JUDGMENT OF THE COURT (Ninth Chamber)

18 April 2024 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Articles 30a and 30b – Vouchers supplied electronically – Single-purpose and multi-purpose vouchers – Prepaid cards or voucher codes for the purchase of digital content, with a 'country' identifier making the digital content in question accessible only in the Member State in question)

In Case C-68/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 3 November 2022, received at the Court on 8 February 2023, in the proceedings

M-GbR

v

Finanzamt O,

THE COURT (Ninth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, S. Rodin and L.S. Rossi (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– M-GbR, by A. Kratzsch, Rechtsanwalt,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the European Commission, by F. Behre and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 30a and 30b of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive (EU) 2017/2455 of 5 December 2017 (OJ 2017 L 348, p. 7) ('the VAT Directive').

2 The request has been made in proceedings between M-GbR, a German non-trading company, and the Finanzamt O (German tax authorities) concerning the classification and liability for value added tax

(VAT) of the marketing of prepaid cards or voucher codes used to purchase digital content in an online shop.

Legal context

European Union law

3 Recitals 1 to 3 and 6 to 10 of Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers (OJ 2016 L 177, p. 9) read as follows:

‘(1) … Directive 2006/112/EC sets out rules on the time and place of supply of goods and services, the taxable amount, the chargeability of [VAT] and the entitlement to deduction. Those rules are, however, not sufficiently clear or comprehensive to ensure consistency in the tax treatment of transactions involving vouchers, to an extent which has undesirable consequences for the proper functioning of the internal market.

(2) To ensure certain and uniform treatment, to be consistent with the principles of a general tax on consumption exactly proportional to the price of goods and services, to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance, there is a need for specific rules applying to the VAT treatment of vouchers.

(3) 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.

…

(6) So as to identify clearly what constitutes a voucher for the purposes of VAT and to distinguish vouchers from payment instruments, it is necessary to define vouchers, which can have physical or electronic forms, recognising their essential attributes, in particular the nature of the entitlement attached to a voucher and the obligation to accept it as consideration for the supply of goods or services.

(7) The VAT treatment of the transactions associated with vouchers is dependent upon the specific characteristics of the voucher. It is therefore necessary to distinguish between various types of vouchers and the distinctions need to be set out in Union legislation.

(8) Where the VAT treatment attributable to the underlying supply of goods or services can be determined with certainty already upon issue of a single-purpose voucher, VAT should be charged on each transfer, including on the issue of the single-purpose voucher. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher should not be regarded as an independent transaction. For multi-purpose vouchers, it is necessary to clarify that VAT should be charged when the goods or services to which the voucher relates are supplied. Against this background, any prior transfer of multi-purpose vouchers should not be subject to VAT.

(9) For single-purpose vouchers susceptible to being taxed upon transfer, including on the issue of the single-purpose voucher, by a taxable person who acts in his own name, each transfer, including on the issue of that voucher, is regarded as being the supply of the goods or services to which the single-purpose voucher relates. Such a taxable person would in that case need to account for VAT on the consideration received for the single-purpose voucher according to Article 73 of Directive 2006/112/EC. Where, on the other hand, single-purpose vouchers are issued or distributed by a taxable person acting in the name of another person, that taxable person would not be regarded as taking part in the underlying supply.

(10) Only the intermediary services or separate supply of services such as distribution or promotion services would be subject to VAT. Therefore, where a taxable person who is not acting in his own name receives any separate consideration on the transfer of a voucher, that consideration should be taxable according to the normal VAT arrangements.'

4 Pursuant to Article 2(1)(c) of the VAT Directive, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT.

5 Article 30a of that directive provides:

'For the purposes of this Directive, the following definitions shall apply:

(1) "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;

(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;

(3) "multi-purpose voucher" means a voucher, other than a single-purpose voucher.'

6 Article 30b of that directive is worded as follows:

'1. Each transfer of a single-purpose voucher made by a taxable person acting in his own name shall be regarded as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher accepted as consideration or part consideration by the supplier shall not be regarded as an independent transaction.

