HMRC - VATSC73880 - General Motors Acceptance Corporation (‘GMAC’)

The GMAC case (VTD 17990 and [2004] EWHC 192 Ch) provided guidance on the treatment of returned goods - both in circumstances where the customer defaulted, with the finance company taking back the goods, and where the customer exercised their right to withdraw from the agreement by returning the goods.

GMAC sold cars to members of the public on deferred payment terms, including hire-purchase (HP) agreements. Ownership of the cars covered by these HP agreements only transferred to the customer when all the required payments had been made. Providing they had made all other required payments up to that point, GMAC customers had the option of not having to make the final payments (the balloon payment). Instead they could return the car to GMAC: then, and providing it was in acceptable condition, the customer was no longer liable to that balloon payment. GMAC could require the customer to pay the cost of repairs if the car was not in acceptable condition.

In addition GMAC’s customers had entitlement, as a result of the Consumer Credit Act, to similarly return the car and end any further liability once they had made 50% of the total payments due under the agreement. GMAC were entitled, if the customer defaulted upon their payments, to repossess the car and resell it. In this situation the customer remained liable for any outstanding balance after taking into account the proceeds (net of the cost of repair and sale) of the sale of the repossessed car.

GMAC won their appeal at Tribunal. HMRC then appealed three points to the High Court, which upheld the decision of the tribunal on each point.

It was found that when a car was returned voluntarily or was subject to a default repossession, and the price actually required to be paid by the customer was reduced, then there was a consequent decrease in consideration, which would give rise to an adjustment under VAT Regulation 38 (See VR7120 and VBDR3600).

Irrespective of how the car came back into the possession of GMAC, the return of the car constituted a repossession for the purposes of Article 4(1)(a) of the VAT (Cars) Order 1992. The sale of the repossessed car accordingly fell to be de-supplied, subject to all of the other conditions in the order (see VATSC73920).

For unregistered customers, or for customers unable to recover the VAT charged as input tax, the level of documentation presented in the GMAC case was satisfactory for the purposes of VAT Regulation 24 (see paragraphs 13.8 and 13.16 of V1-24A).

The GMAC decision only applies to Hire purchase (including personal contract plans - PCP’s) and Conditional Sale Agreements, where title passes on final payment. Credit sales are not covered by the GMAC decision.

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