure 6 shows the distribution chain when applying the judgment in *Argos* in a cross-border situation. In this situation the voucher, which also here constitutes a service, is sold for an amount corresponding to its face value by the wholesaler and the retailer, which is 110. The VAT rate in both MSs is 10 per cent. The dotted arrow shows the redemption of the paid-for discount voucher.

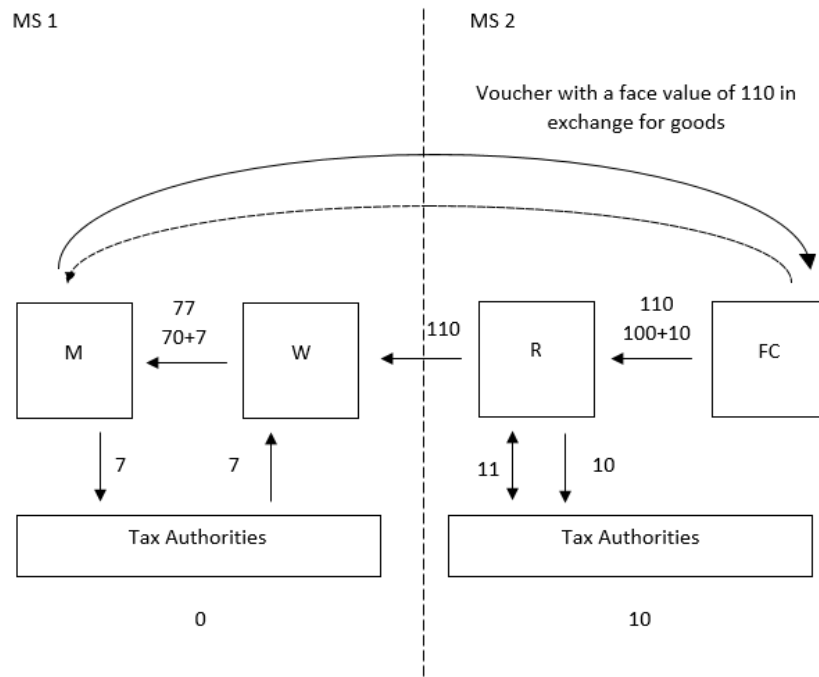


Figure 6

In case of an intra-Community supply of services according to article 44 of the VAT Directive, the VAT relating to that supply is subject to the reverse charge mechanism.⁶³ That means that the wholesaler in MS 1 does not account for any VAT. Instead, the retailer in MS 2 accounts for the VAT, and subsequently pays the VAT to the tax authorities in MS 2.⁶⁴ The VAT subject to reverse charge is 11 since the amount invoiced to the retailer, which is 110, is VAT exclusive. The retailer accounts for the VAT itself and pays the VAT to the tax authorities. However, the retailer immediately deducts the VAT that is reverse charged as input VAT. The retailer thereafter supplies the voucher,

⁶³ Article 196 of the VAT Directive.

⁶⁴ Article 196 of the VAT Directive.

which constitutes a service to the final consumer, and the VAT obtained by the tax authorities is 10.

The amount of VAT that had been paid to the tax authorities if the retailer had supplied the goods directly to the final consumer instead of supplying the voucher in terms of a service is 10.

If the retailer sells the voucher, in terms of a service to the final consumer for an amount below the face value of the voucher, there will be a difference in the amount of VAT that the tax authority receives. This is shown in figure 7. The intra-Community supply of the service is subject to the reverse charge mechanism and the invoice sent to the wholesaler is VAT exclusive.⁶⁵ The retailer accounts for the VAT and pays the VAT to the tax authorities in MS 2. The retailer immediately deducts the VAT subject to reverse charge as input VAT.

The retailer supplies the voucher in terms of a service to the final consumer for an amount of 99 VAT inclusive. The VAT received by the tax authorities is 9. This means that the goods supplied in exchange for the voucher by the manufacturer are supplied for an amount higher than to which the VAT paid to the tax authorities corresponds to. If the goods were supplied by the retailer to the final consumer in exchange for an amount of 110 then the VAT paid to the tax authorities would be 10. Nevertheless, since the service of the right to obtain a future discount or possibly the goods or services, in terms of a voucher is distributed for an amount lower than the stated value of the goods, the taxable amount is lower. The conclusion that can be drawn after the examination of the distribution of paid-for discount vouchers in cross-border situations is that the taxable amount is lower when a voucher is used and the result is that the tax authorities does not receive the same amount of VAT as if the voucher, in terms of a service, was not used.

⁶⁵ Article 196 of the VAT Directive.