Where a transfer of a single-purpose voucher is made by a taxable person acting in the name of another taxable person, that transfer shall be regarded as a supply of the goods or services to which the voucher relates made by the other taxable person in whose name the taxable person is acting.

Where the supplier of goods or services is not the taxable person who, acting in his own name, issued the single-purpose voucher, that supplier shall however be deemed to have made the supply of the goods or services related to that voucher to that taxable person.

2. 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 shall be subject to VAT pursuant to Article 2, whereas each preceding transfer of that multi-purpose voucher shall not be subject to VAT.

Where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the transaction subject to VAT pursuant to the first subparagraph, any supply of services that can be identified, such as distribution or promotion services, shall be subject to VAT.'

7 Article 44 of the same directive provides:

'The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.'

8 Article 58 of the VAT Directive provides:

'1. The place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:

…

(c) electronically supplied services, in particular those referred to in Annex II.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.'

9 Article 73 of the VAT Directive provides:

'In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall 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.'

10 Article 73a of that directive provides:

'Without prejudice to Article 73, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher shall 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.'

11 As set out in Article 410a of the directive, Articles 30a, 30b and 73a of the directive are to apply only to vouchers issued after 31 December 2018.

National law

12 Paragraph 3(13) to (15) of the Umsatzsteuergesetz (Law on turnover tax, 'the UStG') provides:

'(13) A voucher (single-purpose or multi-purpose) is an instrument for which

(1) there is an obligation to accept it as full or partial consideration for a delivery or other service, and

(2) the good to be delivered or the other service or the identity of the contractor providing the service are indicated on the instrument itself or in related documents, including the conditions of use of the instrument.

Instruments which only give entitlement to a price reduction are not vouchers within the meaning of the first sentence.

(14) A voucher as referred to in subparagraph 13, for which the place of supply or other service to which the voucher relates and the tax due in respect of those transactions are known at the time the voucher is issued, is a single-purpose voucher. Where an entrepreneur transfers a single-purpose voucher in his or her own name, the transfer of the voucher shall be deemed to be the supply of the goods or the provision of the other service to which the voucher relates. … The actual delivery or provision of the other service in return for which a single-purpose voucher is accepted shall not be regarded as a separate transaction in the cases referred to in sentences 2 to 4.

(15) A voucher referred to in subparagraph 13 which is not a single-purpose voucher is a multi-purpose voucher. The actual supply or provision of the other service for which the entrepreneur accepts a multi-purpose voucher as total or partial consideration shall be subject to VAT in accordance with Paragraph 1(1), whereas any previous transfer of such a multi-purpose voucher shall not be subject to VAT.'

13 Paragraph 3a(2) and (5) of the UStG reads as follows:

'(2) Subject to subparagraphs 3 to 8 […], any other supply which is made to a business person for the purposes of his or her business shall be made at the place where the beneficiary carries on his or her business.

…

(5) If the beneficiary of one of the other services referred to in the second sentence

(1) is not an entrepreneur for whose business the service is acquired […], the other service shall be performed at the place where the beneficiary of the service has his or her domicile, habitual residence or principal place of business.

The other services within the meaning of the first sentence are:

…

(3) other services provided by electronic means.'

14 Paragraph 27(23) of the UStG provides:

'Paragraph 3(13) to (15) … shall apply for the first time to vouchers issued after 31 December 2018.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 During 2019, which is the tax period in dispute, M-GbR marketed, via its online shop, prepaid cards or voucher codes enabling 'user accounts' to be loaded for the purchase of digital content in online shop X ('shop X').

16 Those cards, known as 'X cards', enabled purchasers to load accounts enabling them to use shop X ('X user account') with a certain nominal value in euros. Once such an account had been loaded, the account holder could purchase digital content from shop X, which was managed by company Y, established in the United Kingdom, at the prices indicated therein.

17 Y was responsible for issuing X cards and marketing them in the European Union, with different 'country' codes, through various intermediaries. X cards with the 'country' code DE were intended exclusively for customers who had both their domicile or habitual residence in Germany and a German X user account.

