



VAT NEWSLETTER

## Federal Fiscal Court: voucher codes as single-purpose vouchers - doubts about the 'known place of supply'

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### 1 Background

As of 01.01.2019, sec. 3 para 13 to 15 of the German VAT Act has, for the first time, provided a legal regulation on the VAT treatment of vouchers. Previously, the classification of vouchers was based on general principles. The new regulation now differentiates between single-purpose vouchers and multi-purpose vouchers. For single-purpose vouchers, VAT arises at the time of issue and its transfer(s). For multi-purpose vouchers, VAT only arises at the moment of redemption. Classification as a single-purpose voucher requires that the place of supply, to which the voucher relates, and the VAT due are known at the time of issue. Otherwise, the voucher is to be qualified as a multi-purpose voucher.

### 2 Facts

The plaintiff sells gift cards for the purchase of digital content in the PlayStation Store (PSN Cards). The issuer of the PSN Cards and operator of the PlayStation Store is Sony Europe, which has its registered office in the UK. Customers can use the PSN Cards to load credit onto their PlayStation user accounts which they can use to purchase digital content in the PlayStation Store. The PSN Cards distributed by the plaintiff have a German country code and, according to Sony's specifications, can only be redeemed by user accounts registered to a German address. In its terms of use, Sony expressly requires users to provide truthful data under threat of sanctions.

The plaintiff obtained her PSN Cards (through intermediaries) from Germany up until 2018, and thereafter, from other European countries. She does not declare or tax either the purchase (from abroad) or the sale of the PSN Cards. In her opinion, the transfer of the PSN Cards is irrelevant for VAT purposes, as the place of supply is not sufficiently defined.



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Since Sony relies on the address registered by the user for his account, but does not confirm this address at any time, users resident abroad are also able to buy and use PSN Cards with a German country code.

### **3 Federal Fiscal Court decision on the legal situation prior to 01.01.2019 (XI R 11/21)**

For the legal situation up until 31.12.2018, the Federal Fiscal Court ruled, on the basis of the established facts, that the transfer of PSN Cards is subject to down payment taxation. With reference to the jurisprudence on the sale of telephone cards, it assumed that the PSN Cards are traded like goods. In the Federal Fiscal Court's view, both the place of supply and the VAT due for the supplies embodied in the voucher are known for the normal case of use in accordance with the contract. The vouchers bearing a German country code are intended exclusively for the purchase of electronically supplied services (at the standard VAT rate) by end customers resident in Germany. Consequently, the place of supply is Germany. The plaintiff should not be entitled to claim a breach of contract.

### **4 ECJ referral on the legal situation as of 01.01.2019 (XI R 21/21)**

The Federal Fiscal Court also considers the objections of the plaintiff regarding the insufficiently determined domicile of the end customers to be irrelevant for the legal situation after 01.01.2019. Taking into account only the electronically supplied services to the end customers, the Federal Fiscal Court classifies the PSN Cards as single-purpose vouchers, the transfer of which is subject to VAT.

However, the Federal Fiscal Court raised doubts as to whether the criterion of the 'known place of supply' is to be assessed solely on the basis of the supply to the end customer. Rather, it considers it possible that any transfers of the vouchers to intermediaries might also need to be taken into account, as they are deemed to be taxable supplies when assuming a single-purpose voucher. This issue has been referred to the ECJ. The Court's doubts are based on the question of how these fictitious supplies are to be assessed in terms of their place of supply: according to the supply embodied by the voucher to the end customer or individually, taking into account the parties involved in the transaction. In the latter case, transfers to foreign intermediaries could be taxable abroad, although the classification as a single-purpose voucher is based on the fact that the place of supply to the end customer is always Germany. In the Federal Fiscal Court's view, this could preclude the classification of PSN Cards as single-purpose vouchers and, overall, lead to the significant restriction of single-purpose vouchers in the service sector. Should this prove to be the case, the Federal Fiscal Court wants to know whether taxation of the transfer of the voucher could be achieved by invoking other legal principles.

### **5 Consequences for the practice**

The Federal Fiscal Court's decision on the old legal situation makes clear its position on the classification of gift cards for narrowly defined supplies. Nevertheless, the individual circumstances must always be taken into account (in particular regarding the contractual use). For the legal situation as of 01.01.2019, the decision of the ECJ remains to be seen. In particular, the VAT treatment of vouchers in supply chains may be clarified by the ECJ. If the ECJ confirms that transfers to intermediaries are to be taken into account when assessing whether the place of supply is known, the further question arises as to whether this already applies to the (maybe purely hypothetical) possibility of the involvement of intermediaries. If the tax authorities already assume the existence of single-purpose vouchers in similar factual situations, taxable persons should keep the reporting periods concerned open until the ECJ's decision is handed down. If taxable persons still assume multi-purpose vouchers without objection by the tax authorities, they should now review the consequences of a different assessment.