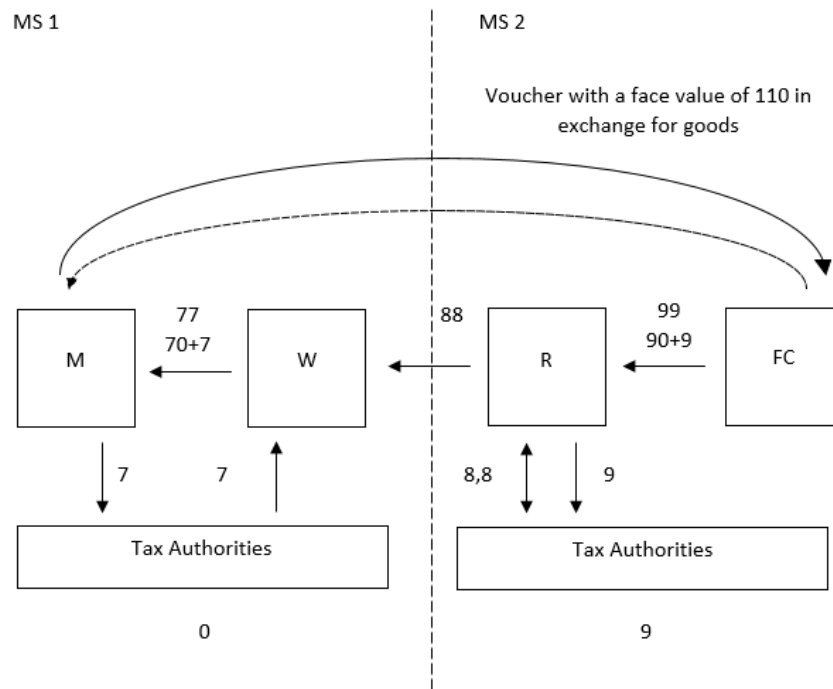


Figure 7

After examining the four examples relating to the judgment in Argos, one conclusion can be made regarding the amount of VAT paid to the tax authorities, in case of a distribution of paid-for discount vouchers. The taxable amount depends on the consideration paid for the voucher and not on the value of the goods that the voucher can be exchanged for as a full or part payment.

The result regarding the taxable amount is the same both if the paid-for discount voucher is distributed domestically and if it is distributed cross-border. However when the distribution chain takes place in a cross-border situation there are some differences to where the VAT is paid.

If the final consumer did not use the voucher in the cross-border example and instead would purchase the goods directly from the manufacturer situated in MS 1, the manufacturer would pay VAT to the tax authorities in MS 1 equal to the VAT included in the stated price of the goods. This means that, if it is a cross-border distribution of a paid-for discount voucher, the MS that would have obtained the VAT if no voucher was used, MS 1, does not obtain that

VAT. Instead, the MS where the final consumer is situated obtains the VAT,
i.e. MS 2.

5. Single purpose vouchers

The VAT treatment of the two different types of discount vouchers have now been explained. Apart from those two definition of vouchers, there are vouchers that are classified as SPVs. Those vouchers are vouchers that only can be used for a specific transaction within a specified period of time. To simplify an SPV can be compared to a prepayment.⁶⁶ Such a voucher was used in the case *Lebara*⁶⁷.

In *Lebara* the vouchers at issue was telephone cards used to call long distance telephone calls to third countries. In the distribution chain at issue, the telephone operator sold telephone cards to distributors in a MS other than where the telephone operator was situated. The distributors thereafter either sold the telephone cards to the final consumer or distributed the telephone cards to wholesalers or retailers that thereafter sold the telephone cards to the final consumers situated in the same MS as the distributors, wholesalers and retailers. The CJEU stated that the telephone cards should be treated as SPVs and consequently, taxed at issuance.⁶⁸ In addition, VAT should be accounted for in every subsequent sale of the telephone cards, i.e. the intermediary supplies of the telephone cards.⁶⁹ When the telephone operator sells telephone cards to distributors in other MSs than where it is situated the reverse charge mechanism applies because the telephone operators supplies telecommunication services to the distributors.⁷⁰ The voucher in this case is equal to a right to call long distance telephone calls and should therefore be treated as a service.

This means that the telephone operator does not account for VAT in the invoice when selling the telephone cards to the distributor. Instead, the distributor accounts for VAT and subsequently pays the VAT to the tax authorities in the MS where the distributor is located.⁷¹ The distributor will

⁶⁶ BUSINESSEUROPE position paper, comments on the vouchers consultation document, 2 February 2007, p 1.

⁶⁷ Case C-520/10 *Lebara*.

⁶⁸ Case C-520/10 *Lebara*, para 28.

⁶⁹ Case C-520/10 *Lebara*, para 42.

⁷⁰ Case C-520/10 *Lebara*, para 42.

⁷¹ Article 196 of the VAT Directive.

deduct the VAT that is reverse charged as input VAT. When the distributor later on supplies the telephone cards to wholesalers or retailers VAT will be charged on the supplies as usual. The CJEU further stated that the taxable amount for the services provided should be the consideration paid for the telephone cards, regardless of what the face value stated on the telephone card was.⁷²

To show the VAT treatment in *Lebara* examples will be shown. In *Lebara*, the telephone operator sold the vouchers to distributors situated in other MS than where the telephone operator itself where situated. Therefore, the issuer in the examples will also be located in another MS than the rest of the parties in the distribution chain. To be consistent, the parties used in the examples in figures 8 and 9, will be the same as in the previous examples, the manufacturer that issues the voucher, the wholesaler, retailer and the final consumer. The VAT rate in both MSs is 10 per cent. The voucher is taxed upon issuance and not redemption; therefore, there are no arrows in the example in figure 8 showing the redemption of the voucher since it has no impact on the VAT treatment.

