

FAQS – TAX WORKSHOP 25th April 2018

	Question	Comment
1	What happens if HMRC changes the VAT rate?	<p>Not specific to the new Directive.</p> <p>MPVs are outside the scope of VAT until the point of redemption. VAT therefore, due at the applicable rate on the date of redemption.</p> <p>SPVs are taxed throughout the chain, with VAT charged, at the applicable rate under existing time of supply rules, to the consumer on the final supply (B2C), prior to redemption.</p>
2	Will HMRC accept blended rates?	<p>Not specific to the new Directive.</p> <p>There is no reason to suggest that HMRC will not continue to accept blended rates of VAT which have previously been agreed.</p>
3	Will SPV's be required to pay VAT on breakage /non-redeemed gift cards?	<p>Yes – SPVs are taxed throughout the supply chain, which means that the final transaction (prior to redemption) will be subject to VAT, even if the consumer does not redeem the voucher, in part or at all.</p>
4	What level of detail is required from retailers to apply the appropriate level of VAT? And is it physically possible to track it?	<p>The rate of VAT is potentially less of an issue than the value to be used. Depending on the length of the supply chain and the contractual arrangements in place it may be difficult for retailers to have certainty or evidence of the price paid throughout the chain.</p> <p>Unless verifiable and / or auditable evidence is obtained, retailers will be required account for VAT based on the face value of the voucher or the retail price for the goods or services supplied.</p> <p>NB Article 73a, 2016/1065, '<i>the taxable amount ... Shall be equal to the consideration paid for the voucher or, in the absence of information ..., the monetary consideration value indicated on the multi-purpose voucher itself or in the related documentation</i>'. This is replicated in the UK rules, as proposed.</p>
5	<p>If the customer pays more or less of the value of the card how do you establish the VAT rate?</p> <p>a. If you get a discount or product topped up how does that impact on the VAT?</p>	<p>See 4 above</p> <p>Unless the retailer is aware of a discount or top-up, the value (for VAT calculation purposes) will be the face value of the voucher or the price of</p>

	<p>e.g. Starbucks card. £200 including 5% discount.</p> <p>b. Reward then top up/mark up</p> <p>c. Buy, then top-up</p>	<p>the goods or services redeemed for the voucher. We expect further guidance from HMRC/HM Treasury in regards to acceptable ways to track top-up cards.</p>
6	<p>Disclosed agent, - does it make any difference to the agent you are selling it to? Declare you are selling on behalf of and ownership of the card does not transfer to the agent.</p>	<p>The contractual terms will be paramount. Where an agent does not take title to the vouchers, but acts for and on behalf of the issuer / retailer, the agent is more likely to be providing a service to the issuer / retailer, in return for a commission or percentage of the value sold. The agents service to the issuer / retailer will be subject to VAT under the normal rules for B2B services.</p> <p>NB Non-disclosed agents (acting as principal, in their own name) involved with the purchase and sale of MPVs will be making supplies that fall outside the scope of VAT, under the new rules. This would preclude them from recovering VAT on costs associated with those transactions and may prevent them from becoming or remaining registered for VAT. HMRC have anticipated this in the Condoc, and comment that non-disclosed agents may wish to change to a disclosed agency arrangement.</p>
7	<p>What happens if there is a balance transfer – B2C to B2B? How do you reconcile that?</p>	<p>Not sure what is anticipated here – nevertheless, in relation to SPV's, if it is possible for a balance transfer to be shifted from a consumer back to a business, pending final consumer redemption, there is a risk that VAT will have been applied on the original B2C transaction; with the consumer not able to charge VAT to a business, the business receiving the balance transfer will not be able to recover the VAT element previously charged, but will be obliged to calculate and apply VAT when it sells / transfers the SPV on.</p>
8	<p>Guidance on re-seller market – e.g. Zeek/e-pay – how do we monitor that? B2B selling on to a consumer, What do you do when it is B2C?</p>	<p>Does this anticipate a C2C use-case? If it does, these are not transactions that fall within the scope of VAT, as they are not economic activities; however, it is possible that a consumer who engages in such activities with frequency or on a regular basis, may become liable to tax and / or VAT.</p> <p>For retailers or MPVs these transactions create uncertainty on the value to be used at redemption, and are likely to mean that, as values cannot be verified, the face value of value of goods / services redeemed will need to be</p>

