

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.9 Origin:** United Kingdom and Greece
Reference: Article 148(e) and (f)
Subject: Case C-33/11 A Oy
(Document taxud.c.1(2013)98712 – Working paper No 758)

with account also taken of discussions during the 100th meeting:

- 4.6 Origin:** Commission
Reference: Article 148
Subject: Case C-33/11 A Oy, follow-up
(Document taxud.c.1(2014)204931 – Working paper No 788)

1. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(f) of the VAT Directive shall be applicable to the supply of an aircraft to a taxable person when the aircraft is acquired by the taxable person with a view to allowing exclusive use of it by an airline, or several airlines each operating for reward chiefly on international routes.

This exemption shall also, according to the **almost unanimous** view of the VAT Committee, be applicable to the subsequent sale of the aircraft by the taxable person having acquired it provided that the exclusive use of that aircraft remains for airlines operating for reward chiefly on international routes.

In any case, the VAT Committee **almost unanimously** agrees that the exemption shall not, under any circumstances, cover supplies made at an earlier stage in the commercial chain than the supply made to the taxable person acquiring the aircraft with a view to allowing its exclusive use by an airline, or several airlines each operating for reward chiefly on international routes.

Further, the VAT Committee **almost unanimously** agrees that the exemption shall apply to the chartering and hiring of an aircraft if the recipient of those services is an airline, or several airlines each operating for reward chiefly on international routes or if that recipient allows for exclusive use of the aircraft by one or several of such airlines.

The VAT Committee **almost unanimously** agrees that this exemption shall also apply to the modification, repair and maintenance of the aircraft referred to above and the supply, hiring, repair and maintenance of equipment incorporated or used therein.

2. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(e) of the VAT Directive, referring to the supply of goods for the fuelling and provisioning of aircraft, will also apply when made in relation to aircraft belonging to a taxable person (i) who allows exclusive use of the aircraft to airlines operating for reward chiefly on international routes and (ii) who acquired that aircraft with a view to allowing that exclusive use. However, the VAT Committee **almost unanimously** agrees that the exemption would only apply to the supply of goods directly made to the airline operating the aircraft, and not cover supplies rendered at an earlier stage in the commercial chain.
3. The VAT Committee **almost unanimously** agrees that, for the exemptions laid down in Article 148(e) and (f) of the VAT Directive to apply, the aircraft must be used by the airline operating for reward chiefly on international routes exclusively for its commercial activities. Where the use of the aircraft is shared with users who are not airlines operating for reward chiefly on international routes, or if it is used for purposes other than the commercial activities of the airline, the VAT Committee is of the **almost unanimous** view that exemption shall be denied.

Irrespective of any shared use of an aircraft, the VAT Committee **almost unanimously** agrees that where goods for the fuelling and provisioning of the aircraft are supplied directly to the airline which operates for reward chiefly on international routes for its exclusive use in its commercial activities, the exemption provided for in Article 148(e) of the VAT Directive shall nevertheless be applicable.

4. The VAT Committee is of the **almost unanimous** view that an airline operating for reward chiefly on international routes does not use an aircraft exclusively for its commercial activities and the exemption shall be denied when the owner of the aircraft, or any related person, has the right to claim use of the aircraft, unless there is clear commercial evidence that such use is only granted on the same basis as for any other client of the airline.