



## ECJ comments on definition of single-purpose vouchers and B2B voucher distribution

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### 1 Background

Since 1 January 2019, the VAT law has differentiated between single-purpose vouchers (SPV) and multi-purpose vouchers (MPV). If the place of supply and VAT due for the supply, to which the voucher relates, are known at the time of issue, the voucher is a SPV and VAT arises upon issue and each transfer. Otherwise, the voucher is a MPV and VAT only arises on redemption. With respect to the distinction between SPVs and MPVs, the German Federal Fiscal Court (BFH) raised doubts as to how distribution chains affect the criterion of the 'known place of supply' and referred the case to the ECJ (KMLZ VAT Newsletter 10 | 2023). The ECJ has now provided clarifying guidance but has also left key questions unanswered.

### 2 Facts of the case

The plaintiff purchases gift cards issued by Sony for the latter's PlayStation Store (PSN Cards) from intermediaries in other EU countries and sells them to end customers. Customers can use the PSN Cards to load credit onto their user accounts, which they can use to purchase digital content in the PlayStation Store. The PSN Cards in dispute have a German country code and, according to Sony's specifications, can only be redeemed by user accounts registered to a German address. Sony's conditions of use require its users to provide accurate data.

### 3 BFH's referral to the ECJ

In the BFH's view, both the place of supply and the VAT due for the supplies to the end customer, embodied by the PSN Cards, are known. In the normal case of contractual use, due to the presence of the German country code, the PSN Cards can only be redeemed for supplies of electronic services taxable in Germany at the standard VAT.



Laura Klein  
Certified Tax Consultant  
Master of Science (M.Sc.)

+49 (0) 89 21759 1296  
laura.klein@kmlz.de

However, the BFH raised doubts as to how the preceding cross-border B2B transfers of the PSN Cards affect their classification. If the PSN Cards are considered to be SPVs, each transfer is deemed to be the supply to which the voucher relates. In this respect, the BFH's decision raises the question of where this fictitious B2B supply of services is taxable: At the place where the supply is rendered to the end customer or - according to the general B2B rule - at the place where the individual recipient is established? If the latter was found to be the case, this would mean that transfers of SPVs to intermediaries could be taxable abroad, although the classification as a SPV is based on the fact that the place of supply, to which the voucher relates, is always in Germany. In the BFH's opinion, this could speak against the classification of a voucher as a SPV in the first place.

#### 4 Decision of the ECJ (judgment of 18 April 2024 – C-68/23 – *Finanzamt O*)

The ECJ clarifies: If the place of supply and the VAT due for the supply to be rendered to the end customer upon redemption are known, the voucher is deemed to be a SPV. Whether the voucher is transferred between (foreign) taxable persons, in the context of distribution, is irrelevant as regards its classification. The fact that the transfer is taxable is the legal consequence of the SPV classification and does not affect its requirements. Furthermore, the uniform treatment of vouchers within the EU intended by the regulation can only be achieved if the classification does not depend on whether they are sold in a cross-border or national distribution chain.

Furthermore, the ECJ agrees with the BFH that the use of PSN Cards by foreign end customers, in breach of contract, is irrelevant. Beyond that, however, the ECJ does not classify the PSN Cards. Rather, it emphasises that the referring court is required to examine whether the conditions for a SPV are met. In response to the second question put by the BFH in the alternative, the ECJ states that if the PSN Cards constitute MPVs, the BFH must examine whether the resale constitutes a taxable supply of distribution or promotional services.

#### 5 Consequences for the practice

The judgment brings the hoped-for clarity on the distinction between SPVs and MPVs in distribution chains: It is the place of supply and the VAT due for the supply rendered to the redeeming person that are decisive.

However, considerable uncertainties remain regarding the important follow-up question for distribution chains as to where the fictitious supply, resulting from the B2B transfer of a SPV, is taxable. While the BFH discussed this question openly in its decision, it seemed to imply, in the question referred to the ECJ, that the place of supply of services should be determined according to the general B2B rule, depending on the parties involved in the B2B supplies. The ECJ's reasoning can be interpreted in both directions. The hoped-for explicit statement was not provided. Yet this question is of great significance. If the fictitious supply is taxable at the same place where the supply to the end customer would be taxable, this means that taxable persons, who sell SPVs for supplies of services in another Member State in B2B transactions, may have to pay VAT there. In addition to VAT registrations, it would also be necessary to adjust the invoicing.

In view of the judgment, the preliminary question of whether a SPV is given in the individual case remains all the more important. This must be examined on a case-by-case basis, which is why this question leaves considerable room for argumentation. In particular, the individual voucher terms and conditions must be taken into account to assess whether the place of supply and the VAT due are sufficiently determined. In our opinion, the BFH has not yet sufficiently considered and discussed all of the relevant circumstances of this individual case.