

AG: loyalty points are not awarded free of charge for VAT purposes

On 11 September 2025, Advocate General ('AG') Kokott of the Court of Justice of the European Union ('CJEU') delivered her Opinion in the Lyko operations case (C-436/24, 'Lyko'). In the Opinion, the AG discusses the VAT treatment of a loyalty program under which customers earn points based on their purchases which can then be redeemed for goods in a subsequent transaction. The AG reaches different conclusions on the VAT treatment than the treatment currently set out in Dutch policy. This case may therefore be of considerable importance for businesses operating loyalty programs.

A conclusion is a reasoned advice to the CJEU. It remains uncertain whether the CJEU will follow the AG's opinion in this case.

1. Facts and background

The case concerns the Swedish company Lyko, which intends to introduce a loyalty program in which customers earn points with every purchase. Customers can redeem these points for certain products from the assortment, but only when they make a new purchase. Depending on the choice of a particular premium item, the redeemed points represent a value of between two and ten percent of the purchases on which the points were originally awarded.

Lyko questioned whether these points should be regarded as vouchers under the European VAT rules and what the VAT implications would be. The company submitted this question to the Swedish tax authorities, and it ultimately reached the CJEU.

2. Opinion of the AG

The AG has made a precise analysis of the conditions of Lyko's specific loyalty program. Since the loyalty points can only be redeemed for a premium item in combination with a subsequent regular purchase, they are economically speaking a discount voucher: when points are redeemed with the purchase of two products (the premium item and the regular item), Lyko supplies one of the two products at a reduced price. It is possible that the price paid should then be attributed to both products, but the AG does not make this explicit.

According to the AG, because the points function as a discount voucher, the VAT rules on vouchers do not apply. Under those rules, an instrument qualifies as a voucher only if it can be exchanged independently as consideration for a supply of goods or services.

For the sake of completeness, the AG then discusses whether the voucher rules would apply if the loyalty points could be redeemed for a premium item without the obligation to make a subsequent purchase. According to the AG, they would, because in that case all the conditions for a voucher are met. It is sufficient that the points can be exchanged for a supply of goods or services and that the terms and conditions specify for what purpose or from whom the points can be redeemed. It is irrelevant whether the points already have a certain, fixed monetary value at the time of issue.

In this part of the Opinion, the AG takes a number of striking positions:

- In the AG's view, the points are not awarded free of charge, rather, part of the purchase price of the product for which the points are granted must be allocated to them. The AG refers to earlier CJEU case law (the Kuwait Petroleum judgment of 27 April 1999), which appears to contradict this, but identifies a decisive distinction. In Kuwait Petroleum, stamps were provided as a gift, and the buyer could choose whether or not to accept them. In Lyko, by contrast, points are only awarded to buyers who have already chosen to participate in the loyalty program. In our view, this is a minimal distinction. The AG actually seems to conclude that the Kuwait Petroleum judgment is incorrect or outdated.
- If the stamps do not represent a fixed value, the allocation of the purchase price advocated by the AG is only possible at the time the points are redeemed for a particular item, because only then can the value of each redeemed point be determined. At that point, part of the purchase price of the earlier product must still be allocated to the provision of the points, thereby reducing the consideration for the earlier product.
- The VAT rules for vouchers distinguish between so-called 'single-purpose vouchers' ('SPVs') and multi-purpose vouchers ('MPVs'). SPVs give rise to VAT at the time of issue, because the VAT treatment of the underlying supply is already known. In the case of MPVs, VAT is only due upon redemption. According to the AG, points always qualify as MPVs if their value is determined only upon redemption.
- If an MPV is never redeemed, no VAT is levied. However, if no value can be attributed to the voucher without redemption (see the second bullet above), the purchase price remains fully allocated to the product for which the unredeemed points were provided.

3. Practical relevance

The VAT treatment of loyalty programs is complex. As shown above, this largely depends on the precise conditions of each program. In the Netherlands, detailed policy is laid down in the voucher decree of 14 December 2018. Under that decree, points awarded "free of charge" with the purchase of a product are treated in line with the Kuwait Petroleum judgment and no part of the purchase price is allocated to the points. Depending on the purchase price of the premium item (if it is higher than €15 excluding VAT), a deemed supply for VAT may take place upon redemption of the points, as the premium item is deemed to have been given away free of charge.

If the CJEU follows the AG's opinion, this will have significant consequences for the VAT treatment of loyalty programs in the Netherlands. Depending on the design of a program, the outcome may be more or less favorable:

- If the points are awarded for a service subject to a reduced VAT rate or an exemption and the points are redeemed for a product with a higher VAT rate, the AG's approach may lead to a higher tax burden than under the Dutch policy.
- In the opposite situation, an advantage may arise. This may also be the case if the points are redeemed at another business.

- If products are supplied that do not lead to a deemed supply for VAT because the purchase value does not exceed € 15 excluding VAT, the AG's approach may be unfavorable.

In that case, Dutch policy would partly revert to the position before the voucher rules came into force on 1 January 2019 (the 'stamp scheme').

The above analysis is not exhaustive and depends on the specific design of the loyalty program. We recommend reviewing the potential consequences if the CJEU adopts the AG's opinion. If this would produce a more favorable result, it may be advisable to object against VAT payments reported in current VAT returns in order to preserve rights. If the current Dutch policy turns out to be more favorable, it would be wise to map out what the financial impact would be of a different CJEU ruling and whether the terms and conditions of the loyalty program could possibly be adjusted in that case.

The advisors of the Indirect Tax Group of KPMG Meijburg & Co will be happy to help you with this analysis. Feel free to contact one of them or your usual advisor.

KPMG Meijburg & Co
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