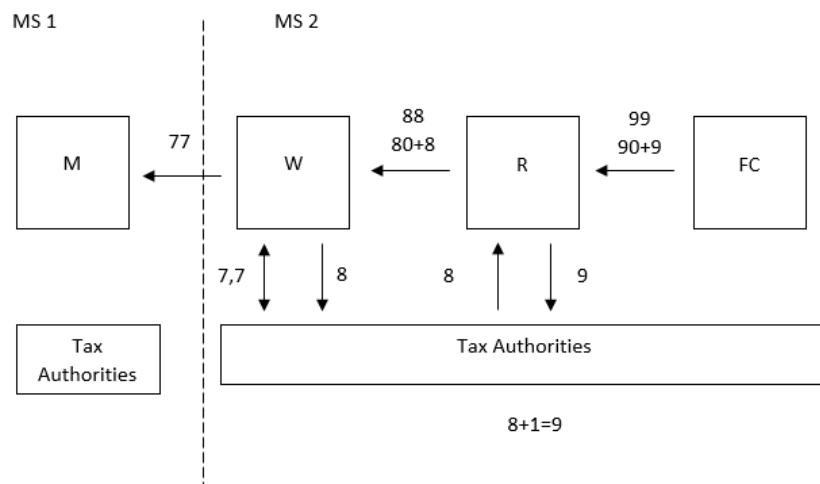


Figure 8

⁷² Case C-520/10 *Lebara*, para 42.

In figure 8 the manufacturer in MS 1 issues a telephone voucher with the face value of 110 but sells the voucher to the wholesaler in MS 2 for an amount of 77. In the *Lebara* judgment, the CJEU found that the taxable amount should be the amount paid for the voucher and not the face value of the voucher.⁷³ This means that the VAT attributable to the sale of the voucher to the wholesaler is 7,7 since the invoice sent to the wholesaler is VAT exclusive. Furthermore, it is stated in *Lebara* that the manufacturer supplies a telecommunication service to the wholesaler.⁷⁴ This service is subject to reverse charge.⁷⁵ Because of the reverse charge it is the wholesaler situated in MS 2 that should account for and pay the VAT of 7,7 to the tax authorities in MS 2. However, the VAT will immediately be deducted as input VAT by the wholesaler.

The wholesaler further on distributes the voucher to the retailer and VAT is charged on the transaction. The taxable amount is the consideration paid for the voucher and not the face value of the voucher. The retailer supplies the voucher to the final consumer and pays VAT to the tax authorities amounting to 9. However, the consequence is that, the VAT attributable to the distribution of the telephone card and paid to the tax authorities in MS 2 is 9 which is an amount below the value that would have been paid if the taxable amount had been a value equal to the service transaction and subsequently the face value of the voucher.

The situation will be the same if the distribution of the voucher will take place in one more MS. This is shown in figure 9. The manufacturer is situated in MS 1, the wholesaler is situated in MS 2 and the retailer and final consumer is situated in MS 3. This means that the distribution of the SPV will take place in three different MSs. The VAT rate is 10 per cent in all the three MSs. There are now arrows showing the redemption of the voucher since the voucher is taxed upon issuance and therefore the redemption of the voucher has no impact on the VAT.

⁷³ Case C-520/10 *Lebara*, para 42.

⁷⁴ Case C-520/10 *Lebara*, para 43.

⁷⁵ Articles 44 and 196 of the VAT Directive.

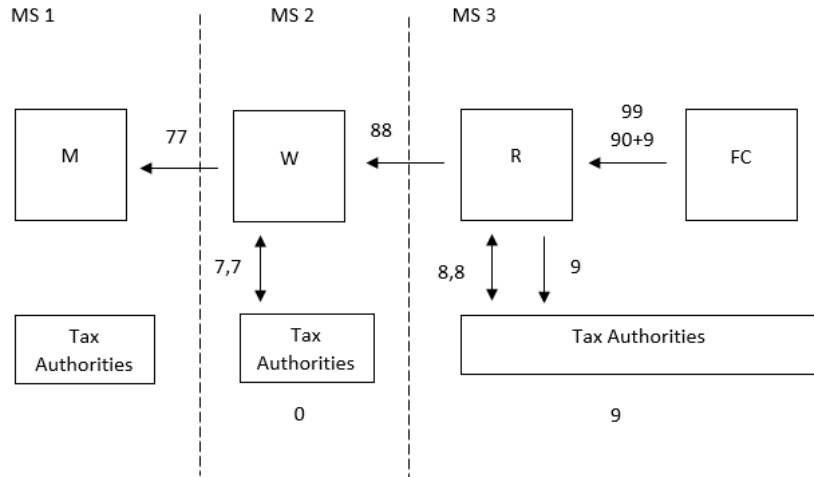


Figure 9

The VAT on the supply from the manufacturer is reverse charged and will be paid in MS 2. However, the VAT will be deducted immediately as input VAT. Therefore, there will be no VAT consequence in either MS 1 or 2. The VAT attributable to the supply from the wholesaler to the retailer is also reverse charged and subsequently that VAT should be paid in MS 3. Also in MS 3, the VAT will be deducted as input VAT when it is reverse charged. On the supply of the voucher made from the retailer to the final consumer normal invoicing rules apply and the VAT will be accounted for, and paid by the supplier. That means that the retailer has 9 in output VAT.

Consequently, when the distribution of SPVs takes place cross-border the result is the same as if the distribution took place in only one MS. The CJEU has repeatedly stated that the taxable amount is the consideration actually paid for the voucher and not the face value of the voucher.⁷⁶ This means that the VAT that the tax authority receives is an amount lower than if the telecommunication service was obtained for an amount equal to the stated value.

