Case C-68/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

8 February 2023

Referring court:

Bundesfinanzhof (Germany)

Date of the decision to refer:

3 November 2022

Applicant and appellant on a point of law:

M-GbR

Defendant and respondent in the appeal on a point of law:

Finanzamt O (Tax Office O)

Subject matter of the main proceedings

Value added tax – Directive 2006/112 – Articles 30a and 30b – Definition of single-purpose and multi-purpose vouchers – Tax treatment of prepaid cards or vouchers for the purchase of digital contents

Subject matter and legal basis of the request

Interpretation of EU law, Article 267 TFEU

Questions referred

The following questions are referred to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Article 30a and Article 30b of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (‘VAT Directive’), in the version of 27 June 2016:

1. Does a single-purpose voucher exist within the meaning of Article 30a(2) of the VAT Directive where:

   – the place of supply of the services to which the voucher relates is established in known in so far as those services are intended to be supplied to final consumers within the territory of a Member State,

   – but the fiction of the first subparagraph of Article 30b(1) first sentence of the VAT Directive, according to which the transfer of the voucher between taxable persons with a view to providing the service to which the voucher relates, also gives rise to a service in the territory of another Member State?

2. If the first question is answered in the negative (and hence a multi-purpose voucher exists in the present case): Does subparagraph 1 of Article 30b(2) of the VAT Directive, according to which the actual provision of the services in return for a multi-purpose voucher accepted as consideration or part consideration by the supplier is subject to VAT pursuant to Article 2 of the VAT Directive, whereas each preceding transfer of that multi-purpose voucher is not subject to VAT, preclude a differently substantiated tax obligation (judgment of the Court of Justice of the European Union of 3 May 2012, *Lebara*, C-520/10, EU:C:2012:264)?

Provisions of European Union law relied on

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in particular Articles 2, 9, 30a, 30b, 44 and 58

Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2016/112/EC as regards the treatment of vouchers

Provisions of national law

Umsatzsteuergesetz (Law on turnover tax, ‘the UStG’), in particular Paragraph 3(13) to (15), Paragraph 3a(2) and (5) and Paragraph 27(23),

Brief summary of the facts and procedure

1 The parties disagree as to whether the transfer of prepaid cards or voucher codes for the purchase of digital content, known as X cards, are subject to VAT.

2 During the 2019 tax period (the year at issue), the applicant sold X cards via its X cards online shop. In the year at issue, Y, which is established in the United Kingdom, was the publisher of the X cards. The voucher codes allowed the purchaser to load his or her X user account with a certain nominal value in euros.

After loading the account, digital content could be purchased by the account holder in Y's X store at the prices indicated therein.

3 The X cards were distributed by Y with different country codes through various intermediaries. The code DE was intended for customers with their domicile or habitual residence in Germany and a German X user account.

4 During the year in question, the applicant purchased X cards from two suppliers who were not established in the United Kingdom or Germany, but in other Member States. They had previously acquired the X cards from Y. In its tax returns, the applicant did not mention either the acquisition of the X cards from suppliers nor their transfer to end customers. It acted on the assumption that X cards were vouchers or multi-purpose vouchers.

5 In contrast, the competent Finanzamt (tax office) took the view that the applicant's turnover with X cards was taxable in Germany because the cards with the identifier DE were intended exclusively for final customers resident in Germany with a German user account. Classification of those cards as goods vouchers or single-purpose vouchers is also supported by the fact that Y had placed the cards as such on the market and that, in the subsequent performance chain, they were treated as such by all the other parties.

6 The Finanzgericht (Finance Court) dismissed the action brought against that decision, whereupon the applicant brought an appeal on a point of law before the referring court.

Succinct presentation of the reasoning in the request for a preliminary ruling

Consideration of the first question referred

Preliminary observations

7 A '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 (Article 30a point 2 of the VAT Directive). A 'multi-purpose voucher' means a voucher other than a single-purpose voucher (Article 30a point 3 of the VAT Directive).

