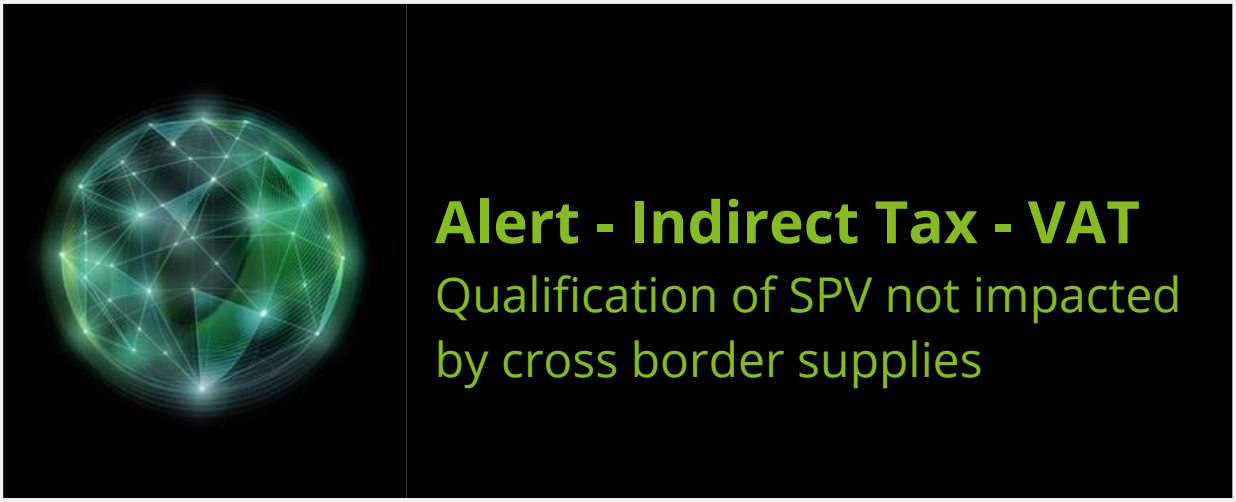

Alert - Indirect Tax - VAT

Qualification of SPV not impacted by cross border supplies

On April 18, 2024, the Court of Justice of the European Union (CJEU) ruled on the M-GbR vs Finanzamt O case (C-68/23) on the VAT treatment of vouchers when sold through distributors/intermediaries established in different EU Member States. The CJEU ruled that vouchers can be considered a Single Purpose Voucher (SPV) per Article 30a of the EU VAT Directive - when the place of provision and VAT due of the services rendered to the user of the voucher is known at the time of issue, regardless the fact that the voucher has been sold multiple times through intermediaries in different Member States. For the test of all elements of the supply to determine the applicable VAT treatment are known (if yes: SPV, if no: MPV), one only considers the sale to the end-user in the last leg of distribution chain.

This qualification of SPV vs MPV is relevant to determine the VAT treatment of the supply of the vouchers throughout the supply chain. Each transfer of an SPV is subject to VAT whereby the actual redemption of the voucher is not. Each transfer of an MPV is not subject to VAT. Instead, VAT is due on redemption.

Background

The vouchers (prepaid cards, called 'X-Cards') in question, were issued by Company Y, located in the UK. In line with Company Y's terms and conditions, the vouchers with the "country code DE" were exclusively intended for end-customers resident in Germany. This was validated upon registration.

Company Y sells the vouchers via distributors located in different EU Member States. Company M-GbR, the party involved in this case, located in Germany, bought the vouchers from the distributors and sold them to end consumers.

M-GbR treated the vouchers as MPVs, and hence no VAT was charged on the transfer of the vouchers to the end-customer. On the contrary, the German Tax Administration was of the view that the vouchers constituted SPVs thus, VAT should have been charged by M-GbR on each transfer.

Judgment

First question
The referring court asks if a voucher qualifies as an SPV if, at the moment the voucher is issued, the place of supply of the underlying service to the final consumer redeeming that voucher is determined to be in Germany, whilst the preceding transfers of such voucher occurs between distributors in other Member States.

The CJEU ruled that the country code issued on the vouchers together with the applicable terms and conditions is a clear indication of the place of supply of the service to the end-user, therefore, they should be considered SPVs (if the other SPV conditions are met, to be verified by the referring judge). Any possible abuse by end-users does not impact that qualification.

Moreover, it clarified that SPVs are considered as such if the place of supply is known when the vouchers are issued. The 'place of supply' that should be known, is the sale to the end user to whom the voucher relates. Regardless whether the vouchers are transferred between taxable persons (distributors) acting in their own name and established in Member States other than that in which those final consumers are located (these supplies do therefore not alter the classification of the SPV).

Second question
If the referring court concludes that the vouchers must be considered as MPV, the question is whether although the transfer of the MPV is not subject to VAT, still a taxable transaction should be recognized by the parties involved. The CJEU has to assess whether the consideration received on each transfer of that voucher between taxable persons must be subject to VAT as consideration for a service independent of the redemption of that voucher for goods or services.

The court considers that it "cannot be ruled out" that, when reselling those vouchers, M-GbR carries out an independent supply of services, such as a supply of distribution or promotion services. Whether this is the case, is to be verified by the local courts.

Practical implications

Qualification as SPV
From the case it follows that a voucher may qualify as an SPV, even in case where supply of the underlying service to distributors results in varying places of supply. This means that M-GbR should charge German VAT to the consumers.

In our view, it does not clearly follow from the ruling how the supply of the SPV in the earlier transactions (e.g. by Y to the distributors and by the distributors to M-GbR) should be treated.

- It may be argued, and the referring German court appears to assume this as well, that the general VAT place of supply rules apply. For electronic services that implies the services are VAT taxable at the place of the B2B customer, with possible application of the VAT reverse charge rule.
- The ruling may however also be interpreted as that a B2C electronic service taxable in Germany is supplied in every transaction of the supply chain. This would imply that the issuer and distributors should charge German VAT (VAT due in the country where the end-user is located). Potentially, this means that distributors should register for VAT in all EU member states, based on the geographic use of the vouchers they distribute.

For supplies of SPVs that can be exchanged for goods the latter interpretation should generally not impact the place of supply, as the place of supply of goods does not depend on the type and place of customer, though the application of the VAT reverse charge rule may be impacted.

Recommendations:
- We recommend companies dealing with vouchers to re-assess the qualification of vouchers as SPV or MPV against this new case-law. This may require a detailed analysis of the underlying terms of each voucher type.
- We furthermore recommend issuers/distributors of SPVs to verify the VAT treatment of the sale of the SPV within the chain, where the SPV is also sold cross border.

Distributors of MPVs
For distributors of MPVs it is relevant to validate the existence of any distribution services. In our view the ruling should be interpreted that such service may under conditions be recognized, whereby the taxable amount can be the margin. In our view the entity from which the voucher is purchased should generally be considered the recipient of the services considering the legal relationship with that entity. It should however be acknowledged that the CJEU addresses the issuer as beneficiary of the services, and we recommend establishing whether that impacts the recipient as well.

Consult the Indirect Tax team and find more on deloitte.com.

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