

**Case C-637/20**

**Request for a preliminary ruling**

**Date lodged:**

25 November 2020

**Referring court:**

Högsta förvaltningsdomstolen (Sweden)

**Date of the decision to refer:**

18 November 2020

**Appellant and respondent**

Skatteverket

**Respondent and appellant**

DSAB Destination Stockholm AB

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[...]

**SUBJECT MATTER**

Advance ruling on value added tax ('VAT'); need to obtain a preliminary ruling from the Court of Justice of the European Union

The Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) makes the following

**Order**

A preliminary ruling under Article 267 TFEU must be obtained from the Court of Justice of the European Union in accordance with the annexed request for such a preliminary ruling. [...]

[...] **[Or. 2]**

**Request for a preliminary ruling under Article 267 TFEU seeking interpretation of Article 30(a) of Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive')**

## **Introduction**

- 1 By its reference, the Högsta förvaltningsdomstolen (Supreme Administrative Court) seeks clarity on how the terms ‘voucher’ and ‘multi-purpose voucher’, used in the VAT Directive, are to be interpreted and what is meant by them. The question referred for a preliminary ruling has arisen in the context of proceedings in which an advance ruling was sought by a company established for the purpose of selling a card, referred to as the ‘city card’, which gives the cardholder the right to obtain certain services in certain places for a limited period of time and up to a certain value.

## **Applicable provisions of EU law**

- 2 Article 2 of the VAT Directive lays down the transactions which are liable to VAT. They include, inter alia, the supply of services for consideration within the territory of a Member State by a taxable person acting as such.
- 3 Article 30a(1) provides that ‘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. **[Or. 3]**
- 4 Under Article 30a(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.
- 5 Article 30a(3) states that ‘multi-purpose voucher’ means a voucher, other than a single-purpose voucher.
- 6 Article 30b(2) provides that 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 is to be subject to VAT pursuant to Article 2, whereas each preceding transfer of that multi-purpose voucher is not to be subject to VAT.
- 7 Under Article 73, the taxable amount for supplies of goods and services is to include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.
- 8 Article 73a provides that, without prejudice to Article 73, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher is to 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.

- 9 Articles 30a, 30b and 73a were inserted by Directive (EU) 2016/1065.
- 10 Recital 4 of Directive 2016/1065 states that only vouchers which can be used for redemption against goods or services should be targeted by those rules. However, instruments entitling the holder to a discount upon purchase of **[Or. 4]** goods or services but carrying no right to receive such goods or services should not be targeted by these rules.
- 11 Recital 5 states that 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.

### **Applicable provisions of national law**

- 12 Chapter 1, Paragraph 1, first subparagraph, of the mervärdesskattelagen (1994:200) (Law (1994:200) on value added tax), provides that VAT is to be paid to the State on, inter alia, supplies within national territory of taxable services effected by a taxable person acting as such. Under Chapter 2, Paragraph 1, third subparagraph, point 1, the term ‘supply of services’ means that a service is carried out, transferred or otherwise provided to a person for consideration.
- 13 Under Chapter 1, Paragraph 20, ‘voucher’ means an instrument in respect of which there is an obligation to accept it as consideration or part consideration for a supply of goods or services. The goods or services to be supplied or the identities of their potential suppliers must be indicated either on the instrument or in related documentation which includes the terms and conditions of use of such instrument.
- 14 Chapter 1, Paragraph 21, provides that ‘single-purpose voucher’ means a voucher in respect of which the amount of VAT due on the goods and services covered by the voucher and the country in which the supply of those goods or services is to be deemed to have taken place are already known at the time of issue of that voucher. ‘Multi-purpose voucher’ means a voucher other than a single-purpose voucher.
- 15 Chapter 2, Paragraph 12 provides that 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 is to be regarded as supply within the meaning of Chapter 2, Paragraph 1. Previous transfers of multi-purpose vouchers do not, however, constitute supplies. **[Or. 5]**
- 16 Chapter 7, Paragraph 3c, provides that consideration means everything which is obtained or is to be obtained by the seller from the purchaser or a third party, including any grants directly linked to the price of the goods or services. In the case of supplies of goods or services effected in return for a multi-purpose voucher, the consideration paid for the voucher is to be regarded as the

consideration for the goods or services. In the absence of information on that amount, it is the monetary value indicated on the multi-purpose voucher or in the related documentation which is to be regarded as the consideration.