18 In accordance with the conditions of use of the X voucher codes published by Y on the shop X, when opening an X user account, customers were required to provide accurate information enabling their place of domicile or habitual residence to be determined. M-GbR's online shop also stated that a customer loading his or her X user account had to find out in advance the country in which his or her account was registered and that, given the strict separation of countries that applies to X cards, customers could only activate credits that were actually intended for the country corresponding to their X user account.

19 During 2019, M-GbR purchased X cards, issued by Y, through suppliers, L 1 and L 2, established in Member States other than the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland. In its tax returns, M-GbR considered the X cards to be multi-purpose vouchers within the meaning of Paragraph 3(15) of the UStG, in so far as, at the time those cards were sold, the domicile or habitual residence of the end customer was not known with certainty. The country identifier assigned by Y to each voucher was not sufficient to determine with certainty the place of supply of services, within the meaning of Paragraph 3a(5) of the UStG, since Y did not check customer data when X user accounts were opened and when they were subsequently used. In addition, a large number of customers residing outside German territory opened a German X user account, in particular because of price advantages, and also purchased X cards from M-GbR with the 'country' code DE.

20 Following a tax audit, the German tax authorities took the view that the X cards constituted single-purpose vouchers, since they could be used only by customers domiciled in Germany who had a German X user account, so that the place of supply, within the meaning of Paragraph 3a(5) of the UStG, was in Germany. The fact that some customers may have been able to circumvent the conditions of use of those cards, as prescribed by Y, by providing deliberately misleading data or by concealing

their Internet Protocol (IP) address, was not a determining factor for the purposes of classifying those cards for tax purposes as single-purpose vouchers. Furthermore, the German tax authorities considered that both Y and the other intermediaries had considered the X cards to be such vouchers. The tax authorities therefore set a provisional VAT instalment to be paid by M-GbR.

21 The action brought by M-GbR against the fixing of that instalment having been dismissed at first instance as unfounded, M-GbR brought an appeal on a point of law before the Bundesfinanzhof (Federal Finance Court, Germany), which is the referring court.

22 In its appeal, M-GbR alleges infringement of Paragraph 3(13) to (15) of the UStG and takes the view that X cards are multi-purpose vouchers, the transfer of which is not subject to VAT. At the time of that transfer, the supply was not sufficiently determined so that the appropriate VAT rate could not be set.

23 The referring court raises the question of the interpretation of Articles 30a and 30b of the VAT Directive in the context of a chain of taxable persons established in different Member States.

24 It wonders, in the first place, whether, in such a context, at the time of issue of the X cards, it can be considered that the place of supply of the electronically supplied services to end customers to which the voucher relates is known, so as to enable it to be classified as a single-purpose voucher within the meaning of Article 30a(2) of the VAT Directive. If this was the case, that place would be determined in accordance with Article 58(1)(c) of that directive and would therefore correspond to the place where the non-taxable person is established or has his or her domicile or habitual residence, which in this case is Germany. The referring court stated that it favoured that interpretation of the provisions of the directive and was inclined to dismiss the appeal on a point of law, having regard also to recital 3 of Directive 2016/1065, which refers to the objective of avoiding mismatches in respect of vouchers depending on whether they are marketed to the end customer directly or via intermediaries. However, that court accepts that another interpretation of the provisions of the same directive is possible.

25 Thus, according to that court, each transfer of the X cards between taxable persons in the chain of transactions in question could be taken into account as a supply of services. In such a case, pursuant to Article 44 of the VAT Directive, the place of supply of the services provided by Y to L 1 and by L 1 to L 2 would be in each of the Member States in which the taxable person for whom those services are provided is established, whereas the place of supply of the services provided by L 2 to M-GbR would be in Germany. In such a configuration, which could result from the interpretation of the first subparagraph of Article 30b(1) of that directive, the condition that the place of supply and the VAT must be known at the time the voucher is issued in order for it to be classified as a single-purpose voucher would not be satisfied. The appeal on a point of law should therefore be upheld.

