HMRC - VATSC57600 - Fines And Penalty Charges

A true fine or penalty is a separate payment from the standard charge for a supply. It is usually a sum of money levied as a consequence for a contravention of the terms of a contract and so does not form part of the consideration for a supply. The terms can also refer to money levied to penalise an unlawful act, for instance parking on yellow lines. This type of payment is also outside the scope of VAT since no supply has been made to the recipient of the payment.

Where a payment is described as a ‘fine’ or ‘penalty’ and is treated as outside the scope of VAT, the terms of any contract should be consulted to check any reference to what happens if its terms are broken. A check should also be made on whether anything has actually been supplied in return for the additional payment. Many payments described as fines or penalties are in fact an additional charge for a supply and so follow the same liability - see VATSC44000.

Excess charges for car parking.

In determining whether excess charges are to be treated as further consideration for a taxable supply of services, it is as important to consider the contractual relationship between the parties as well as the statutory regime under which the services were supplied.

A key Tribunal case was that of Bristol City Council (LON/99/261). This concerned the imposition of excess charges in the Council’s off-street car parks under sections 35 and 46 of the Road Traffic Regulation Act 1984 and designation orders made pursuant to the Act. The Tribunal concluded that excess charges levied in the Council’s off-street car parks, under the 1984 Road Traffic Regulation Act, were not part of the contract between the driver and the Council: they were statutory penalties of which warning was given on the car park signs. Accordingly, the excess charges were not consideration for a supply of parking and so were outside the scope of VAT.

Other local authorities who operated off-street car parks within the same statutory framework and considered the decision applied to them were invited to submit claims for repayment in Business Brief 19/2002. It was already accepted that penalty charges imposed by local authorities operating off-street car parks under the Road Traffic Act 1991 were outside the scope of VAT.

However, HMRC now accept that there is a difference between

the situation where the contract under which parking is supplied allows for an extension of the original terms, in which case the payment made in relation to this is further consideration for the supply of parking, and

the situation where the driver is not permitted to extend the original terms and a penalty for breach of contract ensues if this in fact happens.

Thus, where a car park operator makes an offer of parking under clear terms and conditions, setting punitive fines for their breach, the fines constitute penalties for breaching the contract, rather than additional consideration for the facilities. Consequently they are outside the scope of VAT.

As the same contractual relationships arise between drivers and local authority car park operators as arise between drivers and other car park operators, HMRC have determined that the VAT treatment of excess charges will be the same for all car park operators.

Excess charges not subject to VAT

The penalty charges that will no longer be subject to VAT are those that are levied where a driver is in breach of the terms of the contract with the car park operator. The commonest situations where a driver may be in breach of the contract are:

no parking ticket on display

underpayment

overstaying purchased parking time

returning within a specified time

parking outside marked bays

parking in bays set aside for disabled drivers or parents with children

Excess charges subject to VAT

Where the terms and conditions make it clear that the driver can continue to use the facilities after a set period upon payment of a further amount without being in breach of the contract - for example, no charge for an initial three hours parking but £70 if that period is exceeded - then the payment will be consideration for use of the facilities and subject to VAT.

Excess charges retained by contractors

Some parking site owners contract out the management and operation of their parking sites and allow the contractor to retain all or part of the penalties collected. Any such payments retained by the contractor will constitute further consideration for their services supplied to the parking site owner and are subject to VAT.

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