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## **ETNO Reflection Document on the EC consultation paper on modernising the value added tax treatment of vouchers and related issues**

### **Executive Summary**

When a voucher is sold, from a VAT point of view the question arises whether the supply character or the consideration character prevails. If the supply character prevails, then a single purpose voucher (SPV) has been supplied and the taxable event may conveniently be taken to be the point of sale. Multi purpose vouchers (MPV) however are the most prevalent form of voucher used in the telecommunications industry and consequently VAT must be accounted for when these vouchers are used to receive a specific supply according to that supply. The supplier of the service has an obligation to account for the VAT at this point, and any business customer must have the right to deduct VAT also at the same point.

The European Telecommunications Network Operators Association (hereafter "ETNO") welcomes the opportunity to present its contributions concerning the Consultation Paper on modernising the value added tax treatment of vouchers and related issues.

### **Background**

ETNO represents telecommunication companies throughout Europe and in all EU Member States providing a number of different services from traditional fixed line telecommunication services to mobile telecommunications, content provision and internet service providers.

The disparate tax treatment of vouchers across Europe has been of general concern to ETNO members for many years and the subject has been debated at length at our meetings. Indeed, in 2002 ETNO drew up a position paper on vouchers, which is enclosed with this response at Annex 1.

ETNO therefore welcomes the opportunity to comment on your consultation paper and is grateful for being given the opportunity to do so, particularly as this response represents the collective view of most of the EU's telecommunications VAT specialists.

ETNO recognizes that there are several different types of voucher but has, with the exception of comments relating to principles and definition, restricted its views to those that impact the most in the telecommunications industry, particularly those capable of being purchased in one country for consumption in another country.

## **Principles**

ETNO is in some agreement with the principles outlined at the bullets on page 3 of the paper, i.e.:-

- The system must be able to cope with supplies in more than one country and with vouchers issued in one Member's State and redeemed in other Member States.
- Tax neutrality should be ensured between different payment systems which deliver the same result in paying for goods and services; that is, the choice of payment instrument should not be a determining factor and the same tax charge would apply to a supply whether the customer uses cash, a voucher or any other form of consideration.
- Tax administrations must be able to enforce the system effectively without creating disproportionate burdens for business, that means simple and practical rules.
- The system reasonably be able to cope with future developments in the areas under review.

It does not, however, think that the Commission Consultation Papers has gone far enough with the principles, and suggests some more below. Firstly, however, we have an issue with the second bullet, with the use of the words “.....cash, a voucher or any other form of consideration.”

We believe that attributing the voucher either to the supply or to the consideration creates the existing uncertainty in the VAT treatment of vouchers. A voucher links a supply with the consideration for a specific supply, without being a supply on its own. It facilitates a payment, or a form of settlement for a transaction, by the customer and the performance of the supply by the supplier, taking place at different points in time and probably in different places. When a voucher is sold, from a VAT point of view the question arises whether the supply character or the consideration character prevails. If the supply character prevails, then a single purpose voucher (SPV) has been supplied and the taxable event may conveniently be taken to be the point of sale. If on the other hand the consideration prevails, then a multi purpose voucher (MPV) may be said to have been

sold, and the consideration should be linked to the supply or supplies which are then to be made and which then form the taxable event(s).

Distinguishing whether an SPV or an MPV is sold would depend on what information is available at the point of sale. A ticket which only enables a customer to visit a specific football match, for example, would be an SPV, because all factors to appropriately tax the transaction are known at the point of sale. A voucher which enables a customer to 'top-up' a mobile phone with call credits would be an example of an MPV because at the point of sale, factors to enable the transactions to be effectively taxed are not known.

The accounting treatment should follow the same logic: if the supplier knows for certain what he has supplied at the point of sale he will account for the appropriate revenue in his accounts (and he will be able to tax accordingly), but if he does not believe he has sold anything (merely received consideration) then he cannot book any revenue to a product.

As stated earlier, ETNO believes that the principles you have outlined do not go far enough and suggests that the following should also be respected:-

- Operators should be allowed sufficient time to change their accounting and other systems should the Commission deem that significant changes to the current rules be required. ETNO would suggest that a lead-in time of one year would be prudent.
- The output and input tax treatment should be consistent. This point is made because firstly a recent court case in Germany (BFH-Urteil vom 24. August 2006 V R 16/05) disallowed input tax on vouchers because the onward supply was not precisely determined, and secondly it must be right that tax neutrality should be observed for the same supplies of goods or services irrespective of how payment for those supplies is made. We acknowledge that if a voucher is treated as neither a supply in its own right nor a form of consideration, it does present some problems where vouchers are sold via intermediaries. We believe the solution to this is for intermediaries to have the right to recover input tax on costs associated with the sale of vouchers (because they will be making their own supply of services), in a way that is similarly available to suppliers of international services.
- Where a taxable supply is made, the taxable amount should be based on the consideration paid by the final consumer where no intermediary is involved.
- Vouchers cannot be seen as supplies on their own when they are sold if at this time the relevant information for taxation is not available (esp. kind of supply; supplier; applicable tax rate).
- Electronic wallets and vouchers are different. With wallets a consumer uses a payment system and any money he puts into a

wallet remains his: it is no different to simply putting money into a bank.

