HMRC - VATSC91600 - Introduction

In the majority of legal disputes, each party employs its own lawyers to represent them and so these lawyers supply their services to their client. It is common for the court to order the loser to pay the winner’s legal costs.

Normally the parties agree the winning party will reclaim the VAT, if they are VAT registered, and the loser will pay the net amount. If the winner is not VAT registered or is partly exempt then the loser will normally pay the VAT-inclusive amount. However, this does not mean the winning party’s lawyers have supplied services to the losers - the payment is a contribution to costs and the loser cannot recover input tax on the winners’ lawyer’s fee.

This principle was confirmed in the Turner case (VATSC91800) and has been used as a basis in subsequent cases.

The Law Society published an article on reclaiming third party costs in July 1983: it is reproduced in VATSC92000.

A further article was published in the Law Society’s Gazette on 24 October 1990 entitled “Payment of another party’s costs”. The article was agreed with Customs and Excise and set out the rules which apply when a solicitor’s costs are paid by a person other than the person to whom the solicitor’s services are supplied. Discussions between members of the VAT Sub-committee the Law Society’s Revenue Law Committee and Customs and Excise have led to the agreement with Customs of new guidance, which is set out atVATSC92100. This guidance incorporates a change of practice by Customs and Excise (and now HMRC) and that in certain circumstances VAT will be chargeable where this had previously been accepted not to be the case.

Further information on input tax recovery can be found in V1-13 Input tax.

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