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Myerson **Business**

Commercial Agents: VAT treatment of compensation payments

Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many Commercial Agents choose Myerson as their trusted adviser

Why Myerson?

At Myerson, we are the leading legal Commercial Agency firm outside of London, and we have years of experience in advising agents and principles.

The firm are proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice and that we can advise you on complex disputes.

Myerson is retained as an expert adviser to the members of **Agentbase** and the Association of Professional Sales Agents. Our litigation team has acted in agency disputes against companies based in Ireland, Germany, the Netherlands, Spain, France, Belgium, Italy and the USA, and are experienced in complex disputes.



Commercial Agents VAT treatment of compensation payments

This guide briefly comments on HMRC's updated policy in relation to the VAT treatment of damages payments and how this might impact on compensation payments under the Commercial Agents Regulations following the termination of a commercial agency.

For more information on the updated policy see Revenue & Customs Brief 12/2020.

Introduction

Prior to the updated policy, most damages payments including compensation and indemnity under the Regulations were generally treated as being outside of the scope of VAT.

For agency contracts that meant that compensation payments were generally not treated as payments for the supply of services subject to VAT. That approach seemed to align with the methodology used for calculating compensation payments (under *Londsdale v Howard & Hallam Ltd*) namely, a payment based on the sale of the agency business to a hypothetical purchaser which would not normally attract VAT.

What has changed?

The new guidance from HMRC states that where there is a direct link between the damage's payment and an underlying supply of goods or services to which the contract relates, such payment is within the scope of VAT.



How does the new guidance apply to commercial agency contracts?

A commercial agency contract is a contract for the supply of services by an agent to its principal. In most circumstances, this involves a taxable supply, subject to VAT.

Therefore, if an agent receives a payment for compensation or indemnity under the Regulations by a principal then that agent may well have to account for VAT on that payment, since it relates to an underlying taxable supply of services.

Potential effect on commercial agency claims going forward

The updated guidance demands a greater awareness by agents, principals, and litigators of the possible tax treatment of termination payments under the Regulations. It is possible that we may see agents starting to claim an additional 20% on damages to account for any shortfall after accounting to the HMRC for VAT.

As specialists in commercial agency law, we have seen an increase in attention to VAT issues including whether or not the agent is VAT registered, and whether a VAT invoice should be raised upon settlement where that involves a termination payment under Regulation 17.

It is now more important than ever that agents and principals seek advice from an accountant and/or a tax specialist regarding the likely tax treatment of any damages payments prior to agreeing terms of settlement.



You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our **Dispute Resolution Team** today.

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