HMRC - VATSC37000 - Press Notice 82/87

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

Press Notice 82/87 was issued with the object of restricting its application to genuine disputes only. If a settlement agreement was worded in terms that the plaintiff was giving up rights to sue the defendant in exchange for a sum of money, this was not a supply. If the agreement not to sue and to settle out of court confirmed a previously agreed price, or confirmed a reduction to a previously agreed price, VAT would be adjusted, using the credit note mechanism, by reference to the price finally agreed. The situation when payment was made subject to a court order remained unchanged.

Since the Press Notice had been issued, very few cases had been brought to VAT headquarters. Cooper Chasney LON/89/1409Z (VATSC37200) and Edenroc LON/88/1047X (VATSC59200) were notable exceptions. Customs and Excise believed that both these decisions were in accordance with the Press Notice. Local offices had been dealing with queries. However, it was the Law Society’s view that the lack of cases which had been brought could indicate unawareness of the potential traps where elements of a settlement could attract a VAT liability.

The particular example of royalties when there had been an inadvertent breach of copyright was considered, when the Press Notice was drafted. If payment was partly to compensate for a past breach, and partly for permission to use in the future the material subject to copyright, there should be a reasonable apportionment. A distinction needed to be drawn. Payment by way of compensation in respect of a past transgression was outside the scope, but payment in consideration of allowing the future use of the copyright material was in respect of a taxable supply.

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