26 In the second place, and on the assumption that the vouchers at issue should be regarded as multi-purpose vouchers, the transfer of which, prior to the actual supply of the underlying service, is not subject to VAT, the referring court enquires whether that solution would not run counter to the solution reached by the Court of Justice in its judgment of 3 May 2012, *Lebara* (C-520/10, EU:C:2012:264). It follows from that judgment that both the initial sale of a prepaid phone card and its subsequent resale by intermediaries are taxable transactions. However, on the basis that X cards are not to be treated differently from such prepaid phone cards from a VAT point of view, the referring court states that it is not clear to it how the final part of the first subparagraph of Article 30b(2) of the VAT Directive can be reconciled with the solution adopted in that judgment. Moreover, it does not rule out the possibility that M-GbR may have provided distribution or promotion services to Y, as referred to in the second subparagraph of Article 30b(2) of the VAT Directive, which are subject to VAT.

27 In those circumstances, the Bundesfinanzhof (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(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 [admittedly] known in so far as those services are intended to be supplied to [end] consumers within the territory of a Member State,

– but the fiction of the [first sentence of the] first subparagraph of Article 30b(1) … of the VAT Directive, according to which [also] the transfer of the voucher between taxable persons [is considered as] providing the service to which the voucher relates, … 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 … 3 May 2012, *Lebara*, C-520/10, EU:C:2012:264)?'

Consideration of the questions referred

The first question

28 By its first question the referring court asks, in essence, whether Article 30a and the first subparagraph of Article 30b(1) of the VAT Directive must be interpreted as meaning that the classification of a voucher as a 'single-purpose voucher', within the meaning of Article 30a(2) of that directive, depends on the fact that, at the time of issue of that voucher, the place of the supply of services to end consumers to which that voucher relates is known, even though, pursuant to the first subparagraph of Article 30b(1) of that directive, successive transfers of such a voucher between taxable persons, acting in their own name and established in the territory of Member States other than that in which those end consumers are situated, give rise to supplies of services carried out in the territory of those other Member States.

29 It should be noted at the outset that neither Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) nor Directive 2006/112, in its version prior to the amendments resulting from Directive 2016/1065, laid down specific provisions, for the purposes of levying VAT, governing transactions subject to that tax in which vouchers were used.

30 As pointed out in recitals 1 to 3 of Directive 2016/1065, it was in order to remedy the diversity of solutions adopted by the Member States, which were liable, in particular, to create situations of double taxation or non-taxation, and in view of the new rules on the place of supply for telecommunications, broadcasting and electronically supplied services applicable since 1 January 2015, that the EU legislature adopted that directive, which amends Directive 2006/112, inserting into the text of the latter, in particular, Articles 30a and 30b, applicable from 1 January 2019, with the aim of clarifying the VAT treatment of vouchers.

31 Thus, for the purposes of the VAT Directive, Article 30a(1) of that directive defines 'voucher' as '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'.

32 In the present case, the first question referred for a preliminary ruling is based on the premiss that the prepaid X cards issued by Y, in accordance with the conditions of use laid down by it, and bearing the identifier of the country in which the end consumer may purchase digital content marketed in shop X, managed by Y, meet that definition of a voucher. None of the interested parties which submitted written observations to the Court has challenged that premiss of the reference for a preliminary ruling, which it is appropriate to note.

33 That being so, Article 30a(2) and (3) of the VAT Directive makes a distinction between and defines two types of voucher, namely 'single-purpose' vouchers and 'multi-purpose' vouchers.

34 Under point 3 of Article 30a of the VAT Directive, a ‘multi-purpose voucher’ is a voucher other than a single-purpose voucher. The concept of a ‘multi-purpose voucher’ is thus residual in scope so that, in order to determine whether a particular instrument falls within the scope of one or other of the concepts, it must first be ascertained whether that instrument meets the definition of a ‘single-purpose voucher’ (see, to that effect, judgment of 28 April 2022, *DSAB Destination Stockholm*, C-637/20, EU:C:2022:304, paragraph 28).