- Vouchers may not always be within the scope of VAT. For example a voucher may be used to donate a payment to a charity (which would be outside the scope of VAT).

## **Definition**

With regard to the general definition of vouchers given at page 4, ETNO considers that the following would be more appropriate:-

*In general terms, a voucher, could be a token, a ticket, a card, an electronic message on a chip or other medium, generally accessed by a P.I.N., which gives the consumer an entitlement to receive goods or services, or to obtain a discount, when acquiring those goods or services, or to receive a refund, at the time of redemption. That entitlement might be shown as a value expressed in terms of monetary value or of percentage (percentage reduction) or of units or of quantity.*

*This concept of voucher would in any case exclude the voucher from categorization as legal tender, and it should be accepted that vouchers may operate outside the VAT system, for example where a voucher is used to make a donation to a charity.*

## **Single Purpose Vouchers (SPV)**

ETNO believes that European Telcos do not in general provide SPVs, which can be attributed to a specific supply at point of sale. If they did, then a right, and hence a supply, would be conferred when the SPV was issued.

However, for practical purposes, ETNO considers that Telcos may treat vouchers as SPVs, and tax according to where the supplier belongs, if all the following conditions are met:-

1. The vouchers can only be used for telecommunications services,
2. There can only be one redeemer, identified at the point of sale,
3. There must be a single rate of VAT to apply, which must be clear at the point of sale.

## **Multi Purpose Vouchers (MPV)**

ETNO agrees with the Commission's proposition at 3.3 (page 6) that "MPVs should not, however, extend to systems whose objective is only to provide a vehicle for payment for an open-ended range of goods and services." This is consistent with the Commission's view that Telcos are not providing financial services. We consider that the economic activity conducted by finance institutions and Telcos are very different. Banks, for example, make money on the receipts of money (VAT exempt) and offer

money transfer services, whereby Telcos make money on providing telecommunications services (subject to VAT) and related services. If monies collected by Telcos are not used immediately for services, they become deferred revenue. If monies are not allocated by banks they may accrue interest, because the money remains the property of the customer, and the capital and any accrued interest is repayable to the customer.

In respect of MPVs, at the point of usage all of the following will probably not be known:-

1. the taxable amount,
2. the time of supply,
3. the place of supply.

and therefore a Telco may pragmatically account for VAT according to where it belongs (for example a Telco may find it conveniently much easier to apply tax at the point of sale to pre-pay cards). Should, however, points 1-3 above be known, then the Telco may bring VAT to account according to the time of supply, the place of supply and the amount received. The consideration should be based on the value paid by the customer.

When sales of MPVs are made via an intermediary, they should be ignored (dis-applied for VAT purposes). However, an intermediary would make a taxable supply to the Telco for its services (which would be subject to the reverse charge if the Telco receives the supply from outside his territory).

## **Premium Rate Services**

ETNO believes that vouchers which can be used for paying premium rate services must be treated as MPVs. We do not believe that premium rate services are always taxed as telecommunications services. However, it is usually the case that the Telco does not know what the content is, so necessarily has to treat it as telecommunications, which re-enforces MPV treatment. It is nevertheless possible that contractually, a Telco could buy in and sell premium rate content together with a telecommunications aspect, in which case MPV treatment would again be relevant.

## **Unredeemed vouchers**

ETNO does not consider that a modification to Article 10 is required, for the reasons explained already which are that a supply is not made until a voucher is redeemed so tax cannot be due. Cancellation of the vouchers does not alter this position.

## **Invoicing problems**

The Commission's paper does not consider difficulties with invoicing, particularly in a B2B situation. How, for example is a Telco expected to issue a tax invoice (for a MPV) when consumption is effected, which may

be over a period of time and for small amounts? It is impractical for the Telco (or indeed any supplier) to issue tax invoices when the taxable supplies takes place. The problem is eased in some Member States because there is no obligation to issue a tax invoice to an end consumer, but other Member States require a tax invoice for all sales. ETNO considers that (a) as the amounts involved are generally small the need for a tax invoice should be dispensed with for redeemers of the vouchers and that (b) some form of self-declaration by the recipient business, unsupported by an invoice, should be used when it consumes services, so that it then has the right to recover input VAT. As an alternative, web based usage could be used as a proxy for invoices. Many Telcos enable customer usage to be followed on a web log, and this could be used to support an input tax deduction.