Since the SPV is considered to be a prepayment of the services according to *Lebara*, the services are paid when the first purchase of the voucher takes

⁷⁶ Case C-520/10 *Lebara*, para 42 and Case C-288/94 *Argos Distributors v Commissioners of Customs and Excise*, para 23.

place. The taxable amount of the services is equal to the price paid for the SPV, even if the face value of the SPV is higher. The amount that the SPV can be redeemed for is a larger amount than the taxable amount and therefore the tax authorities will not obtain as much in VAT as if no voucher was used.

If no voucher was issued and sold and if the final consumer had bought the telecommunication service directly from the manufacturer and paid in cash, the VAT attributable to the supply would have been paid in the MS where the manufacturer is situated. This means that when distributing SPVs through several MSs, the MS that would have received the VAT if no voucher was used, will not receive any VAT. Instead, the MS where the final party that can pay VAT will receive the VAT, in figure 9 that is the retailer. That should not be the result since the SPV is supposed to be taxed at issuance, and therefore in the MS where the SPV is issued.

The reason that the voucher is not paid in the MS of issuance is that the manufacturer is situated in a different MS than the party acquiring the SPV from the manufacturer. If the manufacturer had been situated in the same MS as the party acquiring the voucher then the voucher would have been taxed in the MS of issuance but for an amount lower than the face value of the voucher. If on the other hand the SPV would have been seen as a distribution of a good and not a service it does not matter in which MS the party acquiring the SPV is situated. The SPV would then have been taxed in the MS where the issuer i.e. the manufacturer is situated.

6. Multi purpose vouchers

The case *BUPA*⁷⁷ did not concern vouchers but can be applied to vouchers. The case concerned prepayment arrangements and the aim of the arrangements was to tax the prepayments at issuance, as SPVs, but to apply the non-specification rules of MPVs. However the CJEU concluded that in order for VAT to be payable at the time of the prepayment and not at the time of the supply of goods, the goods that was going to be supplied had to be specified at the time of payment and thus the prepayment arrangement in *BUPA* was not allowed.⁷⁸

When interpreting the CJEU's judgment a conclusion that can be drawn is that a prepayment cannot be made if the goods are not specified. There are two options, the first is to specify the goods and make the prepayment; VAT is charged at the time of the prepayment. That is how an SPV works. Alternatively, if no specification is made the payment of the goods should take place at the time of supply of the goods and then VAT should be charged at that time. That can be compared to how an MPV works.

In order to understand how a distribution chain of an MPV works such a distribution chain will be described and shown in examples. As mentioned, a MPV is taxed at redemption. The voucher is often distributed through a distribution chain before reaching the final consumer that can use it upon redemption.

There are no cases by the CJEU that directly concerns the VAT treatment of MPVs, and therefore the treatment that the commission suggests in the Proposal will be used. An MPV is supposed to be taxed at redemption and no VAT is to be charged in the distribution chain that relates to the voucher. Therefore, the suggestion made in the Proposal is that the margin between the face value of the voucher and the consideration paid for the voucher is taxed.⁷⁹ That margin is the consideration for a distribution service that the party receiving the voucher carries out. The examples in this chapter will be based

⁷⁷ Case C-419/02 *BUPA Hospitals and Goldsborough Developments*.

⁷⁸ Case C-419/02 *BUPA Hospitals and Goldsborough Developments*, paras 48-51.

⁷⁹ The Proposal, p 8.

on the Commission's Proposal and the first example of the distribution chain of the MPV, shown in figure 10, is in a domestic situation in order to show how the voucher and the distribution of the voucher is taxed. The VAT rate in this example is 10 per cent and the MPV has the face value of 110. The dotted arrows are the ones showing the distribution of the voucher. The middle arrow shows the actual payment for the voucher and the bottom arrow shows the invoicing of the distribution service.

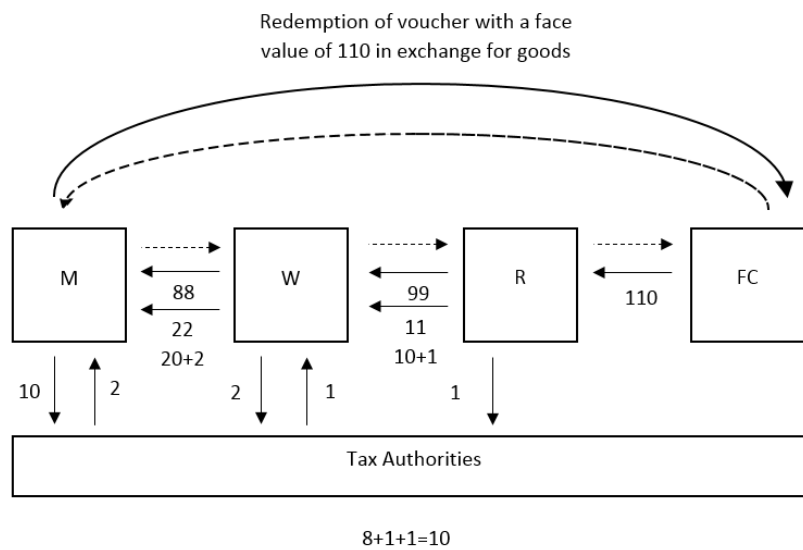


Figure 10

The manufacturer that is the issuer of the voucher sells the voucher to the wholesaler for an amount of 88. Since there is a difference in the price paid for the voucher and the face value of the voucher, that difference is seen as a distribution service provided by the wholesaler to the manufacturer. The consideration for that distribution service is the difference between the face value of the voucher and the price paid for the voucher, subsequently 22 VAT inclusive, which the wholesaler invoices to the manufacturer. That distribution service is subject to VAT, which means that the wholesaler will have to pay VAT to the tax authorities of an amount of 2. The manufacturer does not pay for the distribution service in cash. The consideration for the distribution service is the voucher.