35 In accordance with Article 30a(2) of that directive, a ‘single-purpose voucher’ is ‘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’. It is apparent from the actual wording of that provision that that concept covers vouchers for which the tax treatment can be determined at the time of issue.

36 The classification of a voucher as a ‘single-purpose voucher’ is therefore based on the fulfilment of two cumulative conditions existing ‘at the time of issue’ of the voucher. On the one hand, the place of supply of the goods or services to which the voucher relates and, on the other, the VAT payable on those goods or services must be known at that time. By contrast, where the tax treatment of a voucher cannot be determined at the time of the issue of that voucher, the voucher cannot be classified as a ‘single-purpose voucher’ within the meaning of Article 30a(2) of the VAT Directive.

37 In accordance with the first subparagraph of Article 30b(1) of the VAT Directive, each transfer of a single-purpose voucher made by a taxable person acting in his or her own name is to be regarded as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher accepted as consideration or part consideration by the supplier is not to be regarded as an independent transaction.

38 The purpose of the first subparagraph of Article 30b(1) is thus to lay down specific rules for taxation where a single-purpose voucher is the subject of one or more transfers between taxable persons acting in their own name, including, as indicated in recitals 8 and 9 of Directive 2016/1065, at the time of the issue of that single-purpose voucher, the actual handing over of the goods or the actual provision of the services in return for such a voucher by the end consumer not being regarded as a transaction independent of those transfers for VAT purposes.

39 However, it is clear from the wording of that provision that it applies only to instruments which, for the purposes of the VAT Directive, meet the definition of ‘single-purpose vouchers’, as resulting from Article 30a(2) of that directive.

40 Consequently, the application of the provisions of the first subparagraph of Article 30b(1) of that directive cannot call into question the conditions set out in Article 30a(2) thereof, as recalled in paragraph 36 of this judgment, which lead to an instrument being classified as a ‘single-purpose voucher’ at the time of its issue.

41 That assessment is supported by the objectives pursued by Articles 30a and 30b of the VAT Directive, which consist in particular in ensuring uniform treatment of vouchers, avoiding inconsistencies, double taxation or non-taxation of those instruments and mismatches in the VAT treatment of vouchers supplied between Member States, as emphasised in recitals 2 and 3 respectively of Directive 2016/1065.

42 Indeed, if it were ruled out that a voucher could be classified as a ‘single-purpose voucher’ where it is the subject of successive transfers between taxable persons acting in their own name and established in one or more Member States other than the one in whose territory the voucher is redeemed by the end consumer for the actual handing over of the goods or the actual provision of the service to which it relates, none of the aforementioned objectives would be achieved, since differences in the treatment of such vouchers would persist depending on whether they were marketed within a cross-border distribution chain or within a single Member State.

43 Moreover, an interpretation of the first subparagraph of Article 30b(1) of the VAT Directive which would take account of transfers between the taxable persons referred to in the previous paragraph of this judgment for the purposes of determining the place of supply of the goods or services, within the

meaning of Article 30a(2) of that directive, would be such as to make it virtually impossible to classify any voucher whatsoever as a single-purpose voucher and would therefore deprive that provision of much of its practical effect.

44 It follows that, as the German Government and the European Commission argued in essence in their written observations, the application of the first subparagraph of Article 30b(1) of the VAT Directive does not affect the conditions under which, by virtue of Article 30a(2) of that directive, a voucher is classified as a 'single-purpose voucher' within the meaning of the latter provision.

45 As to the classification, in the main proceedings, of an X card as a 'single-purpose voucher', although it is for the referring court alone to rule on such a classification in accordance with the particular circumstances of the case in the main proceedings, the fact remains that the Court of Justice has jurisdiction to elicit from the provisions of that directive, in this case Article 30a(2), the criteria that the referring court may or must apply to that end (see, to that effect, judgment of 3 December 2015, *Banif Plus Bank*, C-312/14, EU:C:2015:794, paragraph 51).

46 Moreover, there is nothing preventing a national court from asking the Court of Justice to rule on such a classification, although it is for the national court to make the findings of fact necessary for that classification in the light of all the material in the file in its possession (see judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 128 and the case-law cited).

