

VAT treatment of vouchers (2) (3/38/17)

We continue the article in *last week's Flash News* about middleman (agent) engagements and the VAT treatment of voucher sales.

The agency concept under the VAT Act

The VAT treatment of an agent's operations depends on the powers and obligations laid down by the agency agreement:

- The agent acts in the name of the principal, who is the real supplier of goods or services. All acts the agent carries out within the scope of powers granted to him are binding on the principal; or
- The agent is involved in supplies of goods and services in his own name.

To apply VAT correctly, the contractual relationship between the agent and the real supplier as well as the economic substance of their transactions need to be carefully evaluated.

An agent acting in the supplier's name

An agent within the meaning of the VAT Act is a taxable person who takes part in supplies of goods or services, without becoming the owner of those goods or the real service provider, in furtherance of the interests of other parties in those supplies. The agent issues a tax invoice and receives a fee only for his agency service, not for goods or services supplied.

In this situation the agent's operations are essentially characterised by three cumulative conditions:

1. The agent is authorised to independently conclude, or prepare the conclusion of, contracts with third parties in the name and for the benefit of the principal, meaning the third party knows that the agent is acting for the real supplier; and
2. The agent acts for the benefit of the principal; and
3. The agent's acts have legal consequences for the principal, i.e. they change the scope of his rights and obligations. The legal consequences of the transaction do not apply to the agent.

In this case VAT should be calculated and reported as follows:

- The goods or services are supplied and a tax invoice issued between the real supplier and the customer;
- The supplier does not invoice the agent for the supply of goods or services. The agent does not invoice the customer in his own name;
- The agent issues a tax invoice to the principal for his agency service only;
- The supplier reports the supply of goods or services on his VAT return according to the terms of the transaction (place, time, rate etc).

An agent acting in his own name

The VAT Act states that where a taxable person, acting in his own name but for the benefit of another party, is involved in a supply of services, the taxable person will be treated as having acquired and supplied those services.

So for VAT purposes, agents involved in supplies of goods or services in their own name, but for the benefit of the real supplier, are considered to be acquiring those goods or services and supplying them on to

customers, although in fact such supplies are of a simulative nature.

In this case VAT should be calculated and reported as follows:

- The real supplier issues a tax invoice for the supply to the agent, who then invoices the customer in his own name;
- The agent reports the acquisition and supply of goods or services on his VAT return according to the terms of the transaction (place, time, rate etc). The agency fee is the difference between the selling price and the acquisition cost;
- If supplies of goods and services attract VAT, the agent can deduct the input VAT appearing on invoices received from the supplier.

(to be continued)