



**HM Revenue
& Customs**

VAT – Postal Services

Technical Note
24 March 2010

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Introduction

Following a legal challenge, the European Court of Justice (ECJ) confirmed that Royal Mail, as the operator providing the public postal service, is the only body in the UK eligible to exempt postal services from VAT. However, the Court further ruled that the exemption applies only to the public postal service acting as such and does not apply to services which are provided on individually negotiated terms. The Court's ruling means that the UK has applied the exemption for postal services more widely than is permitted by EU law. The Government intends to legislate to bring UK policy in line with the ECJ judgment and the legislation will have effect from 31 January 2011. This document explains the VAT treatment of postal services once the legislation takes effect.

For further information, please contact the VAT Helpline on 0845 010 9000.

Chapter 1 - Background

1.1 EU law provides a mandatory exemption from VAT for supplies of postal services made “by the public postal services”. Article 132(1)(a) of Directive 2006/112 (the Principal VAT Directive) states that exemption shall apply to –

the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto.

1.2 Since the introduction of VAT in the UK in 1973, the application of this provision in UK law has been limited to supplies made by Royal Mail Holdings plc (formerly the “Post Office Company”), as the “public postal services” in the UK designated with responsibility for the delivery of the ‘public interest’ postal service. All other postal operators have been required to charge VAT at the standard rate on their postal services – both before and after full deregulation of the postal sector in the UK on 1 January 2006.

1.3 Following a legal challenge to the scope of the exemption in the UK, the ECJ in the case of TNT Post UK Ltd has confirmed that Royal Mail, as the operator providing the public postal service, is the only postal body in the UK eligible to exempt postal services from VAT. However, it has also ruled that exemption only applies to the public postal services (that is, Royal Mail) acting as such and does not apply to supplies made by Royal Mail for which the terms have been individually negotiated.

1.4 As a result, some postal services supplied by Royal Mail – those which are individually negotiated or not subject to any price and regulatory control – and which have been treated as exempt will become liable to VAT at the standard rate. These changes come into effect from 31 January 2011.

Chapter 2 – Scope of the exemption for postal services

General

2.1 Once the legislation comes into effect, only “public postal services” provided by a universal service provider, and the supply of related incidental goods, will qualify for exemption.

2.2 “Public postal services” means those services which Royal Mail is obligated to provide under or pursuant to, the terms of its licence - including a regulatory requirement as regards price control.

2.3 This means that some postal services supplied by Royal Mail - those which are individually negotiated or not subject to any price and regulatory control – will become liable to VAT at the standard rate.

Price and regulatory control

2.4 “Price control” refers to those services where there is a regulatory requirement to offer services at a public tariff which is uniform throughout the UK, and also to those services which are subject to price control in the interests of the public under the terms of Royal Mail’s licence. It does not include services which Royal Mail opts to provide at a uniform tariff. Nor does it include services where the price is indirectly constrained as a result of commercial competition.

2.5 “Regulatory control” underpins the concept of public postal services and refers to those services that Royal Mail is obligated to provide under a licence duty, including those where – pursuant to a licence duty – Royal Mail allows private postal operators access to its postal facilities.

2.6 Services may fall outside price and regulatory control in the future, and at such point, will become liable to VAT at the standard rate.

Individually negotiated

2.7 If a service is individually negotiated, then regardless of its regulatory status, the service will become liable to VAT at the standard rate.

2.8 For services to be regarded as “individually negotiated”, they must be genuinely, freely, negotiated. Royal Mail has a number of products which, by regulation, have to be made available on the same terms and conditions to everybody but which, in the first instance, will have been individually negotiated (in relation to price and other matters). Such supplies are not considered to be “individually negotiated”. Nor are, for example, volume discounts which are available to all on equal terms.

Which postal services will remain exempt?

2.9 Subject to there being no individual negotiation, the following services will remain exempt from VAT:

- all services covered by the Universal Services Obligation (USO);
- most “regulated” services; and
- charges made by Royal Mail to allow access to its postal facilities to private postal operators.

2.10 In addition, exemption will also apply to:

- “similar” services costing less than the related regulated/price controlled product;
- HM Forces Mail provided by Royal Mail, sent through the British Forces Post Office (BFPO); and
- EU terminal dues.

