

## **When do you charge VAT on deposits and pre-payments?**

You may receive a deposit or pre-payment before you have completed supplying your goods or services. In such cases, a supply is deemed to have taken place at the time of receiving the payment. Value-Added Tax (VAT) is chargeable on the pre-payment and you must pay the VAT to Revenue in your VAT return.

As an example, if a hotel received a deposit of €10K on the 30 August 2023 in respect to accommodation at a wedding the €10K is subject to VAT at the rate in place at the time the cash was received ie 9%. If the balance is paid in say November when the wedding takes place the balancing payment is subject to VAT at the 13.5% VAT rate.

## **VAT treatment when a transaction is cancelled prior to 1 January 2022**

If you retain a deposit, following cancellation of the whole transaction by the customer before 1 January 2022, you may reduce your VAT liability for the period in which the deposit is forfeited. The allowable reduction is an amount equal to the amount accounted for on the deposit. It must only be available for deposits received and cancelled before 1 January 2022.

There are a number of conditions for this to apply:

- the supply does not take place because the customer has cancelled it
- the cancellation is noted as such in the books and records of the supplier
- the deposit is not refunded to the customer
- no other consideration, benefit or supply, is provided to the customer by any person in lieu of that amount.
- Finance Act 2021 has amended Irish VAT legislation in relation to the VAT treatment of cancellation fees, including forfeited deposits, retained by business in the event of a customer cancellation.
- Traditionally Irish Revenue had taken the view that if the vendor receives a deposit that the deposit is treated as an advance payment and that VAT is due when the deposit is received. Prior to the amendment in Finance Act 2021, our domestic VAT legislation provided that In the event that the actual supply did not proceed then the supplier could claim a repayment of the VAT on the deposit, even though they retained the deposit money and did not refund the customer. Finance Act 2021 has now deleted from our legislation the entitlement to claim a refund of VAT. The rationale behind this amendment is that it is intended “to give effect to judgments of the Court of Justice of the European Union to provide that cancellation fees are taxable as they constitute a payment for either a service or a right to access a service”.
- The relevant CJEU case allowing VAT recovery was decided in 2007 (Société thermale d’Eugénie-Les-Bains- C-277/05) involved the VAT treatment of deposits received by a

French hotel. The Court held that where a business received a non-refundable deposit and the service was subsequently cancelled by the customer then the VAT could be reclaimed by the business where it had previously been accounted for on receipt of the deposit. The rationale for the CJEU ruling was that as a supply of service did not actually take place (no show), the deposit was outside the scope of VAT. One of the underlying criteria for a VAT charge to arise is that there must be a supply of goods and/or service for consideration. This case led to an amendment to Irish VAT legislation allowing a refund of VAT in such circumstances.

- In a more recent case (Air France–KLM and Hop!-Brit Air SAS C-250/14 and C-289/14), the CJEU considered the VAT treatment of no-shows in the context of passengers who had paid for flights but did not turn up for their flights. In this case the customer had paid for the ticket and therefore had the right to travel but did not show up. As the issue of the ticket was a right to travel the Court held that there had been a supply for consideration, albeit the passenger decided not to travel. As such the consideration was correctly subject to VAT.
- Another 2020 (case C43/49- Vodaphone Portugal) related to the VAT treatment of termination fees applied on early cancellation of mobile phone contracts. The CJEU held that “supply is made by the supplier of services when it places the customer in a position to benefit from the supply, so that the existence of the abovementioned direct link is not affected by the fact that the customer does not avail himself or herself of that right”.
- **The amendment to Irish legislation came into effect from 1 January 2022.** It is evident that Revenue seem to be applying the judgements in Air France and Vodaphone, whilst ignoring the judgment in Société thermale d'Eugénie-les-Bains. The facts in the more recent cases were very different from that case. Interestingly Revenue appear to be following HMRC’s lead, which amended its equivalent domestic legislation in 2019. As outlined on our call it is important that each case is considered on its own particular facts and circumstances to determine if a VAT refund on a cancellation is possible.
- Despite the above each case for a refund of VAT in the case of a cancellation or a refund should be reviewed in the context of the specifics of that case for instance one significant difference between the Société thermale d'Eugénie-les-Bains case and the subsequent airlines cases is that in the airline cases the ticket was paid for in full and the amount was not designated as a deposit. If contractually the initial payment can be recognised as a potential penalty in respect to the breaking of the contract then it may still be possible to contend that such payments are compensation in nature and not subject to VAT.

## Green Fees

- I haven’t received confirmation from Revenue yet but I am satisfied that green fees will remain at the 9% VAT rate