47 As regards the first condition, as set out in Article 30a(2) of the VAT Directive, according to which the place of supply of the goods or services to which the voucher relates must be known at the time of issue of the voucher, taking account of the conditions for the use of X cards, in particular the identifier of the Member State in which those cards are to be used, affixed to them, the information provided by the referring court and having regard to Article 58(1)(c) of the VAT Directive, it appears that, at the time of issue of such vouchers, the place where the digital content is supplied to the end consumer in exchange for the X cards sold by M-GbR is in Germany.

48 In that regard, it should be made clear that, for the purposes of examining that first condition, account cannot be taken of the fact, set out by M-GbR before the referring court, that end consumers residing outside German territory use X cards purchased from it with the 'country' identifier DE in disregard of the conditions for the use of those cards, in order to obtain price advantages.

49 The appropriate classification of a transaction for VAT purposes cannot obviously depend on any abusive practices.

50 It therefore appears – which it is in any event for the referring court to ascertain – that the first condition laid down in Article 30a(2) of the VAT Directive is satisfied.

51 With regard to the second condition laid down in that provision, the information provided in the request for a preliminary ruling does not make it possible to determine whether the VAT payable on the various items of digital content that may be obtained in return for the X cards is known at the time of issue of the X cards.

52 While it is true that there is nothing in the main proceedings to suggest that there is any uncertainty as to the VAT payable on the various items of content and that the Commission considers that the items of content to which the X cards sold by M-GbR in Germany give access must be understood as being subject to the same rate and the same treatment as regards VAT, it will in any event be for the referring court to determine whether that second condition is satisfied.

53 On the assumption that the supply of services in return for an X card is subject to the same basis of assessment and the same rate of VAT in Germany, irrespective of the digital content obtained, the referring court will therefore be able to find that such an instrument satisfies the second condition laid down in Article 30a(2) of the VAT Directive and, consequently, also taking into account the fact that the same instrument satisfies the first condition laid down in that provision, that it must be classified as a 'single-purpose voucher'.

54 By contrast, if the digital content that an end consumer can obtain in return for an X card is subject to different VAT assessment rules or rates in that Member State, that court will have to find that it is impossible to foresee, at the time of the issue of an X card, which VAT is applicable to the digital content chosen by the end consumer in exchange for such a voucher. In that case, X cards would not be classified as 'single-purpose vouchers' (see, by analogy, judgment of 28 April 2022, *DSAB Destination Stockholm*, C-637/20, EU:C:2022:304, paragraphs 30 and 31).

55 In the light of the foregoing considerations, the answer to the first question is that Article 30a and Article 30b(1) of the VAT Directive must be interpreted as meaning that the classification of a voucher as a 'single-purpose voucher' within the meaning of Article 30a(2) of that directive depends solely on the conditions laid down in that provision, which include the requirement that the place of supply of services to end consumers, to which that voucher relates, must be known at the time of the issue of that voucher, irrespective of the fact that the voucher is the subject of transfers between taxable persons acting in their own name and established in the territory of Member States other than that in which those end consumers are located.

The second question

56 By its second question, put solely in the event that vouchers such as those at issue in the main proceedings are classified as 'multi-purpose vouchers' within the meaning of Article 30a(3) of the VAT Directive, the referring court asks, in essence, whether Article 30b(2) of that directive must be interpreted as meaning that, although a transfer of 'multi-purpose vouchers' is not subject to VAT in accordance with the first subparagraph of that provision, payment of VAT could nevertheless be required on another basis, pursuant to the second subparagraph of that provision.

57 It should be noted that, in accordance with the first subparagraph of Article 30b(2) of the VAT Directive, VAT is charged on the actual handing over of the goods or the actual provision of the services in exchange for a 'multi-purpose voucher' accepted by the supplier, so that that tax is not charged on transfers of that voucher that take place before such a voucher is redeemed by the end consumer for those goods or services.

