VAT focus

The puzzle of the new VAT voucher rules

Speed read

New voucher rules will be imposed from 1 January 2019, with the view of harmonising the VAT treatment of vouchers across the member states. The rules seek to define a voucher, including the difference between a single-purpose voucher (SPV) and a multipurpose voucher (MPV), and tax these at different points (issue, transfer, redemption), depending on what is being supplied. There are some potential nuances in the draft UK legislation that may create potential new difficulties in the treatment of vouchers; and, despite the aim of harmonisation, differences from the rules in other member states. These include the additional (transferability) condition imposed on the definition of a voucher, the definition of an SPV being wider than that of the EU legislation, and proposed input tax restrictions in relation to the issue or transfer of an MPV. The new rules may be something of a puzzle for those affected.



Karen Killington

KPMG Karen Killington works for KPMG in London specialising in advising financial services, public sector and charity clients. She spent six years in HM C&E (as it then was) and has worked for KPMG since 1997. Email: karen.killington@kpmg.co.uk; tel: 020 7694 4685.



Clarissa Vogelaar-Kelly

KPMG Clarissa Vogelaar-Kelly is an assistant manager at KPMG, sitting in the large corporates team in London. She is CTA qualified and has been working in VAT for four years, with experience across a variety of sectors. Email: clarissa.vogelaar-kelly@kpmg.

Control *Toucher for university initially pinched by arrogant butcher* (9 letters); 'An outline to contrive employment' (9): (answers given at the end of article)*

The new voucher rules that will be coming into force in 2019, and we are using the world of the crossword puzzle to navigate the 'Difficult apartment block with syndrome' (7) (answer: 'complex') area, to try and arrive at the right answer.

The current UK voucher law

co.uk; tel: 020 7311 5180.

'Confused in game or puzzle' (6): (answer: 'enigma' – anagram of ʻin game')

When Churchill spoke of a riddle wrapped in a mystery inside an enigma, he was of course speaking about forecasting Russia's actions at the start of WW2. But many VAT advisers might adopt the same description for the UK voucher rules. With credit vouchers, retailer vouchers, single-purpose vouchers (SPV) and multi-purpose vouchers (MPV), the problem has always been what to tax, and when and how.

Recent cases like Associated Newspapers Ltd [2017] EWCA Civ 54 have muddied the waters further by denying the notional input tax credit that HMRC had previously permitted on the purchase of an MPV retailer voucher from the retailer, by an intermediary, in the situation where the intermediary buys it to give it away for a business purpose.

Well, there is good news and perhaps less good news. The less good news is that the voucher rules are changing again in 2019: as announced at Autumn Budget 2017 and following a subsequent consultation, the government will legislate in Finance Bill 2019. The good news, however, is that Brexit notwithstanding, the aim is to adopt the new EU rules (the EU Vouchers Directive (EU) 2016/1065), so there will in theory be harmony (always assuming that the intention is actually fulfilled).

Practical issues

'1964 Bob Dylan album title track' (3, 5, 4, 3, 8): (answer: 'The Times They Are A-Changin')

The importance of defining and understanding terms has been brought home to me in recent weeks, as I have been on a cryptic crossword course. If you type in 'voucher' as a quick crossword clue, you get more than 20 suggestions (coupon, receipt, token, chit, ticket, gift card, etc.); and cryptic crosswords generate even more possibilities and layers of complexity. Defining your terms is essential: knowing what is, and crucially what is not, a voucher will be vital to applying the new rules correctly.

Source of difficulty' (7): (answer: 'problem')

The problem with vouchers, at least according to HMRC, is that two things happen: they are issued (or transferred); and they are redeemed. But the same payment cannot do double duty; only one thing can be taxed. So do you tax the right that the voucher represents? This is a less specific right than that represented by, for example, an admission ticket (which is not a voucher), but is more specific than cash, in the sense of being more limited and restrictive in what it can be used for? Do you tax the goods/ services? Do you treat the voucher as though it was the goods/services?

An inconsistent approach by different jurisdictions can lead to double or non-taxation, which is very much 'Three articles and mother was cursed' (8) (answer: 'anathema'). Things do need to change to bring consistency and certainty.

'Meaning' (10): (answer: 'definition')

The first step to determine the appropriate VAT treatment to be applied to a voucher requires the understanding of the definition of a voucher.

The draft UK legislation lists three conditions which must be met in order for the vouchers rules to be in point. The third of these conditions - that the instrument in question must be 'transferable by gift' - at first glance seems to have no basis under the EU legislation, and is an extra condition imposed by the draft UK legislation.

The reasoning for this third condition is probably to be found in the explanatory notes that came with the EU legislation, which refer to the exclusion of payment instruments from the definition of a voucher. However, it still appears questionable that this justifies excluding transactions, where all the other attributes of a voucher are present, but they are simply not transferable. If this is to be the case, the VAT treatment of that non-voucher transaction still needs to be determined by reference to basic principles, by reference to the existing EU case law on when a chargeable event occurs.

'How to define the intent' (7): (answer: 'purpose')

Particular importance is now placed on whether a voucher is an SPV, which is taxed on issue (and transfer), or an MPV, which is taxed on redemption. The draft UK legislation lists two conditions required for a voucher to be an SPV: at the time of issue, the place of supply of the relevant goods/services must be known; and the (single) supply category of the goods/ services must also be known.

However, the EU law also requires 'the VAT due on those goods or services, is known at the time of issue of the voucher'. This implies that to be an SPV, it must fix the price of the specific goods or services that the voucher is for; otherwise, the 'VAT due on those goods/services' will not be known. It is therefore possible that this difference means the vouchers issued in the UK will be SPV, but that the same type of vouchers in other member states will not be.