The wholesaler thereafter sells the MPV to the retailer for an amount of 99. This means that the consideration for the distribution service in this case is 11 VAT inclusive, which is the amount that the retailer states in an invoice to the wholesaler. Since the distribution service is subject to VAT, the retailer pays an amount of 1 to the tax authorities and the wholesaler deducts the same amount.

Finally, the retailer sells the MPV to the final consumer for an amount equal to the face value of the voucher, which is 110. The manufacturer redeems the MPV. The MPV is subject to VAT upon redemption and therefore the manufacturer pays an amount of 10 to the tax authorities. At the same time the manufacturer is allowed to deduct the input VAT on the distribution service earlier purchased, amounting to 2.⁸⁰ This means that the total VAT paid to the tax authorities when distributing an MPV domestically in this situation is 10. That same amount would have been paid to the tax authority if no voucher was used and the goods were purchased directly from the manufacturer.

If the redeemer had been someone else than the issuer of the voucher, the VAT consequence would have been the same. In the Proposal, it is stated that even if the redeemer of the MPV is someone else than the issuer, the issuer shall maintain the right to deduct the VAT due or paid on expenditure in connection with the issuance of the MPV.⁸¹

The redeemer would have paid the VAT of 10 to the tax authorities and the manufacturer would still have the opportunity to deduct the input VAT relating to the distribution of the MPV, i.e. the VAT relating to the distribution service.⁸² If the numbers in the example in figure 10 is used, the tax authorities receives the same amount of VAT as in figure 10.

The VAT consequence would be the same as the example in figure 10 if the retailer sold the MPV to the final consumer for an amount below the face value of the voucher. Like the example in the figure 10 the final consumer would not issue an invoice regarding a redemption service because the final

⁸⁰ Article 168 of the VAT Directive.

⁸¹ The Proposal, article 169, p 14-15 and 21.

⁸² The Proposal, article 169, p 14-15 and 21.

consumer is not a taxable person and therefore no VAT will be paid on that supply of the voucher. Since the VAT is paid at redemption of the MPV, no loss of tax revenue will occur.

Figure 11 shows the distribution chain when the final consumer pays an amount below the face value of the voucher to the retailer. The dotted arrows shows the voucher's movement in the distribution chain. The middle arrow shows the payment for the voucher. The payment that the final consumer makes is 100, which is an amount below the face value of the voucher. The bottom arrow shows the distribution service made by the party purchasing the voucher, except the final consumer because the consumer is not a taxable person and therefore cannot incur VAT.

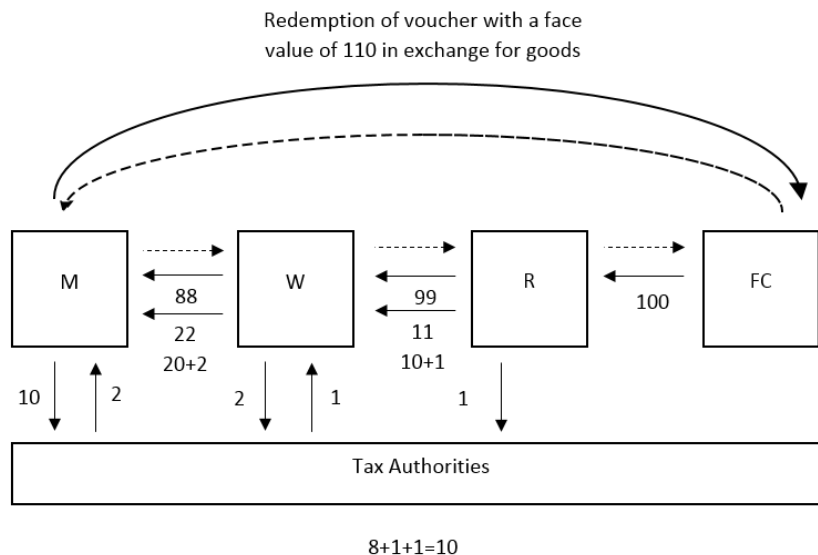


Figure 11

Now an example of the distribution of an MPV in a cross-border situation will be shown in figure 12, in order to show the difference with the domestic situation, if there is any. The face value of the voucher is still 110 and the VAT rate in both MS is 10 per cent.

There is a possibility to treat the supply of the distribution service in different ways. It can be a supply of service according to article 44 of the VAT Directive, which is the main rule when it comes to services that is supplied cross-border. The supply of services could also relate to another provision in

the VAT Directive such as article 47 that regulates the supply of services connected with immovable property. However, in this thesis the services supplied in a cross-border situation will be services relating to article 44 of the VAT Directive. That means that the article stating reverse charge is article 196 of the VAT Directive.

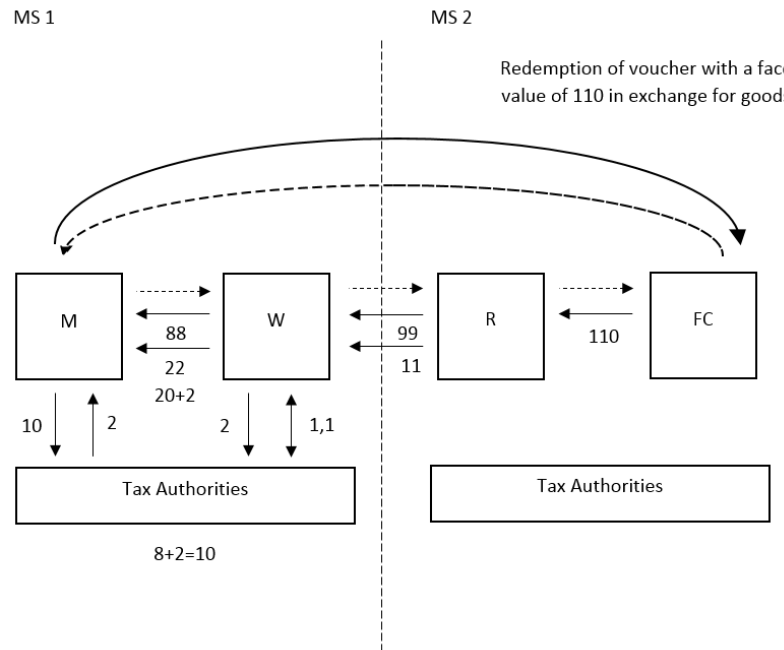


Figure 12

The manufacturer supplies the voucher to the wholesaler for an amount of 88, the difference between the consideration paid for the MPV and the face value of the MPV, 22, is the value of the distribution service that the wholesaler provides to the manufacturer. The wholesaler issues an invoice of 22 VAT inclusive to the manufacturer and subsequently has an output VAT of 2 that is paid to the tax authorities in MS 2.

When the wholesaler situated in MS 1 later on distributes the MPV to the retailer situated in MS 2 for an amount of 99, the consideration for the distribution service will be 11. However, since intra-Community supplies of services is subject to the reverse charge mechanism, the wholesaler will account for the VAT that refers to the supply of the distribution service.⁸³ The amount of VAT attributable to the transaction is 1,1 which the wholesaler will

⁸³ Articles 44 and 196 of the VAT Directive.

pay to the tax authority in MS 1. That amount will immediately be deducted as input VAT by the wholesaler. In MS 2, no VAT will be paid since the final consumer does not perform a distribution service to the retailer. When the manufacturer redeems the MPV, the redemption is subject to VAT of an amount of 10, which is 10 per cent of 110, i.e. the face value of the voucher.

Equal to the domestic examples in figures 10 and 11, the manufacturer can now deduct the input VAT relating to the distribution service purchased from the wholesaler. The VAT paid to the tax authority in MS 1 will be 10. The VAT consequence in this type of cross-border distribution is the same as if the distribution had taken place domestically.

However, the distribution of the MPV can look differently depending on which parties that are situated in which MSs and also depending on how many MSs the MPV is distributed through. If there had been a situation where all the parties were situated in MS 1 except for the final consumer that had been situated in MS 2, there had been a different set of rules applicable than the ones brought up in the thesis so far. New questions had arisen depending on if there had been a supply of goods or services that was going to be supplied. If there would be a distribution of goods, the distance selling rules would be applicable.⁸⁴ However if it would be a question of supply of services, questions such as where the place of supply is would arise. Therefore, the situation of when the manufacturer, the wholesaler and the retailer is situated in MS 1 and only the final consumer is situated in MS 2 will not be further discussed.

In figure 13, there are three MSs involved in the distribution of the MPV and one more party is added to the chain, the distributor. With these circumstances, there will be a difference in the VAT treatment. The VAT rate is 10 per cent in all three MSs and the face value of the voucher is 110 as in the previous examples. The dotted arrow shows the distribution of the voucher. The arrow in the middle shows the payment made for the voucher and the bottom arrow shows the invoicing of the distribution service.

⁸⁴ Article 33 of the VAT Directive.

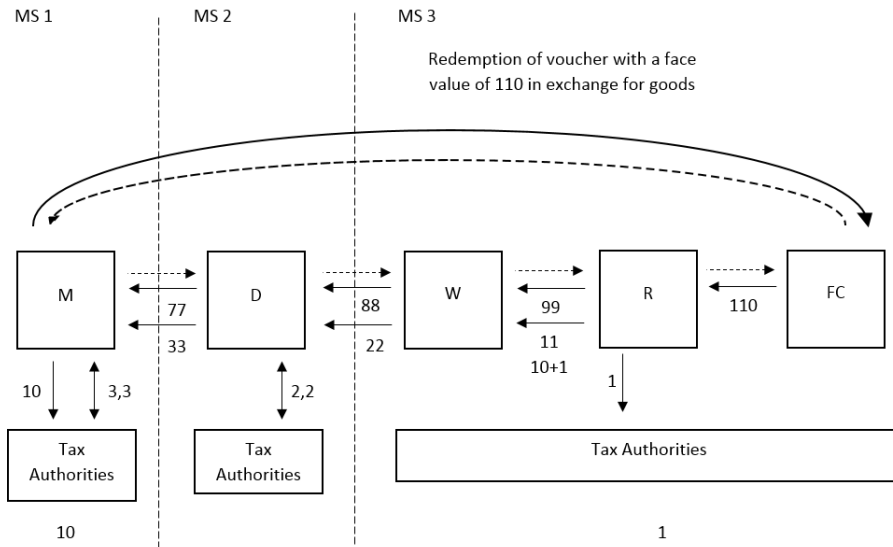


Figure 13

The manufacturer situated in MS 1 supplies the MPV for an amount of 77 to the distributor situated in MS 2. The consideration for the distribution service is 33 and subject to reverse charge. The distributor will invoice the manufacturer an amount of 33 VAT exclusive, which means that the manufacturer will pay 3,3 in VAT to the tax authorities in MS 1. The manufacturer will immediately deduct the input VAT.