58 In so far as the nature of the goods or services to which a 'multi-purpose voucher' relates and which will be chosen by the end consumer is not known at the time of the issue of a voucher of that type, the VAT payable on those goods or services cannot be determined with certainty at that time. It is therefore only when such a voucher is redeemed for the goods or services that the VAT is known and can be duly applied.

59 However, where a multi-purpose voucher is the subject of one or more transfers, in the context of a distribution chain extending over the territory of several Member States, prior to its redemption by the end consumer, the question arises as to whether the consideration received on each transfer of that voucher between taxable persons must be subject to VAT as consideration for a service independent of the redemption of that voucher for goods or services.

60 In this respect, it is important to recall that, under the second subparagraph of Article 30b(2) of the VAT Directive, where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the actual handing over of the goods or the actual provision of the services to the end consumer, any supply of services that can be identified, such as distribution or promotion services, is to be subject to VAT.

61 Furthermore, according to Article 73a of that directive, 'the taxable amount of the supply of … services provided in respect of a multi-purpose voucher shall 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 … services supplied'.

62 The second subparagraph of Article 30b(2) of the VAT Directive, read in conjunction with Article 73a thereof, is thus intended in particular to prevent the non-taxation of distribution or promotion services, in accordance with the objectives of the VAT Directive, by ensuring that VAT is charged on any profit

margin (see, to that effect, Opinion of Advocate General Ćapeta in *DSAB Destination Stockholm*, C-637/20, EU:C:2022:131, paragraphs 71 to 75).

63 It follows that, with regard to X cards, provided that those instruments are classified as 'multi-purpose vouchers' within the meaning of Article 30a(3) of the VAT Directive, it cannot be ruled out that, when reselling those vouchers, M-GbR may be carrying out an independent supply of services, such as a supply of distribution or promotion services for the benefit of the taxable person who, in consideration for the vouchers, actually provides digital content to the end consumer. It is for the referring court to determine whether, having regard to all the circumstances of the case in the main proceedings, M-GbR's transactions should be classified as such for VAT purposes.

64 That interpretation of the provisions of the VAT Directive does not conflict with the judgment of 3 May 2012, *Lebara* (C-520/10, EU:C:2012:264), to which the referring court refers, which concerned the tax treatment of prepaid cards for telecommunications services and whose solution is not relevant for the purposes of the answer to be given to the present question. As is apparent in particular from paragraph 28 of that judgment, the scope of that judgment is clearly limited to the situation at issue in that case, which in any event predates the provisions of the VAT Directive inserted by Directive 2016/1065, which concerned services and VAT already identified at the time of the issue of those prepaid cards. Accordingly, that judgment relates to instruments that should now, under the current provisions of the VAT Directive, be classified as 'single-purpose vouchers'.

65 In the light of the foregoing considerations, the answer to the second question is that Article 30b(2) of the VAT Directive must be interpreted as meaning that the resale by a taxable person of 'multi-purpose vouchers', within the meaning of Article 30a(3) of that directive, may be subject to VAT, provided that it is classified as a supply of services to the taxable person who, in return for those vouchers, carries out the actual handing over of the goods or the actual provision of the services to the end consumer.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

1. **Article 30a and Article 30b(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2017/2455 of 5 December 2017,**

   must be interpreted as meaning that the classification of a voucher as a 'single-purpose voucher' within the meaning of Article 30a(2) of Directive 2006/112, as amended, depends solely on the conditions laid down in that provision, which include the requirement that the place of supply of services to end consumers, to which that voucher relates, must be known at the time of the issue of that voucher, irrespective of the fact that the voucher is the subject of transfers between taxable persons acting in their own name and established in the territory of Member States other than that in which those end consumers are located.

2. **Article 30b(2) of the Directive 2006/112, as amended by Directive 2017/2455,**

   must be interpreted as meaning that the resale by a taxable person of 'multi-purpose vouchers', within the meaning of Article 30a(3) of Directive 2006/112, as amended, may be subject to value added tax, provided that it is classified as a supply of services to the taxable person who, in consideration for those vouchers, carries out the actual handing over of the goods or the actual provision of the services to the end consumer.

[Signatures]

* Language of the case: German.