



VAT AND VOUCHERS

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ICAEW welcomes the opportunity to comment on the [VAT and Vouchers consultation document](#) published by HMRC on 1 December 2017.

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MAJOR POINTS

1. We are concerned that it will not always be clear to redeemers of vouchers as to whether they are redeeming a single purpose voucher (SPV) or a multi-purpose voucher (MPV). Consequently, there is a risk of double taxation where a voucher is treated as a SPV on purchase and a MPV on redemption. There is a similar risk of non-taxation where a voucher is treated as a MPV on purchase and a SPV on redemption.
2. It will therefore be crucial to correctly identify whether a voucher is treated as a SPV or MPV at the time of purchase and for this treatment to be capable of confirmation by the eventual redeemer.
3. We are concerned that output VAT may be accounted for on a greater value when redeeming a MPV than the total consideration received by the supplier for the underlying supply of the redeemed goods or services.

RESPONSE TO SPECIFIC QUESTIONS

Definition of a voucher

Q1. These new rules do not include transport and admission tickets, postage stamps, or the electronic products and payment mechanisms referred to above. Does this cause any difficulty to your business or organisation?

4. This could create problems, as the Directive states in point 5 of the preamble:

“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”. This is in the conditional tense, whereas HMRC is stating that the new rules do not cover transport tickets etc. This needs clarifying. We are also aware that there is on-going litigation in at least one Member state as to the VAT treatment of certain unused transport tickets.

5. In addition, there is no distinction made between whether the payment for an SPV could be a deposit for a future supply or “arrhes” (see *Société thermale d'Eugénie-les-Bains* case C-277/05). The wording in the Directive could still create conflicts between Member states as to when and where a supply should be taxed, or even if the amount retained by the supplier should be subject to VAT at all.

Q2. These new rules do not include on-line credits and telephone SIM cards. Does this raise any concerns for your business or organisation?

6. Not applicable.

Q3. Will applying the new definition of a voucher increase the administrative burdens or cost for your business? Please provide details of both one-off and ongoing costs.

7. Not applicable.

Single Purpose Vouchers – SPVs

Q4. Are there any concerns over the wider definition of an SPV that you wish to bring to our attention?

8. The translation of a SPV into UK VAT law must also define the place of supply, the Vouchers Directive (Council Directive 2016/1065) making it clear that it is not just a question of time of supply. HMRC states at point 2.2 that the new legislation is not concerned with the scope of VAT and whether VAT is due, but only the question of when VAT is due – see preamble point 1. We do not think this is correct.
9. For example, a voucher which could be exchanged for a CD in say France, as well as the UK, would not be an SPV.
10. In addition, under current UK law, books on CDs are standard rated, but the UK could under current EU law (annex III) also zero-rate books on CDs. We therefore question whether the example given by HMRC is appropriate, as the VAT rate is not known with certainty at the time the voucher is issued. Such a retailer is also likely to sell a limited range of related books or magazines, which are zero rated.

Q5. Are there any concerns over the taxation of SPVs that you wish to bring to our attention?

11. We are concerned that vouchers may be incorrectly identified as SPVs when they can or will be used for the purchase of goods subject to a different rate of VAT to that accounted for on their original sale.
12. An example is where a voucher is issued for products that are standard rated in the UK, but could also be redeemed outside the UK, such as in the Channel Islands.
13. If a voucher is treated as an SPV when it is sold and output VAT declared, we believe that there is danger of the output VAT being duplicated at the time of redemption. This is particularly likely where a voucher is redeemed by other than the original vendor of the voucher and the redeemer sells products that are subject to VAT at varying rates. Such a redeemer may be unaware that output VAT was declared at the time that the voucher was sold, as it would normally declare output VAT when it made its sales of goods to its customers.
14. The voucher should specifically state, if VAT has been accounted for on issue, the rate and amount to reduce the risk of double taxation.

Q6. Will applying the new rules for SPVs increase the administrative burdens or cost for your business? Please provide details of both one-off and ongoing costs.

15. In our view, the supply chain illustrated in example 4 would get very administratively complicated if the parties D, E,F and G were not all VAT registered in the same Member state as that in which the underlying supply of goods or services were to take place. That is perhaps a rare occurrence, given the way business is done today, but under the new rules, all parties will need to be VAT registered in the Member state of the place of supply to enable VAT to be accounted for (on each 'supply' of the SPV and recovered). This will be an added administrative burden if one of the parties has to register for the purpose solely of selling the vouchers.
16. According to the EU Commission each VAT registration in a Member state costs around €8,000 per year. It is however difficult to extrapolate this number, but is of course one of the major rationales behind the Commission's proposals to extend the MOSS.

