

**Questions referred**

1. When separate development consents are required for, on the one hand, the infrastructure works for an airport with a basic runway length of 2 100 m or more and, on the other hand, for the operation of that airport, and the latter development consent — the environmental permit — is only granted for a fixed period, should the term 'construction', referred to in paragraph 7(a) of Annex I to Council Directive 85/337/EEC <sup>(1)</sup> of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, be interpreted as meaning that an environmental impact report should be compiled not only for the execution of the infrastructure works but also for the operation of the airport?
2. Is that mandatory environmental impact assessment also required for the renewal of the environmental permit for the airport, both in the case where that renewal is not accompanied by any change or extension to the operation, and in the case where such a change or extension is indeed intended?
3. Does it make a difference to the mandatory environmental impact reporting in the context of the renewal of an environmental permit for an airport whether an environmental impact report was compiled earlier, in relation to a previous operational consent, and whether the airport was already in operation at the time that environmental impact reporting was introduced by the European or the national legislator?

<sup>(1)</sup> OJ L 175, p. 40.

**Reference for a preliminary ruling from High Court of Justice (Chancery Division) (England and Wales) made on 20 July 2009 — T-Mobile (UK) Ltd v The Commissioners for Her Majesty's Revenue & Customs**

(Case C-276/09)

(2009/C 267/52)

*Language of the case: English*

**Referring court**

High Court of Justice (Chancery Division) (England and Wales)

**Parties to the main proceedings**

*Applicant:* T-Mobile (UK) Ltd

*Defendant:* The Commissioners for Her Majesty's Revenue & Customs

**Questions referred**

1. What are the characteristics of an exempt service that has 'the effect of transferring funds and entail[sl] changes in the legal and financial situation'?

In particular:

- (a) Is the exemption applicable to services which would not otherwise have to be performed by any of the financial institutions which (i) make a debit to one account, (ii) make a corresponding credit to another account, or (iii) perform an intervening task between (i) or (ii)?
  - (b) Is the exemption applicable to services which do not include the carrying out of tasks of making a debit to one account and a corresponding credit to another account, but which may, where a transfer of funds results, be seen in retrospect as having been the cause of that transfer?
2. Does the exemption in Article 13B(d)(3) of the Sixth Directive <sup>(1)</sup> for 'transactions concerning payments [or] transfers' apply to a service of obtaining and processing payments by credit and debit cards, such as those performed by the taxpayer in the present case? In particular, where the transmission of settlement files at the end of each day by the taxpayer has the effect of automatically causing the customer's account to be debited and the taxpayer's account to be credited, will those services fall within the scope of Article 13B(d)(3)?
  3. Does the answer to Question 2 depend on whether the taxpayer itself obtains authorisation codes for onward transmission or obtains those codes through the agency of its acquiring bank?
  4. Does the exemption in Article 13B(d)(l) of the Sixth Directive for 'the negotiation of credit' apply to services such as those offered by the taxpayer in the present case in relation to credit card payments, whereby as a result of those services the customer's credit card account is debited with further amounts of credit?
  5. Does the exemption for 'transactions concerning payments [or] transfers' apply to services of accepting and processing payments made using third party agents, such as those offered by the taxpayer through the Post Office and PayPoint in the present case?
  6. Does the exemption for 'transactions concerning payments [or] transfers' apply to services of obtaining and processing payments made by cheque sent to the taxpayer or his agent, which payments have to be processed by the taxpayer and its bank?

7. Does the exemption for 'transactions concerning payments [or] transfers' apply to services, such as those offered by the taxpayer in the present case, of receiving and processing payments made over the counter at a bank for credit, through the banking system, to the taxpayer's bank account?
8. What particular factors have to be taken into account when deciding whether a charge (such as the payment handling charge in the present case) that is applied by a taxpayer to its customer in respect of the customer's choice to make payment to the taxpayer using a particular payment method, and which is individually identified in the contractual document and separately itemised in invoices issued to customers, is a separate supply for VAT purposes?

- (b) under the relevant United Kingdom legislation the supplies consisting of the rental of cars were treated as supplies of services made in Germany and accordingly not subject to value added tax in the United Kingdom. Under German law these supplies were treated as supplies of goods made in the United Kingdom and accordingly not subject to value added tax in Germany. The consequence was that no output tax was charged on these supplies in either member state;
- (c) the United Kingdom bank selected its German subsidiary as lessor and determined the duration of the leasing arrangements with a view to obtaining the tax advantage of no VAT being chargeable on the rental payments:

(<sup>1</sup>) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment  
OJ L 145, p. 1

1. Is Article 17(3)(a) of the Sixth Directive (<sup>1</sup>) (now Article 169(a) of the Principal VAT Directive) to be interpreted as entitling the United Kingdom tax authorities to refuse to allow the German subsidiary to deduct VAT which it paid in the United Kingdom in respect of the purchase of the cars?

2. In determining the answer to the first question, is it necessary for the national court to extend its analysis to consider the possible application of the principle of prohibiting abusive practices?

3. If the answer to Question 2 is yes, would the deduction of input tax on the purchase of the cars be contrary to the purpose of the relevant provisions of the Sixth Directive and thus satisfy the first requirement for an abusive practice as described in paragraph 74 of the decision of the Court in Halifax plc and Others v Customs & Excise Commissioners (Case C-255/02) having regard among other principles to the principle of the neutrality of taxation?

4. Again if the answer to Question 2 is yes, should the court consider that the essential aim of the transactions is to obtain a tax advantage, so that the second requirement for an abusive practice as described in paragraph 75 of the said decision of the Court is satisfied, in circumstances where in a commercial transaction between parties operating at arm's length, the choice of a German subsidiary to lease the cars to a United Kingdom customer, and of the terms of the leases, are made with a view to obtaining the tax advantage of no output tax being charged on the rental payments?

**Reference for a preliminary ruling from Court of Session (Scotland), Edinburgh (United Kingdom) made on 21 July 2009 — The Commissioners for Her Majesty's Revenue & Customs v RBS Deutschland Holdings GmbH**

(Case C-277/09)

(2009/C 267/53)

*Language of the case: English*

**Referring court**

Court of Session (Scotland), Edinburgh

**Parties to the main proceedings**

*Applicant:* The Commissioners for Her Majesty's Revenue & Customs

*Defendant:* RBS Deutschland Holdings GmbH

**Questions referred**

In circumstances such as those of the present case, where:

- (a) a German subsidiary of a United Kingdom bank purchased cars in the United Kingdom with a view to leasing them to an unconnected company in the United Kingdom and paid value added tax on these purchases;

(<sup>1</sup>) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment  
OJ L 145, p. 1