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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers - Political agreement

Delegations will find an updated Presidency compromise text on the abovementioned Commission proposal, following the discussions at the Fiscal Counsellors/ Attachés meeting of 3 June 2015. Changes to the previous compromise text (doc. 9532/15) are in **bold and underlined**. Deletions are presented as strikethrough text.

Proposal for a
COUNCIL DIRECTIVE

**amending Directive 2006/112/EC on the common system of value added tax, 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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax³ lays down 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 and 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 applicable from 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.

³ OJ L 347, 11.12.2006, p. 1.

- (5) The provisions regarding the VAT treatment of vouchers should not be applicable to postage stamps.
- (6) So as to identify clearly what is 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, particularly the nature of the entitlement attached to a voucher and the obligation to accept it as consideration for a 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 made 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. This taxable person would in that case need to account for VAT on the consideration received for the single-purpose voucher according to the Article 73 of the Directive. 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.
- (9a) 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 voucher, that consideration should be taxable according to the normal VAT arrangements.
- (10) [deleted]

(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 goods or services is charged only upon redemption is accurate, without prejudice to Article 73, 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.** ~~However, where neither information about consideration paid nor the monetary value is available to the supplier of the goods or services, consideration that is normally received by the supplier from a purchaser in return for the supply of these goods or services (i.e. the price which would have to pay without using a multi-purpose voucher) should be the taxable amount.~~ **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.**

(11a) ~~Where a monetary value is indicated on the multi-purpose voucher or such value can be substantiated by the supplier of the goods or services by way of the related documentation, including the terms and conditions of usage of that voucher, and where only a proportion of the voucher is used as consideration, the consideration should be the corresponding part of the monetary value. [deleted]~~

(11b) [deleted]

- (12) Since the objectives of the action to be taken regarding 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.
- (13) 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.
- (14) The provisions regarding the VAT treatment of vouchers should apply only to vouchers issued after [31 December 2017] and are without prejudice to the validity of the legislation and interpretation previously adopted by the Member States.
- (15) 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 “Taxable transactions”, the following Chapter 5 is inserted:

“Chapter 5
Provisions common to Chapters 1 and 3

Article 30a

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

- (1) “Voucher” shall mean 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 usage of such instrument.
- (2) “Single-purpose voucher” shall mean a voucher where the place of supply of the goods or services to which the voucher relates, and VAT due on those goods or services are known at the time of issue of the voucher.
- (3) “Multi-purpose voucher” shall mean a voucher, other than a single-purpose voucher.

2. The provisions of Articles 30a(1), 30b and 73a shall not apply to postage stamps.

Article 30b

1. Each transfer of a single-purpose voucher made by a taxable person acting in his own name shall be regarded as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the actual provision of the services made in return for a single-purpose voucher accepted as consideration or part consideration by the supplier shall not be regarded as an independent transaction.

Where the transfer of a single-purpose voucher is made by a taxable person acting in the name of another taxable person, then this transfer shall be regarded as the supply of the goods or services to which the voucher relates made by the other taxable person in whose name the taxable person is acting.

Where the supplier of goods or services is not the taxable person that, acting in his own name, has issued the single-purpose voucher, that supplier shall however be deemed to have made the supply of the goods or services related to that voucher to that taxable person.

2. Without prejudice to any separate supply of services such as distribution or promotion services, each transfer of a multi-purpose voucher shall be regarded as not subject to VAT and only the actual handing over of the goods or the actual provision of the services made in return for a multi-purpose voucher accepted as consideration or part consideration by the supplier shall be subject to VAT.

(2) The following Article 73a is inserted:

“Article 73a

Without prejudice to Article 73, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher shall be equal to the consideration paid for the voucher or, in the absence of information on that consideration, 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.~~In the absence of such information on that consideration or such a monetary value, the taxable amount shall be the consideration that is normally received by the supplier from a purchaser in return for the supply of goods or services, less the amount of VAT relating to the goods or services supplied.”~~

(3) In Title XV, the following Chapter 2a is inserted:

“Chapter 2a

Transitional measures for the application of new legislation

Article 410a

Articles 30a, 30b and 73a shall apply only to vouchers issued after [31 December 2016].”

Article 2

1. Member States shall adopt and publish, by [31 December 2016] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [1 January 2017].

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

DRAFT STATEMENT

TO BE ENTERED IN THE COUNCIL MINUTES

The Council:

- ~~— stresses the need for specific rules providing the VAT treatment of vouchers, in order to ensure certain and uniform treatment thereof and to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance;~~
 - ~~— notes that the Commission proposal provides to amend Directive 2006/112/EC on the common system of value added tax to set up common VAT treatment of vouchers;~~
 - ~~— acknowledges that the adoption of this Proposal is urgent and necessary in order to allow for quicker progress by setting definitions of vouchers (*inter alia* single purpose vouchers and multi purpose vouchers), provisions on tax treatment of a transfer of such vouchers, the taxable amount of the supply of goods or services provided in respect of a multi purpose voucher, as well as the relating transitional provisions;~~
 - underlines the need to continue work on a number of other issues related to vouchers, such as distribution chain, non-redeemed vouchers, discount vouchers;
 - invites the Commission to provide ~~practical and~~ informal guidance that can be used to clarify the application of the VAT treatment of vouchers and to allow Member States to transpose the legislation in a ~~more~~ uniform way and to provide businesses es with the necessary information to adapt to the new rules in time.
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