2.11 Each of these categories is addressed in more detail below.

Services covered by the Universal Services Obligation

2.12 As the “public postal services”, Royal Mail is obligated under the terms of its licence to provide a universal service, known in the UK as the USO. This includes services for letters posted individually (e.g. first and second class mail) and in bulk (both sorted and unsorted), including a registered and insured service and incoming and outgoing services for letters posted from and to addresses outside the UK. Royal Mail’s licence requires them to provide this service at affordable prices determined in accordance with a public tariff that is uniform throughout the UK. All services covered by the USO will remain exempt from VAT.

“Regulated” services

2.13 Royal Mail provides a number of services, known as “Regulated” services (not to be confused with the definition of ‘regulatory control’ above), which it is obligated to offer under the terms of its licence. Most of these – namely those identified as “Controlled” and “Miscellaneous” services - are also subject to price control in the interests of the public and, as such, will remain exempt from VAT.

2.14 Royal Mail also provides a number of unpriced (i.e. free) services. As there is no consideration for these services, no liability to VAT arises.

2.15 A detailed list of these services is provided at Appendix A.

Access services

2.16 Pursuant to the terms of its licence, Royal Mail is obliged to allow private postal operators access to its postal facilities, and it cannot discriminate between customers as to

the price and terms offered. Charges for the following services will therefore remain exempt from VAT:

- Standard access;
- Premium access;
- Mail Centre International Extraction;
- Responsible Mail; and
- Post Office Collect.

2.17 Additional charges made to postal operators for failure to comply with access terms and conditions amounts to further consideration for these supplies and they will also remain exempt from VAT.

2.18 Royal Mail is also obliged under the terms of its licence to redirect certain mail incorrectly placed in their network and belonging to other postal operators (known as the Common Operational Procedures). A single price is charged for this service and these fees will remain exempt.

2.19 Bespoke charges for supplementary services provided in addition to the service of access - such as container fees and Royal Mail's Mis-sort Analysis service (where Royal Mail staff investigate and report on the causes of mis-sorted items for customers) – will remain subject to VAT at the standard rate.

“Similar” services

2.20 Royal Mail offers a small number of products which are not themselves regulated and price controlled but which are closely related to products that are. In some cases, the non-regulated product is priced lower than the related regulated product, reflecting the fact that the service has fewer enhancements. Adding VAT to the non-regulated product in these instances would produce pricing anomalies with the customer having to pay more for a less enhanced service.

2.21 For this reason, exemption will continue to apply on an administrative basis to non-regulated services provided by Royal Mail that cost less than their related regulated service(s), for so long as the “related” product remains regulated. Services which qualify for exemption under this transitional arrangement are:

- Cleanmail Advance;
- Mailsort 120 3rd class;
- Packetsort Plus;
- PO Boxes
 - Delivery to Normal Address 12 Months
 - Delivery to Normal Address 6 Months
 - Standard Service 12 months
 - Standard Service 6 months
 - Transfer to PO Box 6 months; and
- Response Service Plus.

2.22 This is on the proviso that such services at all times cost less than their related regulated service(s). Any additions to this list will require the prior approval of HM Revenue & Customs.

2.23 Where the non-regulated product provides an added service element and is therefore priced higher than the related product, the former will become liable to VAT at the standard rate as the price of the enhancement is only constrained by customer expectations and market forces.

HM Forces Mail

2.24 HM Forces Mail services provided by Royal Mail will remain exempt from VAT, with the exception of certain contract services which are subject to individual negotiation and which will therefore become liable to VAT at the standard rate.

Terminal dues

2.25 “Terminal dues” is a mutual assistance agreement between the postal authorities in different countries across the world. On behalf of overseas postal authorities, Royal Mail delivers mail received from abroad from its point of entry in the UK to its final destination. In return, foreign postal authorities deliver mail coming from the UK from its point of entry to its final destination in their own territory.

2.26 Under an informal EU-wide agreement, all EU terminal dues are treated as exempt from VAT and this situation will continue, pending any changes to the EU wide agreement.

Determination of liability

2.27 Where a product comprises one or more elements, it is the headline product which determines liability. This is because the end product is a different service. For example, a letter sent by Special Delivery 9am is a single supply of a special delivery item. The special delivery element cannot be considered incidental – thus liability is determined by the fact that Special Delivery 9am is a taxable service.

2.28 Subject to there being no individual negotiation, all services listed at Appendix A will remain exempt from VAT. All services which are not price and regulatory controlled (key ones listed at Appendix B) as well as those which are individually negotiated will become liable to VAT.

