Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers

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amending Directive 2006/112/EC as regards the treatment of vouchers

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2006/112/EC[(3)] sets out rules on the time and place of supply of goods and services, the taxable amount, the chargeability of value added tax (VAT) and the entitlement to deduction. Those rules are, however, not sufficiently clear or comprehensive to ensure consistency in the tax treatment of transactions involving vouchers, to an extent which has undesirable consequences for the proper functioning of the internal market.

(2) To ensure certain and uniform treatment, to be consistent with the principles of a general tax on consumption exactly proportional to the price of goods and services, to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance, there is a need for specific rules applying to the VAT treatment of vouchers.

(3) In view of the new rules on the place of supply for telecommunications, broadcasting and electronically supplied services which are applicable since 1 January 2015, a common solution for vouchers is necessary in order to ensure that mismatches do not occur in respect of vouchers supplied between Member States. To this end, it is vital to put in place rules to clarify the VAT treatment of vouchers.

(4) Only vouchers which can be used for redemption against goods or services should be targeted by these rules. However, instruments entitling the holder to a discount upon purchase of goods or services but carrying no right to receive such goods or services should not be targeted by these rules.

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(5) The provisions regarding vouchers should not trigger any change in the VAT treatment of transport tickets, admission tickets to cinemas and museums, postage stamps or similar.

(6) So as to identify clearly what constitutes a voucher for the purposes of VAT and to distinguish vouchers from payment instruments, it is necessary to define vouchers, which can have physical or electronic forms, recognising their essential attributes, in particular the nature of the entitlement attached to a voucher and the obligation to accept it as consideration for the supply of goods or services.

(7) The VAT treatment of the transactions associated with vouchers is dependent upon the specific characteristics of the voucher. It is therefore necessary to distinguish between various types of vouchers and the distinctions need to be set out in Union legislation.

(8) Where the VAT treatment attributable to the underlying supply of goods or services can be determined with certainty already upon issue of a single-purpose voucher, VAT should be charged on each transfer, including on the issue of the single-purpose voucher. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher should not be regarded as an independent transaction. For multi-purpose vouchers, it is necessary to clarify that VAT should be charged when the goods or services to which the voucher relates are supplied. Against this background, any prior transfer of multi-purpose vouchers should not be subject to VAT.

(9) For single-purpose vouchers susceptible to being taxed upon transfer, including on the issue of the single-purpose voucher, by a taxable person who acts in his own name, each transfer, including on the issue of that voucher, is regarded as being the supply of the goods or services to which the single-purpose voucher relates. Such a taxable person would in that case need to account for VAT on the consideration received for the single-purpose voucher according to Article 73 of Directive 2006/112/EC. Where, on the other hand, single-purpose vouchers are issued or distributed by a taxable person acting in the name of another person, that taxable person would not be regarded as taking part in the underlying supply.

(10) Only the intermediary services or separate supply of services such as distribution or promotion services would be subject to VAT. Therefore, where a taxable person who is not acting in his own name receives any separate consideration on the transfer of a voucher, that consideration should be taxable according to the normal VAT arrangements.

(11) In the case of multi-purpose vouchers, to ensure that the amount of VAT paid in respect of multi-purpose vouchers where VAT on the underlying supply of goods or services is charged only upon redemption is accurate, without prejudice to Article 73 of Directive 2006/112/EC, the supplier of the goods or services should account for the VAT based on the consideration paid for the multi-purpose voucher. In the absence of such information the taxable amount should be equal to the monetary value indicated on the multi-purpose voucher itself or in the related documentation, less the amount of VAT relating to the goods or services supplied. Where a multi-purpose voucher is used partially in respect of the supply of goods or services, the taxable amount should be equal to the corresponding

part of the consideration or the monetary value, less the amount of VAT relating to the goods or services supplied.

(12) This Directive does not target the situations where a multi-purpose voucher is not redeemed by the final consumer during its validity period, and the consideration received for such voucher is kept by the seller.

(13) Since the objectives of this Directive, namely the simplification, modernisation and harmonisation of the VAT rules applying to vouchers, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(14) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(15) The provisions regarding the VAT treatment of vouchers should apply only to vouchers issued after 31 December 2018 and are without prejudice to the validity of the legislation and interpretation previously adopted by the Member States.

(16) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

(1) in Title IV, the following Chapter is inserted:

CHAPTER 5

Provisions common to Chapters 1 and 3

Article 30a

For the purposes of this Directive, the following definitions shall apply:

(1) ‘voucher’ means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

(2) ‘single-purpose voucher’ means a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher;