

Provisional text

JUDGMENT OF THE COURT (First Chamber)

28 April 2022 (*)

(Reference for a preliminary ruling – Directive 2006/112/EC – Common system of value added tax – Article 30a(1) – Concept of ‘voucher’ – Article 30a(3) – Concept of “multi-purpose” voucher – Sale of a card entitling the cardholder to a number of tourist services for a limited period)

In Case C-637/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), made by decision of 18 November 2020, received at the Court on 25 November 2020, in the proceedings

Skatteverket

v

DSAB Destination Stockholm AB,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, I. Ziemele, T. von Danwitz (Rapporteur), P.G. Xuereb and A. Kumin, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Skatteverket, by A. S. Pallasdies, acting as Agent,
- DSAB Destination Stockholm AB, by U. Grefberg and M. Fri, advokater,
- the Italian Government, by G. Palmieri and by A. Maddalo, acting as Agents,
- the European Commission, by J. Jokubauskaitė and P. Carlin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 30a of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive (EU) 2016/1065 of 27 June 2016 (OJ 2016 L 177, p.

9) ('the VAT Directive').

2 The request has been made in proceedings between the Skatteverket (Swedish Tax Agency) and DSAB Destination Stockholm AB ('DSAB') concerning the tax treatment of an instrument sold by the latter in the form of a card called 'citycard' ('the card at issue in the main proceedings').

Legal context

European Union law

The VAT Directive

3 Pursuant to Article 2(1)(c) of the VAT Directive, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to value added tax (VAT).

4 Article 30a of the VAT Directive provides:

'For the purposes of this Directive, the following definitions shall apply:

(1) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

(2) "single-purpose voucher" means a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher;

(3) "multi-purpose voucher" means a voucher, other than a single-purpose voucher.'

5 Article 30b of the VAT Directive provides:

'1. Each transfer of a single-purpose voucher made by a taxable person acting in his own name shall be regarded as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher accepted as consideration or part consideration by the supplier shall not be regarded as an independent transaction.

Where a transfer of a single-purpose voucher is made by a taxable person acting in the name of another taxable person, that transfer shall be regarded as a supply of the goods or services to which the voucher relates made by the other taxable person in whose name the taxable person is acting.

Where the supplier of goods or services is not the taxable person who, acting in his own name, issued the single-purpose voucher, that supplier shall however be deemed to have made the supply of the goods or services related to that voucher to that taxable person.

2. The actual handing over of the goods or the actual provision of the services in return for a multi-purpose voucher accepted as consideration or part consideration by the supplier shall be subject to VAT pursuant to Article 2, whereas each preceding transfer of that multi-purpose voucher shall not be subject to VAT.

Where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the transaction subject to VAT pursuant to the first subparagraph, any supply of services that can be identified, such as distribution or promotion services, shall be subject to VAT.'

6 Article 73a of the VAT Directive provides:

'Without prejudice to Article 73, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher shall be equal to the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value indicated on the multi-purpose voucher itself or in the related documentation, less the amount of VAT relating to the goods or services supplied.'

Directive 2016/1065

7 Recitals 2, 4 and 5 of Directive 2016/1065, which amended Directive 2006/112 in order to insert, inter alia, Articles 30a, 30b and 73a, state:

'(2) To ensure certain and uniform treatment, to be consistent with the principles of a general tax on consumption exactly proportional to the price of goods and services, to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance, there is a need for specific rules applying to the VAT treatment of vouchers.

...

(4) Only vouchers which can be used for redemption against goods or services should be targeted by these rules. However, instruments entitling the holder to a discount upon purchase of goods or services but carrying no right to receive such goods or services should not be targeted by these rules.

(5) 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.'

Swedish law

8 Articles 30a and 30b of the VAT Directive were transposed into Swedish law, in particular, by Paragraphs 20 and 21 of Chapter 1, Paragraph 12 of Chapter 2 and Paragraph 3 of Chapter 7 of the mervärdesskattelagen (1994:200) (Law No 200 of 1994 on value added tax) of 30 March 1994 (SFS 1994, No 200).

The dispute in the main proceedings and the question referred for a preliminary ruling

9 DSAB is the company which sells the card at issue in the main proceedings to tourists visiting the city of Stockholm (Sweden).

