



# **Compensations, cancellations and non- payments in the ECJ case-law on VAT**

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# COMPENSATIONS (I)

## **Mohr, C-215/94:**

According to the VAT Directive, an indemnity that is charged for the **abandonment of milk production** is not the consideration of any operation subject to VAT, for which reason its collection is not subject to VAT.

# COMPENSATIONS (II)

## Landboden-Agrardienste, C-384/95:

The **commitment** made by a farmer **to refrain from collecting 20% of his harvest** in exchange for compensation paid by the public authorities does not constitute a provision of services subject to VAT.

# COMPENSATIONS (III)

## **Société thermal d'Eugénie-les-Bains, C-277/05:**

The amounts paid as a deposit in the framework of the provision of services, in the case that **the customer desists from the service** and who had the deposited amount acquires them, are not a consideration for services, but a compensation not subject to VAT.

# COMPENSATIONS (IV)

## **Air France - KLM, C-250/14 and C-289/14:**

For the purposes of the VAT Directive, the issuance of tickets by an airline is subject to VAT even if passengers have not used the tickets (**no-shows**) issued and cannot claim their refund.

The VAT paid by a passenger when he bought an airline ticket that he has not used is required from the moment the ticket price is collected.

# CANCELLATIONS (I)

## Grattan, C-310/11:

There being no regulatory provision in this regard, the **Second VAT Directive** does not confer upon a taxable person the right to **reduce** the tax basis of a supply of goods **retrospectively** where, after the time of that supply of goods, an agent received a credit from the supplier which the agent elected to take either as a payment of money or as a credit against amounts owed to the supplier in respect of supplies of goods that had already taken place.

# CANCELLATIONS (II)

## NLB Leasing, C-209/14:

Dir 2006/112 art.90.1 does not allow a taxable person to reduce the taxable amount where that person has in fact **received all the payments** in consideration for the service which he supplied or where, without the agreement having been refused or cancelled, the recipient of that service is no longer liable to the taxable person for the agreed price.



# CANCELLATIONS (III)

## Lombard Ingatlan Lízing, C-404/16:

The concepts “cancellation and refusal” in the VAT Directive art.90.1) include a situation in which, under a **financial leasing agreement** with definite transfer of ownership, the lessor may no longer claim payment of the leasing instalment from the lessee because the lessor has terminated the agreement due to the breach of contract by the lessee.

Where a financial leasing agreement has been **definitively terminated** because of non-payment of the lease instalments payable by the lessee, the lessor may rely on the VAT Directive, art.90.1) with a view to reduce the taxable amount for VAT, even if the national law considers that situation to be a case of “non-payment” within the meaning of art.90.2) of the VAT Directive and does not allow the taxable amount to be reduced in the case of non-payment.

# CANCELLATIONS (IV)

## Meo-Serviços de Comunicações e Multimédia, C-295/17:

The **predetermined amount received** where a contract for the supply of services with a **minimum commitment period** is terminated early by its customer or for a reason attributable to said customer, which corresponds to the amount that the operator would have received during that period in the absence of such termination, must be regarded as the **consideration** for a supply of services and VAT subject.

The facts that the purpose of this lump sum is to discourage customers from not observing the minimum commitment period, that the consideration received for the conclusion of contracts stipulating a minimum period of commitment is higher than that provided for under contracts which do not stipulate such a period, and that the amount is classified under national law as a penalty, are not decisive to these effects.

# NON-PAYMENTS (I)

## Goldsmiths, C-330/95:

The power established by the VAT Directive art.90.2) to refuse the rectification of the taxable base in cases of non-payment must be limited to exceptional cases.

This possibility cannot be ruled out by the mere fact that the **consideration** is **non-monetary** when it has been admitted for monetary considerations.

# NON-PAYMENTS (II)

## Vandoorne, C-489/09:

In application of a **derogating measure** approved under art.395 of the VAT Directive, the right to recover VAT due to non-payment can be denied.

In this way, the VAT Directive is compatible with a national regulation, which, by providing, for the purposes of **simplifying the procedure for charging VAT** and of combating tax evasion or avoidance in regard to manufactured tobacco, for the levying of that tax by means of tax labels, in an origin single charge, from the manufacturer or importer of those products, excludes intermediate suppliers operating at a subsequent stage in the supply chain from the right to obtain reimbursement of the VAT in the event of non-payment by the purchaser of the price for those products.

# NON-PAYMENTS (III)

## Kraft Foods Polska, C-588/10:

The requirement that, in order to be entitled to reduce the taxable amount as set out in the initial invoice, the taxable person must be in possession of **acknowledgment of receipt of a correcting invoice** by the purchaser of the goods or services, constitutes a condition for the purpose of Dir 2006/112 art.90.

