

TAXREP 29/00

VAT: FACE VALUE VOUCHERS AND SIMILAR ITEMS

Text of a letter sent in September 2000 to Customs by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a Business Brief announcement in August 2000

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GENERAL COMMENTS

1. We refer to the announcement in Business Brief 10/00 dated 8 August 2000 announcing the setting up of a working party including tax advisors and inviting representations from businesses. We and other bodies representing tax advisers are disappointed not to have been invited to join the working party, which we understand comprised mainly industry representatives, ie those who issue or sell this type of voucher. Having contributed at some length to the earlier consultation in 1997 (our letter dated 2 October 1997), we also find it unhelpful that Customs are now seeking further contributions to this process without their disclosing anything of what has emerged in the discussions of the working party referred to in the Business Brief and of their own reaction to what we and others contributed to the debate in 1997. This is contrary to the spirit of Open Government.
2. Any measures finally imposed should take into account all taxpayers, not just those represented on the working party. Whilst we approve Customs' practice of obtaining practical input from those most directly concerned with a particular form of transaction, the interests of taxpayers generally and the general scheme of the tax must not be overlooked.
3. Despite the fact that the Business Brief invites comments only from businesses, we are taking the opportunity to respond on this occasion so that the interests of all parties can be taken into account. We are also grateful to you for extending the lamentably short time-scale in which comments were invited.
4. We endorse the views expressed by the Chartered Institute of Taxation in its paper dated 30 August 2000, which has been shown to us (see Annex). We would welcome the opportunity to discuss the issues with you in a joint meeting with them.
5. We will be issuing the text of this letter as a technical release.

DETAILED COMMENTS

6. Our main observation is that the existing treatment of face value vouchers should be retained unless there is a demonstrably better alternative. If face-value vouchers were to be treated as standard rated pre-payments, with some sort of adjustment where they are applied against supplies other than at the standard rate, then this would be unhelpful to business and potentially distortive.
7. We are aware of, and sympathetic to, Customs' concerns over items such as telephone cards, particularly the pre-payment cards used in mobiles. We understand that, assuming that these are face value vouchers, the situation can arise where there is a substantial difference between the consideration received by the telephone operator, who accounts for VAT when the service is used, and the price paid by the final consumer after the card has passed through various intermediaries. This seems to us to be potentially distortive. However, rather than lose the benefit of the current voucher arrangement, we would prefer 'abuses' to be dealt with by specific legislation. For example, a measure similar to Para 2, Schedule 6, VATA 1994

(subject to any necessary derogation) might be appropriate in the case of telephone cards.

8. We also agree with the CIO's comments on electronic vouchers. Subject to appropriate audit measures, there seems no difference in principle between paper and electronic vouchers. If it is proposed that they should be treated differently, we would welcome clarification of why.

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RESPONSE BY THE CHARTERED INSTITUTE OF TAXATION

Introduction

- 1 In Business Brief 10/2000 dated 8 August 2000, HM Customs and Excise announced the setting up of a working party to review the VAT treatment of face value vouchers and similar items and invited representations.
- 2 The Chartered Institute of Taxation welcomes the opportunity to contribute to this consultation. We make some general comments on the procedure adopted in this consultation before going on to discuss specific issues. As requested, we do not repeat the comments made in our response dated 10 October 1997 to the consultation announced in Business Brief 15/97, 16 July 1997.

The consultation

- 3 We understand that the working party was set up some considerable time ago to consider responses to the 1997 consultation and suggest options. We also understand that the working party has more or less completed its deliberations. On this basis, it appears that HM Customs and Excise have a set of proposals for consideration. We therefore find it surprising that the present consultation takes the form of a general invitation to submit views rather than an invitation to comment upon specific options. We consider this approach to be unhelpful.
- 4 The relevant issues are whether the working party's conclusions receive general acceptance within the business community and whether there are any gaps which remain to be filled. We accordingly consider that the working party's conclusions (or the tentative view taken by HM Customs and Excise in the light of them) should be published in a formal consultation document, preferably with some discussion of the relevant issues and specific questions on which Customs and Excise wish to receive answers.
- 5 We express our concern regarding the manner in which the consultation was announced and the time limit set for responses. The announcement was buried in the middle of a long Business Brief published in the middle of the most popular holiday month and allows only three weeks for responses. This falls far short of the Cabinet Office guidelines for conducting written consultation exercises.
- 6 We also express our concern regarding the terms of reference. The 1997 consultation was confined to "gift vouchers" and excluded consideration of "money off" coupons of the kind considered in *Boots Co plc v C & E Comrs* (case C-126/88) [1990] STC 387, ECJ. The current consultation relates to "face value vouchers" - a term which includes both forms of voucher. We refer to all forms of forms of face value voucher in the present response.
- 7 Our concern is to ensure that the outcome of the consultation (whether it be legislation, a statement of practice or merely guidance in a new public notice) should meet the following criteria:

- It must be comprehensive. Thus, it needs to go wider than book/gift tokens, Granton-type vouchers, money-off vouchers and cash-back vouchers. It needs to deal with such matters as telephone cards, discount cards and vouchers sent over the Internet.
- It must meet the needs of all taxpayers. Due consideration must be given to the interests of all parties to face value voucher schemes. It is insufficient to arrive at an outcome which meets the needs of the parties represented on the working party if this creates problems for other taxpayers.
- It must be seen to comply with the Sixth Directive as interpreted by the EU Court of Justice so as to minimise litigation.
- It must be compatible with the VAT treatment in other EU member states so that UK taxpayers are not placed at a disadvantage in international trade, whether in terms of competitiveness or in terms of administrative complexity resulting from having to reconcile the requirements of differing VAT regimes.

General principles governing face value vouchers

8 We have reviewed the relevant legislation and case law in order to determine whether there is some underlying legal principle which governs the tax treatment of all face value vouchers. We find that there is. In our view, all face value vouchers can be classified under one or other of the following heads:

- Vouchers issued for a consideration by the taxpayer who ultimately redeems them;
- Vouchers issued for a consideration by someone other than the taxpayer who ultimately redeems them;
- Vouchers issued without consideration by or on behalf of the taxpayer who ultimately redeems them.

The case for change

9 The tax position may be criticised as being complex. While we agree that the tax position is complex, we regard the criticism as unjustified. We take the view that the complexity arises from the need to take account of differing contractual situations. Each situation must necessarily be dealt with in accordance with the relevant law and this inevitably gives rise to different results.

10 We consider that the distinction raised in *C & E Comrs v Granton Marketing Ltd* [1996] STC 1049 CA, is a valid one. If vouchers of the kind at issue in that case are excluded from the scope of tax, consumers can effectively make a tax-free prepayment, or partial prepayment, for goods or services chargeable to tax at a positive rate. As the Court of Appeal noted, this would be contrary to the Sixth Directive.

11 We consider that the case law produces results which are both logical and just. We see no basis for the fears expressed by the Advocate-General in paras 27 and 28 of his opinion in *Elida Gibbs Ltd v C & E Comrs* (case C-317/94) [1996] STC 1387 ECJ and repeated by counsel for Customs and Excise in

Conoco Ltd v C & E Comrs [1997] VATTR 47. In short, we see no case for changing the tax treatment.

- 12 We do, however, feel that the text of VATA 1994 Sch 6 para 5 could be clarified. This provision refers to vouchers which confer “a right to receive goods or services”. This phrase is at best opaque and *C & E Comrs v Granton Marketing Ltd* [1996] STC 1049 CA does little to clarify it. We consider that the real distinction is whether the vouchers are issued by the taxpayer who ultimately redeems them.

Consequential matters

- 13 The tax treatment of each class is largely derived from the case law of the EU Court of Justice and, to this extent, it is not susceptible to unilateral change by the UK. However, there are three consequential matters which need to be addressed.
- 14 First, a practical difficulty arises in determining the class within which a particular voucher scheme falls. This is a matter where guidance - in the form of a statement of practice or public notice - would be of considerable assistance to taxpayers.
- 15 Secondly, the tax treatment of each class must be reflected in the legislation (if the relevant case law is to be codified) or in a statement of practice or public notice (in other cases). We prefer codification.
- 16 Thirdly, the record keeping and accounting requirements must be clearly spelt out. There is a case here for both prescribed methods and agreements or directions to use bespoke methods. There is also a case for voluntary use of an alternative tax treatment on the lines indicated in para 19 below.

Specific voucher schemes

Electronic vouchers

- 17 We understand that HM Customs and Excise take the view that VATA 1994 Sch 6 para 5 does not apply to vouchers transmitted over the Internet. If this so, we have some difficulty in discerning the reasons for this conclusion. In essence, an electronic voucher is used in the same way as a paper voucher. The only difference is that it is presented electronically rather than physically, eg the recipient may use it to download digitised music from the net or to order a CD for subsequent physical delivery.
- 18 Assuming, for the moment, that the view is correct in strict law, it appears to discriminate against Internet businesses. This has an obvious impact on the neutrality of the tax. Accordingly, if we have correctly understood the HM Customs and Excise view, we urge a change of mind. Any revision of the face value voucher provisions should ensure that electronic vouchers are defined and that they are dealt with in a like manner to paper vouchers.

Vouchers as prepayments

- 19 In our response to the 1997 consultation we took the view that that such vouchers as postage stamps and phone cards are properly treated in the same manner as other face value vouchers. We do not resile from this view. However, we can well understand that some traders may simplify their accounting (albeit at the expense of cash flow) by treating such vouchers as a prepayment for (in the examples cited) exempt postal services and standard rate telephone services. Accordingly, we consider that taxpayers should be given an option to treat face value vouchers issued for consideration as a prepayment for goods or services if the vouchers are used solely as payment or part payment for goods or services of a specific description.