HMRC - VATSC04650 - Basic Principles And Underlying Law: Cancellation Of A Supply

The Principal VAT Directive provides that:

90(1) In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

In PVD Articles 63 to 66 the directive distinguishes between time of supply and the time VAT becomes chargeable; the “chargeable event”. The VAT Act 1994, section 6 refers to the time a supply is “treated” as being made - see also VATTOS.

Our interpretation of Article 90(1) provision “or where the price is reduced after the supply takes place” is that “supply” refers to the physical performance or handing over of the goods the provision refers to reductions in consideration after that physical performance of the supply.

VAT Act 1994 and Regulations do not explicitly provide for a definition of cancellation.

Our view for services is; once a supply of services has been made it cannot unmade and cancelled.

Cancellation of a supply of goods may at first seem less clear as obviously goods can be returned to the supplier.

The High Court in Liverpool Commercial Vehicles Ltd [1984] BCLC 587 looked at the VAT treatment of repossessed goods and whether the original supply was cancelled or not.

The Judge concluded:

“I can see no ground on which a delivery of goods pursuant to a contract which contains a title retention clause and which constitutes a supply in respect of which VAT has become due within the clear terms of the legislation can later be said not to constitute a supply because the goods are repossessed by the vendor”.

From this we can see that once a supply is made it cannot be cancelled if the goods are returned or repossessed. Additionally the European Court of Justice (ECJ) (Almos (C-337/13)) has also made it clear that where there is a partial refund then that cannot be a cancellation of the original supply.

VATSC70600 explains how to treat returned goods in more detail.

We therefore consider that a supply can only be cancelled after the “chargeable event” but before it physically takes place.

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