The principles of the neutrality of VAT and proportionality do not, in principle, preclude such a requirement. However, where it is **impossible** or **excessively difficult** for the taxable person to obtain such acknowledgment of receipt within a reasonable period of time, he cannot be denied the opportunity of establishing, by **other means**, before the national tax authorities of the Member State concerned, first, that he has taken all the steps necessary in the circumstances of the case to satisfy himself that the client is in possession of the correcting invoice and is aware of it and, second, that the transaction in question was in fact carried out in accordance with the conditions set out in the correcting invoice.

# NON-PAYMENTS (IV)

## Almos Agrárkülkereskedelmi, C-337/13:

The Member States may establish that the exercise of the right to reduce the taxable base is subject to compliance with certain **formalities** that provide evidence, in particular, that, after having carried out an operation, part or all of the **consideration** was **definitively not received** by the taxable person and that said taxable person was able to rely on one of the situations referred to in the VAT Directive art.90.1 ("cancellations and refusals").

In accordance with the VAT Directive art.90, the Member States can exclude from the possibility of recovering the VAT through the modification of the taxable base on the cases of non-payment by the recipient, but not the rest of the situations in which, after a transaction has been agreed, part or all of the consideration is not received by the taxpayer.

The art.90.1 of the VAT Directive has a **direct effect**, so taxpayers can invoke it before their tax authorities to reduce the taxable base of their operations in the cases for which it is established.

# NON-PAYMENTS (V)

## BCR Leasing IFN, C-438/13:

According to the VAT Directive art.16 and 18, the impossibility, for a leasing company, of recovering from the lessee the goods let under a financial leasing contract following its termination as a result of the lessee's breach, despite the steps undertaken by that company to recover those goods and despite the lack of any consideration following such termination, may not be treated as a **supply of goods for consideration** for the purposes of those articles.

# NON-PAYMENTS (VI)

## GMAC UK, C-589/12:

Under the VAT Directive art.90.1), a Member State may not prevent a taxable person from invoking the **direct effect** of that provision in respect of one transaction by arguing that that person may rely on the provisions of national law in relation to another transaction (the sale of the recovered goods) concerning the same goods and that the cumulative application of those provisions would produce an overall fiscal result which neither national law nor Sixth Directive, applied separately to those transactions, produces or is intended to produce.

In cases of non-payment by customers, taxpayers have the right to reduce the taxable base. It cannot be replaced by another system that leads to a similar result, but not equivalent. This alternative route cannot deny the direct effect of the EU Law.



# NON-PAYMENTS (VII)

## Enzo Di Maura, C-246/16:

According to the VAT Directive art.90.2), a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that **insolvency proceedings** have been unsuccessful when such proceedings may last **longer than ten years**.

# NON-PAYMENTS (VIII)

## Tratave, C-672/17:

The principle of neutrality, as well as the VAT Directive art.90 and 273, preclude national legislation which provides that the reduction of the taxable amount for VAT, in the event of non-payment, cannot be made by the taxable person until it has given **prior notice** of its intention to cancel all or part of the VAT **to the purchaser** of goods or services, if that purchaser is a taxable person, for the purposes of correcting the deduction of VAT that the latter has made.

# NON-PAYMENTS (IX)

## A-PACK CZ, C-127/18:

The VAT Directive art.90 opposes a national regulation that the taxable person cannot rectify the tax base, in case of total or partial non-payment, by your debtor when **the aforementioned debtor is no longer a VAT taxable person.**

# NON-PAYMENTS (X)

## UniCredit Leasing, C-242/18:

The VAT Directive allows, in the event of termination of a financial leasing contract, a reduction of the tax base calculated on a lump sum basis through a supplementary settlement on all the installments due for the entire period of the contract, even when said supplementary settlement is definitive and therefore constitutes a **"firm administrative act"** that determines a tax debt under national law.

Under the VAT Directive, the non-payment of part of the installments due on a financial lease agreement corresponding to the period between the cessation of payments and the non-retroactive termination of the contract, on the one hand, and the non-payment of the required compensation in the event of early termination of the contract and corresponding to the sum of all unpaid installments up to the expiration date of said contract, on the other hand, constitute an event of non-payment that may be included in the exception to the obligation to reduce the tax base, unless the taxable person proves with a **reasonable probability** that **the debt will not be paid**.

# ADDITIONAL INFORMATION

Additional information about some of those topics can be found in the book **"ECJ case-law on VAT", available electronically** and whose link is attached:

<https://www.efl.es/catalogo/manuales-juridicos/ecj-case-law-on-vat>