## **Conclusion**

As a general principle, ETNO believes that MPVs are the most prevalent form of voucher used in the telecommunications industry and consequently VAT must be accounted for when these vouchers are used to receive a specific supply according to that supply. The supplier of the service has an obligation to account for the VAT at this point, and any business customer must have the right to deduct VAT also at the same point. This is consistent with the general principles in the 'BUPA' case and a recent Swedish National Tax Board position paper "Skatteverkets ställningstagande nr 16/06 Dnr: 131 648991-05/111".

ETNO is grateful for the opportunity to respond to the consultation paper and is willing to discuss its thoughts with representatives of the Commission.

# **ETNO Reflection Document on VAT treatment of cards providing access to services**

## **Introduction**

This document offers ETNO's viewpoint on the VAT treatment of cards, which provide access to telecommunication services, or telecommunications services combined with other services.

It is crucial for the telecoms industry that such cards are subject to equal treatment –that is simple to administer across all member states in order to avoid double VAT, VAT avoidance, distortion of competition and fraud.

One aim of this document is to demonstrate a practical solution for multifunctional cards. This would maintain the neutrality of internal market conditions and reduce tax risks for industry and distributors. Another aim is to provide a basis for solving the practical complications regarding the documentation of sale or invoicing of cards and/or services provided.

## **Basic information**

Different kinds of “telephone cards” have been developed:

- Traditional phone cards can be used at public telephone boxes.
- Calling cards can be used for all telephones by dialling a special access number and personal code.
- Credit cards and cash cards.
- Cards that offer users a limited credit or which merely provide access to the services of a specified telecommunication operator (telco), which are later billed to the card user.
- Cards allowing access to the services of several suppliers or access only to the services of the card issuer.

Market evolution favours multifunctional cards (cards for different kinds of services and/or from different suppliers), but the development varies from country to country.

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Cards are not only used for fixed net phones but also for mobile phones and Internet access.

Cards can be supplied directly from issuer to end-user, or a number of intermediaries may be involved (acting in their own name or in the name of the issuer).

Regarding VAT, these various kinds of cards could be seen as:

- a taxable prepayment (re. Article 10,2 of the EU Sixth VAT Directive, or similar provision outside the EU),
- a tax-exempted financial service (where some member states nevertheless, have the option to charge VAT), or as
- a simple exchange of money - which is beyond the scope of VAT.

The VAT treatment differs depending on the kind of card. If they fall within the scope of Value Added Tax and subject to VAT (VAT-able), phone cards can be treated as "services". That is because the customer does not pay for a good but for the services (or goods, e.g. from vendor machines that are able to communicate with mobile phones) provided by the card. (There is one possible exception: collector's items, where a card is sold at a price exceeding face value.)

The VAT treatment of a card can depend upon whether:

- it is **monofunctional** (i.e. the supplier issuing the card and rendering the service is identical) or **multifunctional** (i.e. to be used for several services or for the services of several suppliers), and
- it is **prepaid** (i.e. it represents a credit to be used for paying for services to be consumed in the future) or **postpaid** (i.e. the services rendered by using the card are billed to the card user afterwards).

## **Present situation**

ETNO's members have seen phone cards treated differently for VAT purposes across the EU. This provides ample opportunity for distortion of competition and possibilities for intermediaries to manipulate VAT revenue.

When intermediaries are involved, member states have different views on the services provided by these entities, or on the discounts/remuneration (margin at buying and selling cards) provided to these entities.

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## **ETNO's position**

*Multifunctional cards* are cards which can be used for different kinds of services, and/or for services from different suppliers.

Our view about these cards' VAT treatment is:

- When sold – prepaid multifunctional cash cards are treated as a non-taxable exchange of one means of payment for another.
- Post-paid multifunctional cards should be disregarded for VAT purposes as there is neither a supply nor a payment when the card is distributed.
- When used – both for prepaid and postpaid multifunctional cards – VAT can be accounted for at the right time, and with the correct amount concerning the actual type of supply and the place of supply.
- A commission paid to an intermediary or a reseller (acting in the name of the issuer) should be regarded as payment for services provided by the intermediary/reseller to the issuer of the cards.
- A discount provided by the issuer of the card to a reseller (acting in his own name) should be treated according to the decision of the European Court of Justice case, "Argos Distributors Ltd" no. C-288/94 <sup>A</sup>.

*Monofunctional cards* should be treated in the same way as multifunctional cards <sup>B</sup>.

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<sup>A</sup> Deutsche Telekom does not support this statement because it considers that the vouchers of the Argos case are not comparable to the various types of cards described in the paper.

<sup>B</sup> Deutsche Telekom and Türk Telekomünikasyon do not support this statement. They consider monofunctional prepaid cards as taxable prepayment.