This could create a basis for arguing that this difference prevents fiscal neutrality (and creates unequal treatment). Consider two retailers that sell almost identical goods. The first retailer sells only standard-rated goods. The second retailer sells the same goods as the first retailer; however, it also sells a small proportion of zero-rated goods. If both retailers issue vouchers to be redeemed against goods in their shops, the first retailer's vouchers will be an SPV under UK law. The second retailer's, however, will be an MPV. This scenario would not occur if, for a voucher to be SPV, the UK legislation included the need for the VAT due on the supply of the goods to be known at the time of issue.

The definition of an MPV, in relation to an SPV, is much like the definition of a service in relation to a good; an MPV is any voucher that is not defined as an SPV. As a result, this further increases the importance of getting the definition of SPV right.

'Rest a long time, showing fracture' (8): (answer: 'breakage') Apart from the time when VAT is due, another key difference between SPVs and MPVs is breakage – the value represented by vouchers that go unredeemed. The unredeemed value of a taxable SPV has had VAT declared on it at the time of issue; while the unredeemed value of a taxable MPV would escape any charge to VAT, as it has not been proffered as payment for any goods or services. This would require HMRC to view an MPV as something different from a right to goods or services in its own right: a right which has been prepaid and obtained, but has expired before being fulfilled. If the voucher is not a supply in itself (see below) and there is only a supply of the underlying goods/services represented by the voucher, then unredeemed MPVs must go untaxed.

'Esteem' (5): (answer: 'value')

Having explored the definition of a voucher, identifying at which point the supply is to be taxed, we turn to the value of a voucher. Whilst this process is quite simple in respect of an SPV (consideration received on issue of the voucher), there are some potential complexities faced by supply chains involving MPVs, especially those including intermediaries.

The draft UK legislation states that the value may be the consideration for the last transfer of the voucher; however, that consideration must be known. If the consideration is not known, then the value of the voucher is deemed to be equal to its face value. Therefore, where intermediaries are part of the supply chain, if the taxpayer (i.e. the supplier with whom the voucher is redeemed) is aware that the intermediary issues/ transfers the vouchers for less than face value, it is in the redeemer's interests to obtain the relevant documentation to evidence this. Such transparent pricing throughout the supply chain may be beneficial.

It should also be noted that reference to the EU explanatory comments is required when an MPV is only part redeemed for taxable supplies, making it clear that VAT is due in those circumstances only on that redeemed part of the voucher value and not on the unredeemed element.

'Salvage' (8): (answer: recovery); and 'Peril' (4): (answer: 'risk')

Perhaps of greatest concern is the input tax recovery position on MPVs, as covered in the draft legislation. It appears to be based on there being both a taxable supply (of the goods or services) on redemption, and an untaxed transaction on issue of the voucher (and any intermediary transfer of it). This view then translates to the conclusion that the 'untaxed' activity should result in an input tax restriction.

It is understood that this part of the draft law, in particular, could change. We would hope that, in considering this, account is taken of the fact that:

- the full consideration paid for the voucher will be taxed on redemption (i.e. there is no untaxed turnover in a real world sense); and
- the issuer/redeemer's tax base can be greater than the amount actually received by the issuer/redeemer, because it is now necessary to also include any value added at the intermediary stages to the value on which VAT is due at redemption.

The intention at the time of issue is that the MPV will be redeemed. It is also worth noting that the EU law (and notes) do not contain any reference to any change to the input tax position caused by the voucher changes.

'Doubt' (11): (answer: 'uncertainty')

We have commented on the issues and differences that may arise from the draft UK legislation, and this has led us to question how it might be better phrased. We appreciate this is quite a task to undertake; and that, however it is worded, all the possible eventualities that may ensue could not be conceptualised and covered beforehand. There are 27 other EU member states that also have this complex task. Is the concept of totally harmonising the voucher rules too far-fetched?

This is draft legislation, and subject to change. The legislation cannot be too prescriptive and therefore HMRC guidance will be a tool to assist further in the application of the new vouchers rules. The real impact of the new legislation is unlikely to be quantifiable until the various, inevitable guidance documents are formed.

So why is there a crossword theme for this article on VAT law? Assumptions and prior conceptions are fatal to the success of cryptic crosswords, as is being too literal about the words on the page, while lateral thinking, innovation and imagination are key. There is always an answer, it may just not be the first one you thought of. You may arrive at it by a strange route, and you may struggle to see why it is the answer and understand it, until it is explained. The read across to interpreting and applying VAT law appears self-evident.

Action points

'Spadework' (11): (answer: 'preparation')

So what should businesses in this sector (issuers, redeemers, intermediaries) do now to prepare for next year's changes? First, define your terms. Identify what you supply. Will it still be a voucher? Will it be a SPV under the new definition? If it is an MPV, will there be a risk to input tax recovery? When will VAT be due and on what value?

You will then be in a better position to decide what to do to mitigate any uncertainties and risks, particularly considering if additional transparency in the supply chain pricing will help to mitigate the impacts.

* 'Voucher for university initially pinched by arrogant butcher' (9): (answer: 'guarantor', of course – an anagram of 'arrogant' ('butcher' is the anagram indicator) and add 'u' as the initial letter of university. There is more than one type of voucher, and this is a person who vouches for another – which is sort of where we came in...

'An outline to contrive employment' (9): (answer: framework, which is what we have sought to provide in this article.)

For related reading visit www.taxjournal.com

- Guide to the draft Finance Bill 2019 provisions (12.7.18)
- ▶ HMRC's consultation on VAT and vouchers (Sean McGinness, 25.1.18)
- VAT on promotional schemes: a tide of change? (Julie Park, 23.3.17)