		<p>used for calculating the amount of VAT due.</p> <p>The reseller market is to be discussed with HMRC/HM Treasury and further guidance sought.</p>
9	<p>How will HMRC treat points or currency exchange? What happens if it's a partial redemption? e.g. 50 points + £5 = £10 voucher.</p>	<p>See 4 above</p> <p>Where there is uncertainty or ambiguity regarding the value or amount of consideration, HMRC will expect retailers to apply the face value of the voucher when calculating the amount of VAT due.</p>
10	<p>What happens when you have a promotion with a gift card in the same retail transaction? How is that treated in terms of VAT?</p>	<p>Not specific to the new Directive</p> <p>Valuation rules already exist to identify and / or otherwise apportion the value to be applied where more than one item is sold for a single price. It has not been confirmed but, we expect these rules to remain and apply post 1 January 2019.</p>
11	<p>How long will VAT records have to be kept – i.e. if gift cards are in the market for 10 + years?</p>	<p>Not specific to the new Directive.</p> <p>Most businesses will retain records for at least six-years. Where vouchers remain eligible for redemption for longer than the existing retention period, businesses will want to consider retaining supporting records for that longer, especially where those records support the value of vouchers issued.</p>
12	<p>Non-VAT registered businesses – what/will there be any issues there?</p>	<p>Not specific to the new Directive.</p> <p>Non-VAT registered businesses involved with a vouchers supply chain will not be able to recover any VAT incurred in relation to the supply of vouchers (or related services). Where non-VAT registered businesses on-sell SPV vouchers the recipient business will not be able to recover any VAT embedded within those vouchers, as the selling (unregistered) business will not issue a valid VAT invoice.</p>
13	<p>Will non-UK companies operating voucher schemes in the UK be under the same regulations as UK based companies? e.g. Channel Islands.</p> <p>What happens if gift cards are redeemed in</p>	<p>The new Directive applies to EU member states only.</p> <p>Whilst the Channel Islands are part of the UK, they fall outside the VAT territory of the UK. This means that businesses established in the Channel Islands will not be required to adopt these new rules.</p>

	non EU states?	<p>However, any Non-UK businesses making supplies which fall within the scope of the UK (e.g. selling UK SPV's) will be subject to the same voucher rules as UK resident businesses.</p> <p>Not specific to the new Directive. Vouchers issued or transacted in the EU but redeemed outside the EU will be subject to the taxation rules of the country where the vouchers are redeemed. This could result in double or non-taxation. Commercial terms should be reviewed to understand and mitigate double taxation risks.</p>
14	What happens when an intermediary sells a product to a corporate client at a discount which is greater than the value at which they bought it? (double intermediary)	<p>SPVs – no impact, VAT will be charged on the discounted selling price as normal.</p> <p>For MPVs, the taxable amount on which VAT is to be calculated is the price paid; where this cannot be verified or is unknown VAT will be due on the face value or on the value of the goods or services redeemed.</p>
15	What happens when the end user purchases gift cards from an intermediary if purchased at the same value? What happens if they purchase at a reduced discount or at a greater value than was acquired in the channel?	See 14 above
16	<p>How do value added agencies:</p> <ol style="list-style-type: none"> a. Differentiate the formal supply of the gift cards when they are sold at different prices to different customers but where acquired at the same price? b. How do retailers know the redeemed value 	<p>See 4 above.</p> <p>We expect further guidance from HMRC/HM Treasury on this point.</p>
17	<p>Given the variety of models and difference –</p> <ol style="list-style-type: none"> a). how can the retailer &/or agency know the pricing...? b). what level of guidance will they need to demonstrate the VAT amount c). HMRC said'must use end value if in doubt' 	<p>See 4 above.</p> <p>We expect further guidance from HMRC/HM Treasury on this point.</p>
18	<ol style="list-style-type: none"> a). Retrospective discounts (or repeat) b). Credit notes c). Off invoice discount 	See 4 above