The distributor supplies the voucher to the wholesaler situated in MS 3 for an amount of 88. That means that the consideration for the distribution service is 22 and the VAT subject to reverse charge is 2,2, which will be paid in MS 2 by the distributor as a consequence of the invoice that the wholesaler sends to the distributor. The distributor will immediately deduct the VAT subject to reverse charge as input VAT.

The wholesaler supplies the MPV to the retailer, which is situated in the same MS. The consideration for the distribution service is 11. Since both the wholesaler and the retailer are situated in the same MS, the normal invoicing rules apply, which means that the retailer will send an invoice to the wholesaler VAT inclusive and will pay the VAT to the tax authorities in MS 3 amounting to 1.

At last, the retailer sells the MPV to the final consumer also situated in MS 3. The manufacturer in MS 1 redeems the voucher and the redemption of the

voucher is subject to VAT. Subsequently the manufacturer has an output VAT of 10, which is received by the tax authorities in MS 1.

What can be concluded from this example is that the treatment of VAT is not completely neutral when it comes to cross-border distribution of MPVs. The tax authorities in MS 1 obtains the same amount of VAT as if the final consumer had purchased the goods directly from the manufacturer and paid in cash instead of with the voucher. In MS 2 there is no VAT consequence, which is correct if comparing to previous examples and the Proposal. What is discussable is the VAT paid in MS 3. In order for the VAT consequence to be in line with the proposal, there should not be any payment of VAT in MS 3, but since the distribution service is subject to VAT, there is such a payment in MS 3.

As mentioned in the beginning of this chapter, what have been described above is the Commission's Proposal for how the distribution of the MPV should be treated.⁸⁵ This shows that the Proposal is not solving the problems pertaining MPVs in a cross-border distribution chain.

Since the MPV is to be taxed at redemption and the supplies of the MPV to intermediaries is not to be taxed at all,⁸⁶ there is one possible solution to this problem. The distribution service should be abolished and the distribution of an MPV should fall outside the scope of VAT. The VAT treatment in this situation would be completely neutral and in line with the proposal regarding the nature of the MPV; that it should be taxed only at redemption and not in every step of the distribution chain.⁸⁷ With this solution, the administration in connection with the distribution of MPVs would decrease. The one argument against this solution is that there will no longer be a tax on the distribution service; instead, the distribution will fall outside the scope of VAT, which can be said to be against the aim with the VAT.⁸⁸ The solution to the complex distribution chain above is demonstrated in figure 14.

⁸⁵ The Proposal, p 8.

⁸⁶ B, Terra and J, Kajus, 'A Guide to the Recast VAT Directive', IBFD 2014, p 2141.

⁸⁷ The Proposal, p 8.

⁸⁸ Article 1 of the VAT Directive.

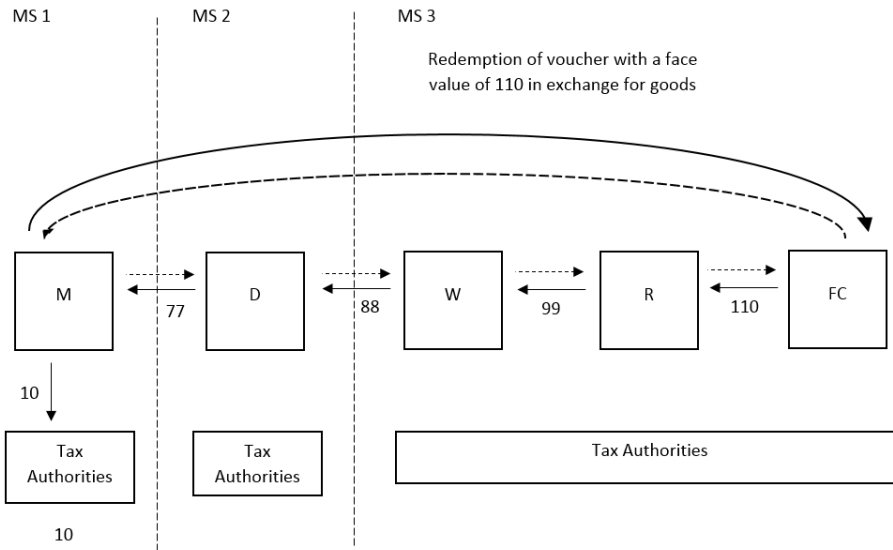


Figure 14

No VAT will be paid in either MS 2 or 3, and the correct amount of VAT would be paid in MS 1. With this solution, the invoicing for the distribution service would not be necessary and as the definition of the MPV states, the voucher would be taxed upon redemption. This solution would ensure the neutrality of VAT and would be in line with the Proposal.

7. Conclusion

A conclusion that can be drawn is that there are many issues arising when the vouchers are used and distributed in cross-border situations. The case law of the CJEU often results in an inconsistent VAT treatment if it is applied when vouchers are used and distributed in cross-border situations, compared to when the vouchers are used and distributed in domestic situations.