2.29 In the event of deregulation, services which are currently exempt will become liable to VAT at the standard rate.

Incidental goods

2.30 The supply by Royal Mail of goods that are incidental to a supply by them of exempt postal services is also exempt. This includes, for example, the supply of a pre-stamped envelope.

Chapter 3 - Miscellaneous

International services

3.1 Mail is treated as freight (and thus goods) for the purposes of the place of supply rules and the zero rating for international freight transport.

3.2 Supplies to business customers belonging outside the UK are outside the scope of UK VAT.

3.3 Supplies to business customers belonging in the UK are zero-rated in respect of mail being delivered to or from a place outside the EU.

3.4 Supplies to non-business customers in the case of –

- mail going to or from the UK to a place outside the EU is zero-rated/outside the scope of UK VAT;
- mail going from the UK to an address within the EU is exempt or standard-rated, depending on the service involved.

3.5 There is more about this in Notice 744B *Freight transport and associated services*.

Surcharges

3.6 This is where the addressee or sender makes up the difference when postage has been underpaid. This is further consideration for the supply of postage, and thus follows the liability of the relevant product.

International Reply Coupons

3.7 These are coupons for buying postage stamps outside the UK (from non-UK postal services) and are outside the scope of VAT.

Tailor Made Incentives (TMIs)

3.8 TMIs are a postage credit on a proportion of a customer's mailing, to be used against a future mailing (supply) and are offered by Royal Mail as an incentive to customers to try using Royal Mail's products in an innovative way. A TMI is not therefore a product in itself. Accordingly the liability of both the initial supply and the subsequent discounted supply will depend on their individual status.

Appendix A – Royal Mail Universal and Regulated services

Note – paragraph 2.9 refers

Services covered by the USO

- First and second class stamped and metered mail
- Standard parcel
- International public tariff surface and air mail (excluding Airsure products)
- Special Delivery (Next Day) other than when sold to users having an account with Royal Mail buying the service using their account
- Cleanmail first and second class
- Mailsort 1400 first and second class

Controlled services

- First and second class mail not conveyed by other services listed below
- First and second class metered
- Standard parcel
- Airmail Europe and world zones 1 and 2
- Surface mail
- Response services first and second class
- First and second class Printed Postage Impression (PPI)
- Special delivery (next day), other than when sold to users having an account with Royal Mail buying the service using their account
- Cleanmail OCR and CBC first and second class
- Mailsort 120 OCR and CBC first and second class
- Mailsort 700 first and second class
- Mailsort 1400 first and second class
- Mailsort 1400 residues first and second class
- Presstream first and second class
- Packetpost first and second class
- Packetsort 8 first and second class (including Flatsort 8 first and second class)
- Walksort first and second class
- Mailsort 700 3
- Mailsort 1400 3 (including Flatsort 1400 3)
- Access 1400
- Access 120 letter
- Access 120 flat and packet
- Access 120 OCR and CBC
- Access 700 CBC
- Access walksort
- Automated Standard Tariff Large Letters (ruled by Postcomm to be substantially similar to other controlled services)

- Sustainable Mail (ruled by Postcomm to be substantially similar to other controlled services)
- Responsible Mail

Unpriced (free) services

The following services are provided free of charge by Royal Mail –

- Return to sender as part of regulated service
- Poste restante (mail to be collected by the recipient from a specified Post Office)
- Petitions to Parliament
- Petitions to Her Majesty the Queen
- Certificates of posting
- Articles for the blind

As there is no consideration for these services, there is no supply for VAT purposes.

Miscellaneous services

- Proof of delivery
- Private boxes transfer to PO box 12 months
- Recorded delivery
- Response services licence fees
- Ministerial pouch services
- Redirection services (UK)

Appendix B – Taxable supplies

The standard rate of VAT will apply to all postal services which are either -

- not subject to any price and regulatory control; or
- individually negotiated.

This includes, **but is not limited to** –

- Airsure products
- Application of Indicia
- Big Book
- Business Collections
- Candidate Mail
- Data management services
- Departmental Billing
- Docket Completion
- Door-to-door (unaddressed mail)
- International Admail and Admail Packets
- International Business Reply Service
- International Redirections
- Keepsafe
- Large Mail Order returns
- Mailmedia
- Mailroom management services
- Parcelforce services
- Private Boxes (collections from post boxes not owned by Royal Mail)
- Royal Mail Heavyweight
- Royal Mail Relay
- Royal Mail Tracked
- Rural Services
- Sameday
- Special Delivery 9.00 am
- Special Delivery (Contract) (Next Day) sold to users having an account with Royal Mail