19	Book tokens are a blend of models – charges a fee and applies a discount. How do you work out the VAT?	See 4 above, and subject to contractual terms. We expect further guidance from HMRC/HM Treasury on this point. In particular the input VAT position of businesses using a blend of models.
20	How to treat closed loop products/restricted loop or open-loop products? VAT is charged on some e-money products. Are they outside of VAT?	Important to distinguish between pre-payments, vouchers (SPV and MPV) and financial instruments, following established rules. See Appendix 2 for a summary comparison
21	Grandfathering –any gift cards you buy up to 31 st December 2018 will be treated under the current rules. After 1 st January 2019 new rules apply. Does Grandfathering only apply to the first issuer or later on down the chain? How do you do the invoicing and account for the split in dates. Of codes/cards are blank, and/or not paid for at time of purchase how will they be treated?	The new rules apply to vouchers issued on or after 1 January 2019, and means that any vouchers issued prior to this date will not be subject to the new rules at any stage of the supply chain. In practice businesses will need to be able to identify vouchers issued pre and post the effective date, and may wish to seek agreement from HMRC on how to apply the rules. For example, by applying a FIFO approach, recognising breakage ratios. SPV – new definition is broader than the previous one and it is anticipated that more vouchers will be categorised as SPV than now.
22	How does retailer treat cards if on sale or return?	Not specific to the new Directive. Under sale or return contracts, the transaction is only recognised for VAT purposes where a sale is effected, by reference to established tax point rules.
23	In the world of intermediaries what disclosure is required to be a 'disclosed' agent throughout the chain?	Not specific to the new Directive. Dependent on contractual terms and 'notices' available to consumers. Does the customer know that they are contracting with the issuer, or the agent? We expect further guidance from HMRC/HM Treasury on this point.
24	How do retailers know what value the gift card was purchased at? How can the retailer track the VAT – issuer and intermediary tracking is an issue.	See 4 above

Additional questions

The following question(s) reflect some of the other remaining points of ambiguity that were not recorded during the workshop, but nevertheless need addressing in order that the consistent treatment anticipated by the Directive can be achieved.

	Question	Comment
A	<p>For MPVs the supplies fall outside of the scope of VAT until the point of final redemption; for SPVs the supplies are subject to VAT throughout the chain, with no VAT due at the point of calculation. Do supplies of SPVs follow the existing rules for invoicing (B2B / cross-border) etc.? or</p> <p>Are supplies to be treated as the final supply throughout the chain, resulting in, for example, ESS vouchers being subject to MOSS reporting throughout the chain with no input VAT recovery?</p>	<p>The purpose of the Directive is to <i>'ensure certain and uniform treatment, to be consistent with the principles of a general tax on consumption to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance'</i>, by introducing a <i>'common solution for vouchers'</i>. [Directive 2016/1065, as enacted]</p> <p>It does not alter the <i>'rules on the time and place of supply of goods and services, the taxable amount the chargeability of (VAT) and the entitlement to deduction'</i>, which are set out in Directive 2006/112 (the Principal VAT Directive), but does recognise that there those rules are <i>'not sufficiently clear or comprehensive to ensure consistency in the tax treatment of transactions involving vouchers'</i>. [Recital (1) of 2016/1065]</p> <p>However, the objectives are to simplify, modernise and harmonise the VAT rules applying to vouchers, which suggests that, having established that a voucher is a SPV, the VAT treatment throughout a supply chain continues to follow the established invoicing rules, as per the Principal VAT Directive. See example at Appendix 1.</p> <p>Further clarifying guidance is required to achieve certainty that all taxpayers will apply the rules in the same way.</p>

Appendix 1

How to treat SPVs throughout the chain

There is some ambiguity regarding the VAT treatment of SPVs throughout the supply chain, (e.g. where an SPV can be redeemed for goods or services) however the basic position is that an SPV is treated as a supply of underlying goods or services.

The Directive [2016/1065] recognises that the existing rules, contained within Directive 2006/112, are *'not sufficiently clear or comprehensive to ensure consistency in the tax treatment of transactions involving vouchers'*, and therefore introduces a remedy to achieve consistency by defining different types of voucher. However, whilst the new Directive does not seek to alter the invoicing rules, it recognises that the VAT treatment depends on the specific characteristics of the vouchers.

For SPVs, *'where the VAT treatment attributable to the underlying supply ... can be determined with certainty, VAT should be charged on each transfer'*.

Does this mean that each transfer is subject to VAT as per the underlying supply, or subject to VAT by reference to the established rules for taxing supplies of services?

NB It is currently accepted that transactions involving vouchers are to be treated as supplies of services.

The following examples set out these two alternatives.