8 Each transfer of a single-purpose voucher made by a taxable person acting in his or her own name is regarded as a supply of the goods or services to which the voucher relates. However, the actual handing over of the goods or the actual provision of services is not regarded as an independent transaction (first subparagraph of Article 30b(1) of the VAT Directive). Conversely, in the case of a multi-purpose voucher, only the actual handing over of the goods or the actual provision of the services to which it relates are subject to VAT, but not each

preceding transfer of that voucher (first subparagraph of Article 30b(2) of the VAT Directive).

9 In so far as – as in the present case – the issuer of a voucher (A) transfers the voucher in his or her own name to a taxable person established in another Member State (B) who transfers it himself or herself in his or her own name to another person (C), both the transfer of the voucher from A to B and its transfer from B to C are thus to be regarded under the first subparagraph of Article 30b(1) of the VAT Directive as a provision of the service to which the voucher relates, whereas the (subsequent) actual provision of the service is not to be taxed.

10 The question arises as to what consequences result from the first subparagraph of Article 30b(1) first sentence of the VAT Directive for Article 30a point 2 of that Directive. For a single-purpose voucher to exist within the meaning of Article 30a point 2 of the VAT Directive, the place of supply of the service to which the voucher relates must be known. In the case of the multiple transfer of a voucher, it follows from the first subparagraph of Article 30b(1) first sentence of the VAT Directive that the service to which the voucher relates is to be regarded as having been supplied several times.

11 However, this interpretation based on the first subparagraph of Article 30b(1) first sentence of the VAT Directive (first interpretation) would lead to a considerable reduction in the scope of the single-use voucher in service sector. Such a voucher would not exist where it relates to a service the place of supply of which must be determined in accordance with Article 44 of the VAT Directive (see paragraph 14 et seq. below).

12 However, a second interpretation would also be conceivable. First, in assessing the question of whether the place of supply of services within the meaning of Article 30a point 2 of the VAT Directive is known, the fiction laid down in the first subparagraph of Article 30b(1) first sentence of the VAT Directive could be disregarded. In that case, any transfer of the voucher to an intermediary in another Member State would not affect the application of Article 30a point 2 of the VAT Directive. Second, it could be considered whether, in the case of a voucher relating to a service to be supplied to a final consumer, the place of the transfer is the place of the service to be supplied to the final consumer even in the case of a transfer between two taxable persons.

Application of the two possible interpretations to the present case

13 In so far as, during the year at issue, the applicant distributed the vouchers incorporated in the X cards relating to electronically supplied services within the meaning of Article 58(1)(c) of the VAT Directive, it is questionable whether they were single-purpose vouchers, the transfer of which constitutes a supply of services. For that to be the case, the place of supply of the services to which the voucher relates and the tax due for this turnover would have to be known at the time of issue of the voucher (Article 30a point 2 of the VAT Directive).

14 It is open to question to what the requirement that the place of supply must be known relates. If it concerns only the sale of a voucher (in the form of X cards) to end customers, it is a single-purpose voucher. The place of supply of the electronic service to which the voucher relates will not be determined at the time of redemption in accordance with Article 44 of the VAT Directive, since even if the person redeeming it were a taxable person within the meaning of Articles 2 and 9 of the VAT Directive, he or she would not be acting as such within the meaning of Article 44 of the VAT Directive, since he or she would be obtaining the service supplied electronically by Y for private purposes (cf. judgment of 17 March 2021, *Wellcome Trust*, C-459/19, EU:C:2021:209, paragraphs 39 and 40). The place of supply in the event of redemption would therefore have to be determined on the basis of Article 58(1)(c) of the VAT Directive and it would be known, since the conditions for the use of X cards would allow redemption only by end consumers established in Germany.

15 In accordance with the above, if the X cards were single-purpose vouchers, Y, as the issuer of the vouchers on account of the fact that it transferred them to distributors in exchange for payment, would have supplied them, by electronic means, with a supply of services in exchange for payment in Germany. Similarly, any other transmission (from the supplier to the applicant and the applicant to its customers) would be an electronic service supplied in Germany.