10 That card gives a cardholder the right to be admitted to around 60 attractions, such as sights and museums, for a limited period of time and up to a certain value. It also gives a cardholder access to around 10 passenger transport services, such as tours provided by DSAB's own 'Hop-on-Hop-off' buses and boats, as well as sightseeing tours with other organisers. Some of those services are subject to VAT at rates ranging from 6% to 25%, while others are tax exempt. The cardholder uses the card at issue in the main proceedings as a means of payment for admission to or use of a service and does not pay any supplement, since that card is simply presented to a special card-reader. Under a contract concluded with DSAB, the supplier of services then receives

from the latter, in respect of each admission or use, consideration equal to a percentage of the normal price of admission or use. The supplier of services is not obliged to grant the cardholder access to its services more than once. DSAB does not guarantee any minimum number of visitors. If the value limit of the card is reached, it can no longer be used by the cardholder.

11 The card at issue in the main proceedings exists in several versions, with different validity periods and value limits. Thus, a card for an adult with a 24-hour validity period costs 669 kronor (SEK) (approximately EUR 65). During that validity period, the cardholder may use that card as a means of payment amounting to SEK 1 800 (approximately EUR 176). That validity period starts to run when the card is used for the first time. That card must be used within one year of purchase.

12 Following an application made by DSAB for a tax ruling, the Skatterättsnämnden (Revenue Law Commission, Sweden) decided that the card at issue in the main proceedings did not constitute a 'multi-purpose voucher' within the meaning of Article 30a of the VAT Directive. It found that it followed, *inter alia*, from the definition of 'voucher', within the meaning of that article, and the provisions relating to the calculation of the taxable amount, that a voucher must have a certain nominal value or relate to certain specified supplies of goods or services. According to that commission, it must emerge clearly from a voucher what may be obtained in return for that voucher even though, when dealing with a multi-purpose voucher, there may be uncertainty as to the tax rate or the country of taxation.

13 The aforementioned tax ruling was the subject of an action brought before the referring court, by both the tax authorities and DSAB.

14 The tax authority contends that the card at issue in the main proceedings cannot be classified as a 'voucher' within the meaning of Article 30a of the VAT Directive. It is a form of leisure card, the value limit of which is very high in relation to its validity period, which is very short. Thus, an average consumer would not be able to take advantage of all the possibilities offered by that card. The discount enjoyed by the cardholder compared to the normal prices of attractions visited is proportional to the extent to which it is used. Thus, that card cannot be regarded, as such, as being exchanged for goods or services.

15 DSAB claims, on the other hand, that the card at issue in the main proceedings satisfies the conditions laid down in Article 30a of the VAT Directive and that it constitutes a 'multi-purpose voucher' within the meaning of that article. DSAB points out, *inter alia*, that the suppliers of services concerned are obliged to accept that card as a means of payment and that the conditions applicable to cardholders state which services may be paid for with that card and who the suppliers of those services are. That card may be used as consideration for services which are subject to different tax rates. The amount of VAT due for the services which may be supplied as consideration for the card at issue in the main proceedings is therefore unknown at the time of issuance of that card.

16 In those circumstances, while finding that the Court had not yet ruled on the interpretation to be given to the provisions of the VAT Directive relating to vouchers and that the work of the VAT Committee established under Article 398 of that directive had not allowed a consensus to be reached as to the tax treatment of instruments such as the card at issue in the main proceedings, the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 30(a) of the VAT Directive be interpreted as meaning that a card, such as the one at issue in the main proceedings, which gives the cardholder the right to receive various services at a given place for a limited period of time and up to a certain value constitutes a voucher and, in such circumstances, constitutes a multi-purpose voucher?’

Consideration of the question referred

17 By its question, the referring court is asking, in essence, whether Article 30a of the VAT Directive must be interpreted as meaning that an instrument which gives the bearer thereof the right to use various services at a given place, for a limited period and up to a certain amount, can constitute a ‘voucher’ within the meaning of Article 30a(1) of that directive even if, on account of the limited validity period of that instrument, an average consumer cannot benefit from all the services offered, and that, in the affirmative, such an instrument can constitute a ‘multi-purpose voucher’ within the meaning of Article 30a(3) of that directive.

18 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 18 November 2020, *Kaplan International Colleges UK*, C-777/19, EU:C:2020:934, paragraph 39 and the case-law cited).

19 In that respect, it is necessary, in the first place, to determine the circumstances in which an instrument may be classified as a ‘voucher’, in the light of the wording of Article 30a(1) of the VAT Directive.

20 According to that provision, a ‘voucher’ is an instrument where, first, there is an obligation to accept it as consideration or part consideration for a supply of goods or services and, second, the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

21 It must therefore be ascertained, on the one hand, whether such an instrument entails an obligation to accept it as consideration or part consideration for a supply of goods or services and, on the other hand, whether that instrument or related documentation specifies the goods or services to be supplied or the identity of the potential suppliers thereof. As is clear from the wording of Article 30a(1) of the VAT Directive, which contains the conjunction ‘and’, and, as the Advocate General states in point 41 of her Opinion, the two conditions referred to in paragraph 20 of the present judgment are cumulative.