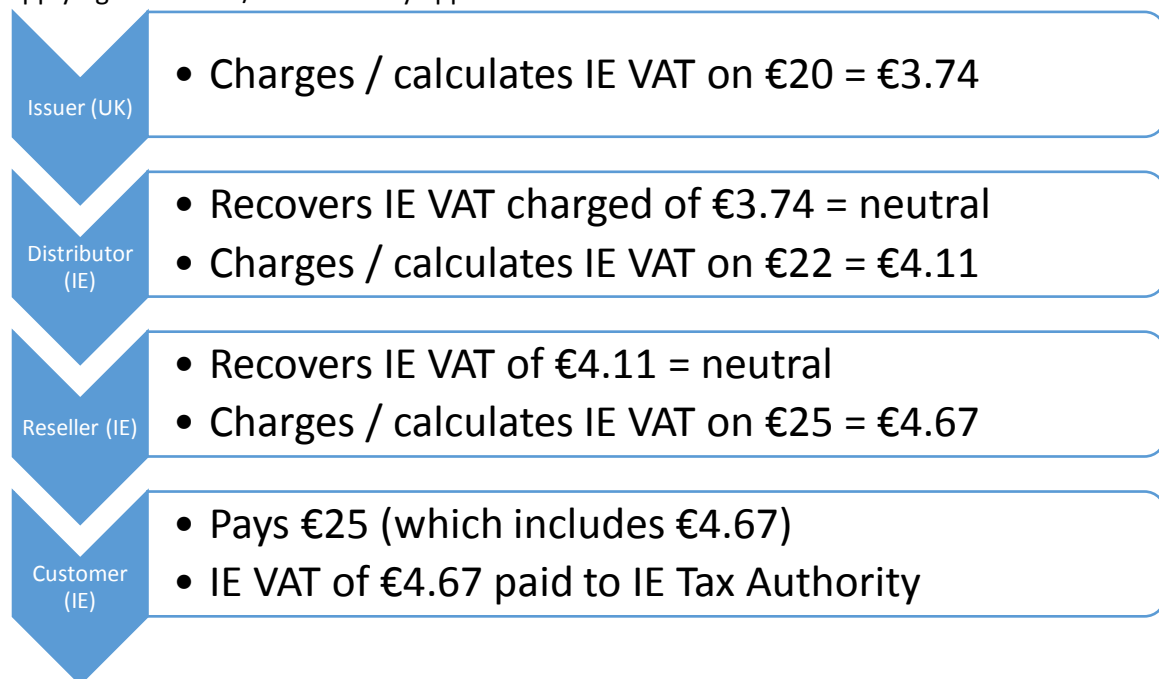
Taxing Transactions as the Underlying Supply

HMRC and HM Treasury are messaging that, for SPVs, each transaction in the supply chain should be taxed as the underlying supply; this would mean that (using the example above), the UK Retailer and Distributor would both be required to register for, charge and pay IE VAT. This has two significant impacts:

1. Additional VAT registration, administration and compliance for countries where the business may have no other activity
2. Obtaining VAT registrations as businesses are only entitled to be registered where they are either established or otherwise making supplies in the country of registration.

There is no guarantee that all EU member states Tax Authorities will accept such VAT registrations, as this could require a revision to the VAT registration regulations for some countries, and / or resulting in an inconsistent approach across the EU, contrary to the purpose of the new Directive. This is also inconsistent with the OECD aims of taxing supplies at consumption. In addition, this route, outside of adding an unnecessary complexity, results in the same VAT consequence as the approach set out on the previous page. For example:

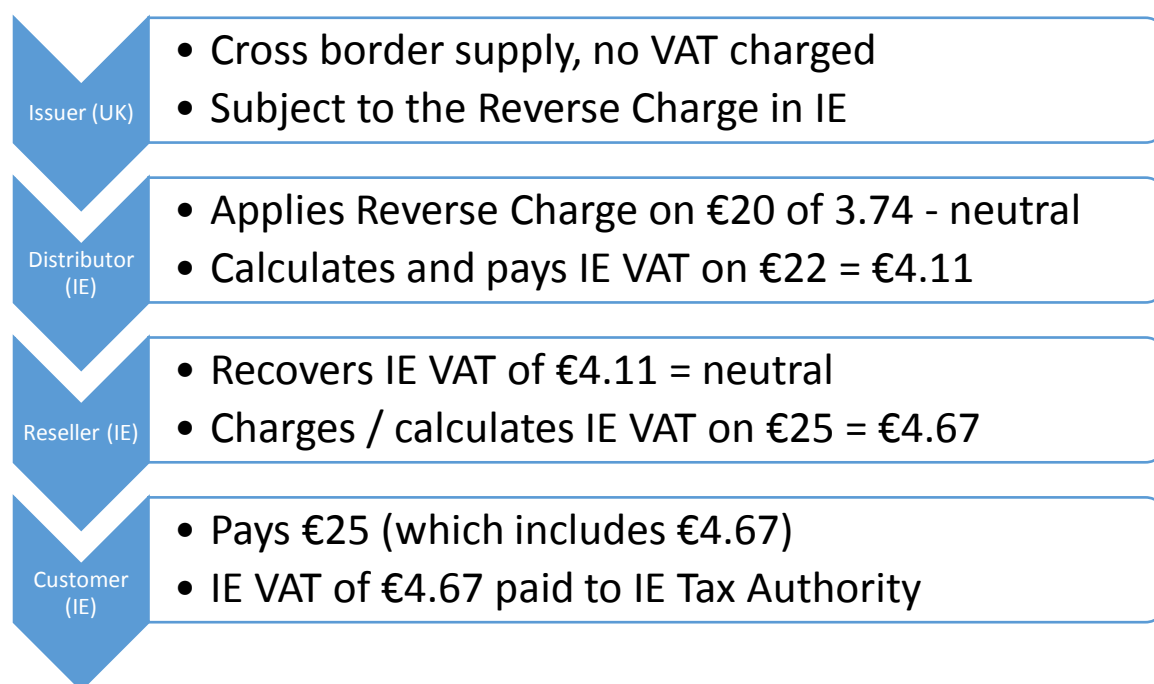
Applying the HMRC / HM Treasury approach:



This assumes that the Issuer and Distributor are able to obtain VAT registration in IE; failure to secure VAT registration in IE risks double taxation.

Taxing Transactions Following Established Principles

The alternative approach, achieves the same result with VAT due and payable to the IE Tax Authority of €4.67, as below:



The VAT payable to the IE Tax Authorities is €4.67, but without requiring additional VAT registration and increasing the administrative burden on businesses.

This approach is more closely aligned with existing and established procedures for identifying the place of supply without interfering with the intention of the Vouchers Directive to tax vouchers by reference to the goods or services that they are exchanged for, at the place of consumption.

Note:

Recital (13) of the Directive states the objectives of the Directive as, ‘namely the simplification, modernisation and harmonisation of the VAT rules applying to vouchers’. On this basis it seems unlikely that the intention would have been to ignore the invoicing principles established in the Principal VAT Directive, which should lead to conclude that existing invoicing rules continue to apply, and not require businesses to register for VAT in countries where they have no establishment and no business activity. Further guidance is required.

Appendix 2

Voucher v Pre-Payment v On-line Credit

A voucher is defined as an instrument that obliges a supplier / retailer to accept it as consideration or part consideration in return for supplying goods and / or services; and those goods or services, or a value equivalent, are either indicated on the voucher or in related documents, including terms and conditions of use.

A voucher is therefore distinct from a pre-payment, which is defined as payment for a specified future supply, so that the nature / substance, place and rate of VAT for the supply are known at the time that the pre-payment is made. For example, a pre-payment for a specific bike to a UK retailer is not a voucher, as the substance of the supply (the bike), the place of supply (UK) and the rate of VAT (UK standard rate) are known, and VAT is calculated at the time that the pre-payment is received by the retailer.

In practice the VAT treatment for a supply settled by a pre-payment is the same as that for a Single Purpose Voucher (see below), as VAT is due in both cases at the time that the payment is received.

An on-line credit, electronic money, such as pre-paid currency cards, are not considered to be vouchers, and are to be treated as money or other financial instruments or means of making payments, and recognised for VAT purposes when used to pay for goods or services.

Essentially, a pre-payment is treated (for VAT purposes) in the same way as a single purpose voucher, and on-line credit is treated (for VAT purposes) in the same way as a multi-purpose voucher, as summarised below:

	Definition	Specific good or service known	Place / country of supply known	Rate of VAT known	VAT Due
Pre-Payment	Payment for a specific supply	Yes	Yes	Yes	When paid
Single Purpose Voucher	Supplier obliged to accept at face value in return for goods / services or an equivalent value	No	Yes	Yes	On issue
Multi-Purpose Voucher	Supplier obliged to accept at face value in return for goods / services or an equivalent value	No	No	No	On redemption
On-line credit	Treated as money	No	No	No	When transferred for goods / services