16 If, on the other hand, the requirement that the place of supply of services must be known also concerns the sale of a voucher between traders, it appears questionable whether it is a single-purpose voucher. In that case, both the suppliers and the applicant would have acted “as such” within the meaning of Article 44 of the VAT Directive, both in the transfer from Y to the suppliers and from the suppliers to the applicant; these transactions would be seen as independent since they did not purchase X cards in order to redeem them for their own private purposes, but to resell them in the course of their economic activity. If Article 44 of the VAT Directive were to apply to the turnover on transfers from Y to the suppliers and from the suppliers to the applicant, the place of supply of services for the transfer from Y to the suppliers would not be in Germany whereas the transfer from the suppliers to the applicant would be in Germany. The place of supply would not then have been known at the time of issue of the voucher by Y.

17 Recital 3 of Directive 2016/1065 might suggest that the first question referred should be answered in the affirmative. It states: ‘In view of the new rules on the place of supply for telecommunications, broadcasting and electronically supplied services which are applicable since 1 January 2015, a common solution for vouchers is necessary in order to ensure that mismatches do not occur in respect of vouchers supplied between Member States. To this end, it is vital to put in place rules to clarify the VAT treatment of vouchers.’ That objective would not be achieved if the transfer of the very same voucher had different legal consequences depending on whether the voucher is distributed exclusively through intermediaries in Germany, through intermediaries established in the rest of the

territory of the European Union or directly, without an intermediary, to final customers established in Germany.

18 Following the first interpretation (see paragraph 11 above), the applicant did not transfer single-purpose vouchers. Under Article 44 of the VAT Directive, X would then have transferred the vouchers to the place of destination of the suppliers in their respective Member State at the tax rate applicable in that Member State, while the transfers by the suppliers to the applicant would have been made, in accordance with Article 44 of the VAT Directive, at the applicant's place of residence in Germany; the same would apply to the transfers made by the applicant to its customers. Thus, the requirement to establish the place of supply of services to which the voucher relates and the VAT due in respect of that supply would not be satisfied.

19 By contrast, according to the second interpretation (see paragraph 12 above), they would be single-purpose vouchers.

Consideration of the second question referred

20 If the answer to the first question referred is in the negative, it is a multi-purpose voucher (Article 30a point 3 of the VAT Directive). In that case, the actual supply of services in return for which their supplier accepts a multi-purpose voucher as consideration or part consideration is subject to VAT, whereas any prior transfer of that multi-purpose voucher is not subject to VAT (first subparagraph of Article 30b(2) of the VAT Directive).

21 The referring court assumes that there is no need, for VAT purposes, to treat the X cards at issue differently from the phonecards that were the subject of the judgment of 3 May 2012, *Lebara* (EU:C:2012:264). According to paragraph 43 of that judgment, a telecommunications services operator which offers telecommunications services consisting in selling to a distributor phonecards which display all the information necessary for making international telephone calls by means of the infrastructure provided by that operator and which are resold by the distributor, in its own name and on its own behalf, to end users, either directly or through other taxable persons such as wholesalers and retailers, carries out a supply of telecommunications services for consideration to the distributor. Thus, according to paragraph 42 of *Lebara*, both the initial sale of a phonecard and its subsequent resale by intermediaries constitute taxable transactions.

22 On that basis, the applicant's transfer of X cards to its customers would be taxable by the applicant as a supply of electronically supplied services. It appears questionable to the referring court whether a different purpose was intended in the context of the provision of Articles 30a and 30b of the VAT Directive, although those provisions were intended to shift taxation upstream. In the view of the referring court, the relationship of the last clause of the first subparagraph of Article 30b(2) of the VAT Directive to the Court's position in *Lebara* is unclear.

23 Furthermore, through the intermediate trade in multi-purpose vouchers, the applicant may have provided distribution or promotion services to Y within the meaning of the second subparagraph of Article 30b(2) of the VAT Directive, which are subject to VAT, so that the consideration given by the applicant for the transfer of the vouchers by its supplier may comprise not only a payment but also a supply of services of this kind (transaction resembling barter, see judgment of 26 September 2013, *Serebryannay vek*, C-283/12, EU:C:2013:599).