The free discount vouchers are assessed first in the thesis. The conclusion is that the judgment made in that area, *Commission v Germany*, resulted in a tax loss for the tax authorities when the vouchers were used in cross-border situations. The reason for the tax loss is the opportunity that the manufacturer is given; to adjust the taxable amount when the manufacturer makes the third party payment either to the retailer in case of a money off voucher or the final consumer in case of a cash-back voucher.

In the Proposal from May 2012, this issue is addressed and a solution is presented. The solution is that the payment made by the manufacturer to the retailer or the final consumer shall not be seen as a third party payment. Instead, the payment shall be seen as a consideration for the service of distributing the voucher if the payment is made to the retailer. The retailer will then invoice the manufacturer an amount equal to the face value of the voucher. If applying the Proposal it is, instead of one adjusted transaction, two separate transactions.

Another possible solution could be that the usage of a free discount voucher shall fall outside the scope of VAT since it is not paid for. If this would be the case, then no adjustments or deductions could be made as a consequence of the usage of the voucher. The aim with VAT is to tax consumption. The usage of a free discount voucher is not a consumption therefore the manufacturer shall not be able to adjust its taxable amount. If this is the case, the VAT treatment of the free discount voucher will be neutral, since the problem is that when the adjustment is made the tax authorities receives 10 and pay 11 in VAT. On the other hand, if no adjustment is made, the redemption of the voucher will be a direct cost for the manufacturer, since the manufacturer then will have to make a payment VAT inclusive, where the VAT cannot be

adjusted or deducted. Nevertheless, there will be no loss of tax revenue for the tax authorities.

The paid-for discount voucher does not have a treatment in the Proposal. The VAT treatment of this voucher does not result in a tax loss neither in a domestic nor in a cross-border distribution. However, when the paid-for discount voucher is distributed cross-border the VAT is paid in the MS where the final consumer is situated and not in the MS where the voucher is issued and redeemed. If no voucher is used in a cross-border situation and the goods or services is paid for with cash by the final consumer, the VAT is paid in the MS where the manufacturer is situated and not in the MS where the final consumer is situated. This means that when using a paid-for voucher in a cross-border situation the VAT is paid in a different MS than if no voucher was used.

The reason that the result is not the same when using a paid-for voucher and not is that the distribution of the voucher is treated as a distribution of a service. In order for the treatment to be the same when using a voucher cross-border and not, a solution can be that the distribution of the paid-for voucher shall be seen as a distribution of a good instead of a service. With that treatment, there would be no difference in the VAT treatment if the goods or services were paid with cash or with a voucher.

The usage of an SPV has a similar VAT consequence as the usage of a paid-for discount voucher. There is no tax loss when the SPV is used, neither in a domestic nor in a cross-border usage of the SPV. When the SPV is distributed domestically and used by a consumer situated in the same MS as the issuer of the SPV the VAT is paid to the tax authorities where both parties is situated, of interest is that the VAT is paid in the MS where the voucher is issued. If the SPV is distributed cross-border, the VAT is paid in the MS where the final consumer is situated. If no voucher is used in a cross-border situation and the final consumer pays for the obtained goods or services in cash directly to the manufacturer, the VAT is paid in the MS where the manufacturer is situated and not in the MS where the final consumer is situated.

Since the SPV is supposed to be taxed at issuance according to the Proposal the result when applying the CJEU's case law in cross border situations is contradictory to the purpose of the SPV. The reason that the SPV is taxed in the MS where the final consumer is situated and not in the MS where the issuer of the voucher is situated is because the supply of the SPV is seen as a supply of services and therefore the reverse charge mechanism applies.

A possible solution to this problem is to re-classify the SPV and treat it as something else than a supply of a service. If the SPV had been treated as a good instead of services, and the redemption of the voucher had been seen as a barter, the reverse charge mechanism would not apply and the voucher would be taxed at issuance in the issuing MS and at the intermediary stages in the supply chain. This solution would be neutral.

At last, the VAT treatment of MPVs is assessed. If the Proposal's solution is used in a domestic situation, the tax authorities in that MS will obtain VAT equal to the face value of the voucher. If the voucher is distributed in a cross-border situation, where there is more than three MS involved and more than five parties involved, the VAT consequence, when the suggested rules in the Proposal are used, is not neutral. The MS where the issuer and redeemer is situated will obtain VAT as if the distribution of the voucher was made domestically, but that is not the only VAT that will be paid.

The Proposal's suggestion is to tax the difference between the value of the voucher and the consideration paid for the voucher as a distribution service carried out by the intermediary parties in the distribution chain. Because of the taxation of the distribution service, the tax authorities in the last MS obtains VAT, see figure 13. This means that the VAT paid in connection to the transactions of the MPV is an amount higher than if the MPV was not used, and the goods or services was paid for with cash by the final consumer instead.

A possible solution to this problem is that the distribution service shall be abolished and consequently, there will be no taxation relating to the distribution of the MPV. The only problem with this solution is that the

distribution service will fall outside the scope of VAT, and it will no longer be a taxation on the consumption of that service.

The assessment of the VAT treatment that has been made shows that when vouchers are used and distributed in cross-border situations the VAT consequence is not the same as if the vouchers is distributed domestically. In order for the VAT treatment to be harmonized and neutral within the EU, adjustments have to be made to the existing rules. The alternative treatments presented in this thesis could be a possible solution to some of the occurring problems, and could be implemented in order to reach a harmonized VAT treatment for vouchers used and distributed in cross-border situations.

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