HMRC - VATSC36800 - Customs And Excise’S Original Approach

This section should be read in conjunction with the rest of VATSC36400.

In relation to situations where litigation is settled between parties by the offer by the suing party to grant the offender a right in return for payment (see VATSC36600), Customs and Excise’s original approach had been that giving up a right to sue somebody in return for payment was a taxable supply and it satisfied s 5(2)(b) of the VAT Act 1994, which provides that anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services (if done in the course or furtherance of a business).

There had never been any question that if a payment by way of compensation was made pursuant to a court order, this was outside the scope. However, given that basic principle, and the uncertainty surrounding out of court settlements prior to the issue of the Press Notice 82/87, it had seemed that HMCE were forcing taxpayers to go all the way through the courts and not to enter any settlement by way of compromise, in order to guarantee that any payment would not attract VAT. Customs and Excise had reviewed their policy in the light of the decision in the case of Whites Metal Company v CCE (LON/86/686Z, No 2400) where the VAT Tribunal had held that services were not supplied by a plaintiff to a defendant in reaching a settlement of an action in court.

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