HMRC - VATSC72800 - Background

This section is intended to cover the distinction between goods and services where goods are provided under agreements described as hire purchase, lease purchase, lease hire, contract purchase, contract hire, conditional sale etc. The terms of the agreement determine the VAT treatment of the supply, regardless of the label given to the agreement.

Under Paragraph 1(2)(b) of Schedule 4 of the VAT Act 1994, the test for distinguishing between an outright supply of goods or a lease hire (services) is whether:

possession of goods is transferred … under agreements which expressly contemplate that the property also will pass at some time in the future (determined by, or ascertainable from, the agreements but in any case not later than when the goods are fully paid for) …

This has always proved to be a difficult paragraph of the law to interpret and there are now a greater variety of agreements and sales promotion schemes in existence adding to the uncertainty in many cases.

We must also ensure that the approach we adopt is consistent with the VAT Directive 2006/112 (Principal Vat Directive). Article 14(2)b of the Directive provides that there is a supply of goods where the actual handing over of goods, pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment. So the phrase emphasised above can be helpful when it comes to deciding whether a supply of goods has occurred.

In cases of doubt you should look at both the written agreement and the intention of any overall scheme operated by the trader. Are the customers in reality buying the goods - that is will ownership pass in the normal course of events?

Both EU and UK law refer to property/ownership passing when the goods are fully paid for or at the latest upon payment of the final instalment. Some businesses have sought to argue that if the transfer of title is delayed for a short time (for example 7/14 days after the final payment is made) that this means that such supplies should be treated as services rather than goods. Customs do not accept this view and believe that the legislation should be interpreted as meaning that title passes as a result of the final payment. It should therefore be clear from the agreement exactly how much the customer has to pay to buy the goods - including the size of the final instalment/option payment.

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