### **Facts in the proceedings**

- 17 The present case concerns an advance ruling issued by the Skatterättsnämnden (Revenue Law Commission, Sweden) which dealt with the question of whether a city card constitutes a multi-purpose voucher. That part of the advance ruling has been appealed before the Högsta förvaltningsdomstolen (Supreme Administrative Court) by both Skatteverket (Swedish Tax Agency) and the company that sought the advance ruling, DSAB Destination Stockholm AB. The advance ruling has also been appealed in so far as it deals with consequential issues.
- 18 The circumstances are as follows.
- 19 The company in question sells cards to tourists visiting Stockholm. Those cards give cardholders 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. They also entitle cardholders to use around 10 passenger transport services, such as tours provided by the company's own Hop-on-Hop-off buses and boats, as well as sightseeing tours with other organisers. The services are either subject to tax, at various rates, or are tax exempt. The cardholder uses the card to pay for admission or use and merely presents the card to a special card reader, without paying anything further. In accordance with an agreement concluded with the company, the organiser then receives consideration from the company for each admission or use up to a certain percentage of the ordinary admission or use price. The organiser is not obliged to admit the cardholder more than once. The company does not guarantee a minimum number of visitors. Once the value limit has been reached, the card is no longer valid.
- 20 There are various versions of the card with different validity periods and value limits. A card for an adult with a 24-hour validity period costs SEK 669. During the validity period, the cardholder can use the card to pay for services having a value [Or. 6] of up to SEK 1 800. The validity period starts to run when the card is used for the first time. The card must be used within one year of purchase.
- 21 The Skatterättsnämnden (Revenue Law Commission) found that the card is not a multi-purpose voucher. The Skatterättsnämnden concluded that it follows from the definition of 'voucher', in conjunction with 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 the Skatterättsnämnden, 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, for example, the rate of tax or the country of taxation.

## The parties' positions

### *Skatteverket*

- 22 The card cannot be regarded as being characterised by the fact that it is exchanged for goods or services and, for that reason, it cannot be considered to be a 'voucher'. The distinguishing feature of cards of that type is that they are valid for only a limited period of time (between one and five consecutive days) and that they have a high value limit in proportion to their validity period. It is a type of experience card, giving the cardholder the right to admission to a large number of attractions and to an unlimited number of trips on Hop-on-Hop-off buses and boats. The more the card is used, the greater the reduction for the cardholder when compared with the normal price that he or she would have had to pay for each attraction. Because of the card's high value limit and short validity period, it is certain that the average consumer will not make full use of the card.

### *DSAB Destination Stockholm AB*

- 23 The card is a multi-purpose voucher. Organisers are obliged to accept the card as consideration. The terms and conditions to which the cardholders are subject make it clear which services may be paid for with the card and who the suppliers are. The cardholder may use the card in respect of all the attractions which are supplied by organisers with which the company has entered into agreements, up to the applicable value limit. The card satisfies the criteria laid down in Article 30(a)(1) of the VAT Directive. There is no scope for imposing any further requirements in order for an instrument to be considered to constitute a voucher. The card may [Or. 7] be used as consideration for services which are subject to different tax rates. For that reason, at the time of issuance, the amount of VAT payable in respect of the services covered by the card is not known.

## The need for a preliminary ruling

- 24 The provisions relating to vouchers in the VAT Directive are relatively new and are applicable to vouchers issued after 31 December 2018. It seems that the Court is yet to have the opportunity to take a position on how the terms 'voucher' and 'multi-purpose voucher' are to be interpreted. The parties disagree as to whether a card such as the one at issue in the main proceedings is to be regarded as a multi-purpose voucher. The question of how cards of that type are to be treated was the topic of discussions within the EU VAT Committee, but no consensus was reached in that regard. According to information in the main proceedings, a similar card has previously been considered to be a multi-purpose voucher in Denmark.
- 25 Against that background, the Högsta förvaltningsdomstolen (Supreme Administrative Court) deems it necessary to request a preliminary ruling from the Court.

**Question referred**

- 26 In the light of the foregoing, the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) requests an answer to the following question.
- 27 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?

WORKING DOCUMENT