

2. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

2.2 **Origin:** Italy
Reference: Article 148(a), (c) and (d)
Subject: Vessels used for navigation on the high seas
(Document taxud.c.1(2015)630069 – Working paper No 840)

1. The VAT Committee **unanimously** agrees that to benefit from the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive, the condition of being ‘used for navigation on the high seas’ shall apply to both vessels carrying passengers for reward and vessels used for the purpose of commercial, industrial and fishing activities but not to vessels for rescue or assistance at sea or to vessels for inshore fishing.
2. The VAT Committee **almost unanimously** agrees that the concept of ‘high seas’ for the purpose of the VAT Directive must be seen as static and shall cover any part of the sea outside the territorial waters of any country that is beyond a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the International Law of the Sea¹.
3. The VAT Committee is of the **almost unanimous** view that Member States shall be required to implement safeguards to guarantee that only vessels carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities which are effectively and predominantly used for navigation on the high seas benefit from the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive.

In that regard, the VAT Committee **almost unanimously** agrees that Member States cannot rely only on objective criteria, such as the length or the tonnage of the vessel, in order to determine that a vessel is effectively and predominantly used for navigation on the high seas, unless they have been authorised to apply a simplification measure pursuant to the procedure laid down in Article 394 of the VAT Directive. However, the VAT Committee is of the **almost unanimous** view that objective criteria may be used to exclude from the scope of the exemption vessels that in any case do not meet the conditions required under Article 148(a), (c) and (d) of the VAT Directive for the exemption to apply.

¹ United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982.

4. The VAT Committee is of the **almost unanimous** view that when a vessel carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities qualifies as effectively and predominantly used for navigation on the high seas, the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive shall apply to all transactions in respect of that vessel in their entirety, subject however to the other conditions governing the exemptions being met.

Conversely, if the use of the vessel subsequently changes, so that it is no longer effectively and predominantly used for navigation on the high seas, the VAT Committee is of the **almost unanimous** view that the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive shall no longer be applicable to any transactions in respect of that vessel.