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VAT:
FTA practice adjustment regarding vouchers

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Based on the assessment of new facts and as a result of the decision of the Federal Administrative Court of 10 August 2021 (A 2587/2020), the FTA has published an initial practice statement on vouchers. The practice determination and the resulting adjustments in VAT Info 04, Tax object, 07, Tax assessment and tax rates, as well as VAT sector Info 06, Retail trade and 10, Public and tourist transport companies, are still a draft. However, the draft in any case shows the direction, the SFTA are headed. Essentially, the practice definition introduces a distinction between service vouchers and value vouchers, each of which is treated differently for VAT purposes. In addition to announcing a definition of the voucher categories, the FTA has inserted various examples in the revision of VAT Info 04, Tax Object, in particular, which are intended to help taxpayers distinguish between so called “supply vouchers” and “value vouchers”.

JUDGMENT OF THE FEDERAL ADMINISTRATIVE COURT OF 10 AUGUST 2023 (A-2587/2020)

In the case under review, the taxpayer had sold vouchers for outdoor events. With regard to VAT, the taxpayer had followed the practice of the FTA applicable until then, according to which the sale of a voucher was irrelevant for VAT purposes, largely irrespective of its concrete form. Only the redemption of the voucher led to an exchange of services relevant for VAT purposes, which was taxable according to the usual rules. The FTA now claimed that the VAT consequences differed depending on the design of the vouchers and that a distinction had to be made between service and value vouchers. In fact, the customer had a choice of the following types of voucher:

- In the first variant, the customer received a voucher after payment, which he could use at a later date to obtain any service from the complainant for the amount stated on the voucher. This type of voucher was to be seen as a so-called "value voucher" in accordance with established practice as a means of payment, the issue of which was irrelevant for VAT and which only led to a VAT-relevant turnover when it was redeemed.
- In the second variant, the customer received a voucher with which he could participate in the activity mentioned on the voucher at a later date at an already determined location in exchange for redeeming the voucher. This type of voucher qualified as a so-called "supply voucher", where the expenditure already led to a VAT-relevant turnover. Since the supply was already determined (or at least determinable), the payment was an advance payment that was taxable under the VAT Act at the time of receipt.

The Federal Administrative Court followed the FTA's argumentation in this regard, with the consequence that a distinction must now be made between the two types of voucher for the correct handling of VAT. In particular, a distinction must also be made as to which of the parties, the recipient of the supply or the supplier, bears the price risk. If it is borne by the supplier, it is a supply

voucher. If, on the other hand, the price risk is borne by the recipient of the supply, this indicates the existence of a value voucher.

DEFINITIONS, VALUE ADDED TAX CONSEQUENCES AND EXAMPLES

Against this background, the FTA published its draft practice in this regard on 31 August 2023. According to this, the following definitions and VAT consequences apply:

According to the definition of the FTA, vouchers generally entitle the holder to purchase services and goods. They can be issued in physical or electronic form. It should be noted that the FTA explicitly does not consider discount vouchers or tickets for public transport, admission tickets or stamps to be vouchers in the aforementioned sense.

In accordance with the above-mentioned ruling of the Federal Administrative Court, a distinction must now be made between value vouchers and supply vouchers, whereby the FTA does not take up the distinction made by the Federal Administrative Court regarding the question of who bears the price risk. Rather, a voucher is considered to be of value if only a value is stated on the voucher or electronically deposited and with which any supply can be obtained in the amount of the face value. Vouchers are to be treated as means of payment, since no supply is rendered and (technically) no payment is received upon sale; there is only an exchange of funds. Therefore, payments for value vouchers are not included in the assessment basis for VAT. However, it is a condition that no tax rate is shown on the voucher (otherwise the principle "tax invoiced is tax owed" applies).

It is interesting to note at this point that in the case of commercial trading in value vouchers, an exchange of supplies is nevertheless assumed: in this case, there is exempt turnover in the area of monetary and capital transactions. The FTA does not provide a justification for this reclassification of the VAT consequences depending on whether it is traded commercially or not as well as an answer to the question as to which trade in vouchers by companies could qualify as non-commercial. One thing is certain: if there is no remuneration, the corresponding flow of funds has no influence on the entitlement to deduct input tax. If, on the other hand, there are exempt transactions, the input tax deduction must be corrected accordingly. The question is therefore quite relevant in individual cases and it cannot be ruled out that courts will have to clarify it.

A supply voucher, on the other hand, exists if a specific or determinable supply is specified on the voucher. The customer can choose when the voucher can be redeemed, but not for which supply. The presence of a value indication on the voucher does not change this qualification.

A supply is deemed to be identified or identifiable if the supplier can already determine where and in what amount the tax is due and settled when the voucher is sold due to the nature of the supply. In this case, the receipt of the purchase price shall be deemed to be an advance payment and the tax shall become due at the time of receipt. If the voucher is not redeemed or expires, a correction is possible as a reduction of the consideration if the consideration is refunded or the recipient of the supply waives the refund of the consideration paid.

In the case of the supply voucher, the FTA points out that the tax is to be settled and paid in the period in which the consideration is received. With regard to the applicable tax rate, it should be noted against the background of the tax rate changes coming into force on 1 January 2024 that the tax rate applicable at the time of the provision of the supply is decisive (cf. also our blog post from 09.08.2023). Since the customer alone decides when the voucher is redeemed, especially in the case of vouchers with a longer validity period, the service provider cannot know when he will finally provide the service in the case of a validity period spanning several years. In such cases,

the tax rate at the time of sale is likely to be decisive as an exception, and a possible subsequent correction is unnecessary.

The FTA also lists various examples. It should be emphasised that the FTA also assumes that the voucher is a supply voucher if the customer can redeem the voucher for a supply other than the one specified on the voucher in accordance with the GTC of the supplier (and without any further reference on the voucher). In contrast, a value voucher is to be assumed if the voucher itself optionally allows redemption for a different supply. In this way, the FTA presumably wants to prevent suppliers from being able to easily turn all vouchers they sell into supply vouchers on the basis of clauses in the general terms and conditions, in order to possibly circumvent the input tax adjustment that is necessary if value vouchers are sold commercially (see the comments above).

PARALELLES TO THE REGULATION IN THE EU

In the EU, a distinction is made between single-purpose and multi-purpose vouchers. A single-purpose voucher exists if the applicable tax rate can be determined at the time of issue because the supply to be provided upon redemption is already determined or determinable. The tax liability for single-purpose vouchers arises at the time of issue. Multi-purpose vouchers, on the other hand, are vouchers for which the consideration is not yet clearly determined and therefore the tax rate ultimately to be applied is not yet determined at the time of issue. Consequently, the tax liability only arises on the occasion of redemption.
Although the terms and definitions are not congruent, parallels can be seen. For example, the value voucher corresponds largely to the multi-purpose voucher, the supply voucher to the single-purpose voucher. However, the extent to which there is actually congruence in practice or in the assessment of individual cases remains to be seen.

CONCLUSION

It is gratifying that the FTA has now published its reassessment of the practice on vouchers in the wake of the Federal Administrative Court's ruling and is working with examples. Nevertheless, one or two questions remain unanswered and it remains to be seen how the rules developed by the FTA will prove themselves in practice. Providers of vouchers are recommended to familiarise themselves with them in order to ensure compliance. In individual cases, it may be advisable to seek the advice of an expert.