



VAT NEWSLETTER

## Federal Fiscal Court: Intermediary services related to the sale of experience vouchers through voucher portals

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### 1 Background

For the sale of vouchers, the first question that arises under both the old and new legal situation applicable since 1 January 2019 is whether the transfer of the voucher, or only its redemption, gives rise to VAT for the supply underlying the voucher. In a second step, it must be examined whether the taxable person who transfers the voucher provides an intermediary service. At the very least, this could be the case, if he is acting in someone else's name or if multi-purpose vouchers (new legal situation) or value vouchers (old legal situation) are transferred. The German Federal Fiscal Court (BFH) has now had to decide, in a case concerning the old legal situation, when and at what amount such an intermediary service is to be taxed.

### 2 Facts

The plaintiff operated an internet portal through which he marketed experiences on behalf of various organisers. Customers were able to purchase experience vouchers for a specific experience from the plaintiff or value vouchers that enabled them to select the experience at a later date. The plaintiff only provided the customers with the organiser's contact details after they had 'activated' the voucher during the redemption process. Only then did the plaintiff forward the price agreed for the voucher or experience, minus an agreed commission, to the organiser. If a customer did not redeem their purchased voucher, the plaintiff was entitled to retain the full voucher price.

The plaintiff only paid VAT on the retained commission. The tax office, however, assumed that he provided a taxable service with the voucher sale, for which the full customer payment constituted the remuneration. When the voucher was redeemed, the remuneration would subsequently be reduced by the amount paid to the organiser.



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The Fiscal Court assumed that the plaintiff offered the experiences in the organiser's name, acting as an intermediary. The plaintiff carried out his intermediary service at the time of sale of the voucher, in the case of experience vouchers, and at the time of redemption, in the case of value vouchers. The remuneration for the intermediation was, in principle, the retained commission. However, if the experience voucher expired, the remuneration increased to the total amount paid by the customer and retained by the plaintiff. The expiry of value vouchers, in turn, led to a reduction in input VAT reduction. Since, in this case, there was no taxable intermediary service by the plaintiff, the Court found a direct connection between the procured supplies aimed at marketing of the vouchers in question and non-taxable supplies.

### 3 German Federal Fiscal Court decision (judgment of 5 September 2024 – V R 21/23)

The BFH did not object to the assumption by the Fiscal Court that the client was acting as an intermediary. However, it did not consider the intermediary services to have been provided until the customer was informed of the organiser's contact details. The BFH considered the presentation of the experiences and the sale of the vouchers to be mere interim steps for the intended intermediation. The intermediation in turn presupposes that the recipient is given the opportunity to conclude a contract. For this purpose, the plaintiff must either inform the organiser of the successful intermediation or at least provide the voucher purchaser with the organiser's contact details so that the latter can make use of the underlying experience. The mere issuing of a voucher is not sufficient if it is not clear, to either the organiser or the customer, with whom a contract for a specific experience can be concluded. Until the organiser's details were communicated to the customer, the plaintiff could therefore not have provided any intermediation services to the organiser or to the customer. The customer's payment was also not subject to VAT as a down payment for an intermediation service rendered at a later point in time (with information pertaining to the organiser's contact details). For this to be the case, it would also have to have been clear, at the time of payment, between which persons the intermediated service was to be provided.

If the customers do not redeem the vouchers, the BFH is of the opinion that the plaintiff does not provide an intermediary service due to the lack of communication of the organiser's contact details. In this case, neither the agreed commission nor the additional amount retained by the plaintiff could be regarded as remuneration for services rendered. Nevertheless, the plaintiff was entitled to deduct input VAT for supplies procured in connection with vouchers that later expired if he intended to provide taxable intermediation services at the time he procured them. Whether the plaintiff expected financial benefits if the vouchers were not redeemed is irrelevant in the opinion of the BFH.

### 4 Consequences for the practice

The judgement relates to the old legal situation. However, it is also important for the new legal situation and offers potential for structuring, especially for multi-purpose vouchers. Of particular importance will be the fact that monies received may remain untaxed under certain circumstances in the event of non-redemption. Taxable persons with similar circumstances should check whether the judgement could bring advantages for them and hold such cases open.

To date, the tax authorities assume that the transfer of a multi-purpose voucher, by persons other than the provider of the underlying supply, constitutes an intermediary service and that the taxable amount of this supply should increase if the voucher is not redeemed (sec. 3.17 para. 10, para. 13 sentence 2 of the Administrative VAT Guidelines). The tax authorities do not take into account the principles established by the BFH, according to which the intermediary must either inform the supplier of the underlying service of the successful intermediation or inform the customer of the supplier's contact. In this respect, the Administrative VAT Guidelines should be adapted.