HMRC - VATSC73920 - The VAT (Cars) Order 1992, Article 4(1)(A) Of The VAT (Special Provisions) Order 1995, And 2006 Changes

The courts’ findings in GMAC revealed a fault in the law where a Regulation 38 adjustment and a de-supply under Article 4(1)(a) of the VAT (Cars) Order 1992 were available. The combined effect was that double relief was afforded, resulting in under-taxation. For goods other than cars, the same problem arose by virtue of Article 4(1)(a) of the VAT (Special Provisions) Order 1995.

This loophole was closed by the VAT (Cars) (Amendment) Order 2006 SI 2006/874 and the VAT (Special Provisions) (Amendment) (No. 2) Order 2006 SI 2006/869, which apply to goods delivered on or after 1 September 2006. The effect of these changes is that, where a Regulation 38 reduction is available (whether or not made), the de-supply is therefore not available.

This ensures that the VAT accounted for by finance companies reflects the full consideration they receive in respect of the goods they supply. It means the de-supply is not available where there is a requirement to adjust the VAT accounted for on the first sale. In most cases, subsequent sales of returned goods will, as a result, be subject to VAT in the normal way.

The change directly affects finance companies selling goods under hire purchase or conditional sales agreements. Finance companies selling goods under credit sale agreements are not affected by the changes. Credit sale agreements provide for title in the goods to pass immediately to the customer. If the goods return to the finance company there is a separate supply by the customer and the normal rules will apply, depending on the status of the customer and whether VAT has been recovered on the original purchase.

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