22 In the present case, it is apparent from the order for reference that those two conditions would appear to be satisfied, which is, however, a matter for the referring court to ascertain.

23 In so far as concerns the argument, put forward by the tax authorities, that the card at issue in the main proceedings cannot constitute a ‘voucher’, within the meaning of Article 30a(1) of the VAT Directive, on the ground that it is impossible for an average consumer to take advantage of all the services offered, having regard to the limited validity period of that card, it must be held that such an argument cannot be accepted.

24 As the Advocate General observes, in essence, in point 57 of her Opinion, it is not apparent from the definition of ‘voucher’ set out in Article 30a(1) of the VAT Directive that the validity period of the card concerned or the possibility of taking advantage of all the services covered by that card are relevant elements for the purposes of classifying that card as a ‘voucher’ within the meaning of that provision.

25 Furthermore, contrary to what the Italian Government submits in its written observations, the issuance of an instrument such as the card at issue in the main proceedings cannot be classified as a ‘single provision of services’, in the light of the diversity of the services offered and of third-party economic operators acting as suppliers of services.

26 Such a classification would, moreover, be contrary to the objective expressed in recital 5 of Directive 2016/1065, since it would result in the imposition of a single rate of tax on services such as transport or museum admissions, which are subject to different rates of VAT or which are exempt from that tax. Such a classification could also lead to double taxation of the services concerned, even though the purpose of Directive 2016/1065 was, *inter alia*, to prevent such double taxation, as is clear from recital 2 of the latter directive.

27 In those circumstances, and subject to the verification referred to in paragraph 22 of the present judgment, it appears to be possible to classify the card at issue in the main proceedings as a ‘voucher’ within the meaning of Article 30a(1) of the VAT Directive.

28 In the second place, as regards the classification of the card at issue in the main proceedings as a ‘multi-purpose voucher’ within the meaning of Article 30a(3) of the VAT Directive, it should be noted that that concept is residual in scope. All vouchers other than single-purpose vouchers constitute ‘multi-purpose vouchers’, in accordance with that provision. Consequently, it is necessary to ascertain, first, whether that card falls within the scope of the concept of ‘single-purpose voucher’ referred to in Article 30a(2) of the VAT Directive.

29 Pursuant to the latter provision, a ‘single-purpose voucher’ is defined as a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher.

30 In the present case, it is apparent from the order for reference that the card at issue in the main proceedings allows access to various supplies of services, which are subject to different rates of VAT or are tax exempt, and that it is impossible to predict in advance which supplies of services will be selected by the cardholder.

31 In that case, it is clear that the VAT due on the services obtained by the cardholder is not known at the time of issue of the card at issue, which means that it cannot be classified as a ‘single-purpose voucher’ within the meaning of Article 30a(2) of the VAT Directive. Consequently, as the Advocate General notes in point 66 of her Opinion, since, subject to the verification referred to in paragraph 22 above, that card may constitute a ‘voucher’, it should be classified as a ‘multi-purpose voucher’ within the meaning of Article 30a(3) of that directive. The tax treatment thereof must be established in the light of Article 30b(2) and Article 73a of that directive.

32 In the light of all the foregoing considerations, the answer to the question referred is that Article 30a of the VAT Directive must be interpreted as meaning that an instrument which gives the bearer thereof the right to benefit from various services at a given place, for a limited period and up to a certain amount, may constitute a ‘voucher’ within the meaning of Article 30a(1) of that directive, even if, on account of the limited validity period of that instrument, an average consumer cannot take advantage of all the services offered. That instrument constitutes a ‘multi-purpose

voucher' within the meaning of Article 30a(3) of that directive, since the VAT due on those services is not known at the time of issuance of that instrument.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 30a of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2016/1065 of 27 June 2016, must be interpreted as meaning that an instrument which gives the bearer thereof the right to benefit from various services at a given place, for a limited period and up to a certain amount, may constitute a 'voucher' within the meaning of Article 30a(1) of that directive, even if, on account of the limited validity period of that instrument, an average consumer cannot benefit from all the services offered. That instrument constitutes a 'multi-purpose voucher' within the meaning of Article 30a(3) of that directive, since the value added tax due on those services is not known at the time of issuance of that instrument.

[Signatures]

* Language of the case: Swedish.