Multi-Purpose Vouchers – MPVs

Q7. Are there any concerns over the valuation of goods and services, provided in respect of MPVs when they are redeemed, that you wish to bring to our attention?

17. The new article 73a of the Principal VAT Directive (PVD) (Council Directive 2006/112/EC) could in certain circumstances apply VAT to a consideration greater than that actually received by the supplier. There appears to be nothing that can be done about this at this stage, so we believe that the point should be clarified to ensure VAT is only paid on the actual consideration received or receivable for the supply. This might be achieved by producing documentation to accompany the voucher or the voucher itself stating the actual consideration paid.

Q8. Will applying the new rules for SPVs increase the administrative burdens or cost for your business? Please provide details of both one-off and ongoing costs

18. Not applicable.

SPV intermediaries

Q9. Are there any concerns over the position of intermediaries that you wish to bring to our attention?

19. The intermediary will need confirmation whether a voucher with which it is dealing is a SPV or MPV, or a means of payment or an 'excluded' voucher eg travel, cinemas etc. If a SPV, the VAT rate applicable will need to be known at the time of issue.

Q10. Do you agree that the existing rules in section 47 of the VAT Act 1994 are sufficient to accommodate the requirements of the Directive?

20. Section 47 states as follows:

(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.]

(3) Where services are supplied through an agent who acts in his own name the Commissioners may, if they think fit, treat the supply both as a supply to the agent and as a supply by the agent.

21. Article 28 of the PVD states:

Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.

22. In this article there is no discretion. Consequently, in our view, section 47 (3) needs to be amended to comply with article 28.

MPV intermediaries

Q11. Some distributors may wish to change from a buy/sell arrangement to an agency arrangement. This would allow them to charge commission and deduct VAT under normal rules. It would also allow the price paid by the final buyer to be identified. Do you think that the new rules for the treatment of intermediaries will lead to you changing your business model in the way described above?

23. Not applicable.

Q12. Are there any concerns over the position of intermediaries transferring MPVs that you wish to bring to our attention?

24. The legal relationship between the parties is critical. If the intermediary is acting in his own name then he can be seen as a buyer/reseller of the MPV under article 28 of the PVD for services and article 14.2 for goods.

25. If the intermediary ‘facilitates’ the underlying supply of the goods, is there a risk that he could be liable for the VAT on the total supply under new article 14a of the PVD introduced by Directive 2017/2455/EU?

Q13. Will applying the new rules for the treatment of intermediaries increase the administrative burdens or cost for your business? Please provide details of both one-off and ongoing costs.

26. Not applicable.

Part payments

Q14. Will applying these rules for part payments increase the administrative burdens or cost for your business? Please provide details of both one-off and ongoing costs.

27. Although not applicable to ICAEW, we can see a difficulty for retailers redeeming vouchers to know whether the voucher is an SPV, on which output VAT will have already been accounted, or an MPV, which should have output VAT declared upon redemption. In particular, if both treatments apply, when part of the payment is made by voucher and part by cash, it may be difficult for the redeemer of the voucher to calculate how much output VAT it should be declaring. We are unable to estimate the additional costs of this, but appropriate system development could be expensive and require a considerable length of time to implement.
28. In addition, it has to be clear that the part payment is consideration for the supply and not 'arrhes' (see *Société thermale d'Eugénie-les-Bains*, case C-277/05).

Retail Schemes

Q15. Will applying the rules for vouchers to your retail scheme increase the administrative burdens or cost for your business? Please provide details of both one-off and ongoing costs.

29. Although not applicable to ICAEW, we are concerned to note that the current guidance in relation to retail schemes, which has force of law, states that sales of vouchers should be included in daily gross takings at the appropriate rate of VAT. This is confusing and should be changed to take into account the differing treatment of MPVs and SPVs. It should also be made clear that the rules are different for issuing retailers and redeeming retailers.

Vouchers issued before 1 January 2019

Q16. Will retaining Schedule 10A for vouchers issued before 1 January 2019 create any difficulty for your business or organisation?

30. Not applicable.

Vouchers issued after 1 January 2019

Q17. Are there any concerns over timing that you wish to bring to our attention?

31. There are clear concerns about changes being made so close to the expected date for Brexit. Businesses will not want to potentially have to make two changes to their systems within three months.
32. There is further concern regarding the potential impact on the requirements for the introduction of making tax digital for VAT on 1 April 2019, although we are aware that the UK as an EU member as at 1 January 2019 must respect its Treaty obligations.