

#### **4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

- 4.2 Origin:** Commission  
**References:** Articles 9, 25(a), 135(1)(b)-(g), (l) and (k)  
**Subject:** The VAT treatment of transfers of payment entitlements under the Common Agricultural Policy's Single Payment Scheme  
(Document taxud.d.1(2009)188306 – Working paper No 630)

- *The transfer of payment entitlements by sale without land*

The VAT Committee, at **large majority**, agrees that given the nature of the payment entitlements, the transfer of such entitlements by sale without land must be regarded as an assignment of intangible property and be treated as a supply of services within the meaning of Article 25(a) of the VAT Directive.

The VAT Committee, at **large majority**, considers that the payment entitlements may not be regarded as an exempt financial transaction within the meaning of Article 135(1)(b)-(g) of the VAT Directive.

- *The transfer of payment entitlements by sale with land*

Where payment entitlements and land are sold together, it is the view of the **large majority** of the VAT Committee that while the transfer of payment entitlements may in many cases qualify as ancillary to the supply of the land and therefore be covered by the exemption in Article 135(1)(k) of the VAT Directive, the actual circumstances of the sale must nevertheless be examined in each case in order to determine whether in accordance with the settled case-law of the Court of Justice of the EU, the sale of the land and the sale of the payment entitlements must be regarded as two independent supplies or if instead, it shall be treated as a single transaction.

- *The transfer of payment entitlements by leasing with land*

The VAT Committee, at **large majority**, agrees that since under the Common Agricultural Policy's Single Payment Scheme the transfer of payment entitlements by lease or similar types of transaction is allowed only if the payment entitlements transferred are accompanied by the equivalent number of eligible hectares of land, the VAT treatment of such transfers must follow that of the underlying land transfer because the leasing of land and the transfer of payment entitlements go together. If the leasing of the land is exempt pursuant to Article 135(1)(l) of the VAT Directive, the transfer of the payment entitlements shall also be exempted.

**6. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE EUROPEAN COURT OF JUSTICE**

**6.3 Origin: Commission**  
**Reference: Article 132(1)(a)**  
**Subject: Case C-357/07 (TNT Post UK limited)**  
**(Document taxud.d.1(2009)326553 – Working paper No 643)**

- *As regards the scope of the exemption*

The VAT Committee **almost unanimously** confirms that the exemption provided for in Article 132(1)(a) of the VAT Directive for the “public postal services” must be applied to any universal service provider, irrespective of whether it is a public or private operator, but limited to the services falling under the “universal service” as provided for in Article 3 of Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC.

- *As regards the meaning of “an operator who undertakes to provide [...] the universal postal service”, notably to whom the word “undertake” refers to*

The VAT Committee is of the **almost unanimous** view that to be regarded as an operator who undertakes to provide the universal service, the postal operator must supply postal services under a specific legal regime provided for pursuant to Article 3 of Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC, which is substantially different to that under which other postal operators provide such services.