

## **Supplies in connection with issue and redemption of e-money**

### ***Smart Voucher Ltd***

#### **Background**

The case concerns Smart Voucher's Ukash proposition. This essentially allows consumers to buy Ukash e-money which can then be used to make purchases on-line. The offering is particularly aimed at the under 18's and people who do not wish to use debit or credit cards on-line. When Ukash e-money is purchased in a participating retail outlet, the customer receives a voucher containing a 19 digit code. On redemption the customer uses this code and if the Ukash amount is greater than the purchase price, change is given in the form of a new code. Individuals can manage their Ukash account on-line to split values into smaller amounts, combine into larger amounts or even convert currency.

#### **Ukash purchase**

Smart Voucher enters into contracts with merchants such as Paypoint, e-Pay or Payzone. This enables retailers belonging to these networks to sell Ukash e-money. Individuals pay the cash to the retailer whose systems interface with the Ukash system to provide the voucher and number. The money is passed back net of commission via the merchant to Smart Voucher.

#### **Ukash redemption**

Smart Voucher enters into agreements with merchants to allow their customers to pay with Ukash. For these services Ukash have a variety of fees. There is a standard merchant service charge of 6 percent (a minimum of £250 per month). On top of this there is a monthly £25 administration fee, a £5 bank wire charge and a potential integration fee of £2,000 if integration is not completed within 60 days.

#### **The Services**

The services provided by Smart Money to a merchant were detailed in a service level agreement and are essentially as follows:

- Provision of interface with the Ukash system to allow Ukash issue and redemption
- Provision of messaging interface for merchant's customer facing website i.e. to allow customer to enter Ukash number
- Access to reports showing voucher usage
- Provision of a Help Desk to support the Merchant Customer Service desk.

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The Tribunal noted the only elements requiring human intervention are the help desk and the accounting function required for settlement. The issue under dispute was whether the supplies to the merchants were electronically supplied services (taxed where the customer belongs – some merchants were non UK so supplies to these would not bear UK VAT) or the supply of the right to belong to and use the Ukash system (taxed where the supplier belongs, i.e. the UK, and hence all subject to UK VAT).

## **Held**

### Is it a digitised product?

HMRC argued that the key feature which needs to be present in an electronically supplied service is a digitised product. In particular HMRC drew attention to the Help Desk and accounting function which were not digitised and required human intervention. However the Tribunal was dismissive of this argument. Whilst accepting these elements, alone were not electronically supplied, the Chairman agreed with the taxpayer that these were ancillary to the core verification service and did not affect the characterisation of the main supply.

### Nature of the supply

The Chairman then turned to what the Tribunal considered to be HMRC's principal argument. HMRC argued the nature of the supply was firstly the setting up and running of the scheme and secondly of bringing together new consumers to merchants. This HMRC added was a supply of a commercial advantage. To support this argument HMRC cited Customs & Excise Commissioners v Diners Club Ltd and another [1989] STC 407, and Customs & Excise Commissioners v High Street Vouchers Ltd [1990] STC 575. However the Tribunal did not regard either case as being of relevance. Diners Club essentially found that something of value was obtained by the retailers for which they paid in the form of a discount allowed by the retailers on the sale to Diners Club of the debts created by the use of the cards. In High Street Vouchers the Court found the 10 percent discount forgone by the retailers on redemption of the vouchers constituted consideration for the services by High Street Vouchers. The Tribunal found that neither case was an authority for any general proposition as to the nature of the services provided as they both concerned consideration.

In reaching its conclusion as to the nature of supply the Tribunal found the services provided were those set out in the Merchant Agreement and Service Level agreement. The Chairman added HMRC's argument that the supply was a right to participate and secure wider market benefit confused the real supply with the relationship between the parties and the motive of the recipient. The Chairman added such an approach would be distortive and incorrect in law. Accordingly the

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Tribunal found there was no supply of a right to participate or the benefit of a wider market. The supplies were electronically supplied services.

Scope of “electronically supplied services”

Despite having found for the taxpayer, given the time spent considering the scope of electronically supplied services, the Tribunal decided to make some further comments. The Tribunal looked at the various parts of both the Sixth Directive and VAT Directive. The Tribunal came to the conclusion the important point is not the description or analysis of the nature of the service but the manner in which it is supplied. Agreeing with the taxpayer, the Tribunal was of the view the expression ‘electronically supplied service’ should be given its natural meaning of a service supplied electronically and not limited to a supply of a digitised product. The Chairman added the fact that supplies that are communicated electronically by email are specifically excluded from electronically supplied services supports this view. Coming back to the case the Tribunal added that even if HMRC were right about the nature of the services, they could still only be supplied electronically and would therefore still be electronically supplied services.

[To read the decision in full click here.](#)

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