



HM Revenue and Customs Call for Evidence: Simplification of Partial Exemption & Capital Goods Scheme

FLA Response September 2019

Introduction

1. The Finance & Leasing Association (FLA) is the leading trade body for the asset, consumer and motor finance sectors in the UK. Our members include banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of independent firms.
2. In 2018, members of the Finance & Leasing Association (FLA) provided £137 billion of new finance to UK businesses and households, £46 billion of which helped consumers and businesses buy new and used cars, including over 91% of private new car registrations. £104 billion was in the form of consumer credit, accounting for over a third of all new consumer credit written in the UK. £33 billion of finance was provided to businesses and the public sector to support investment in new equipment, representing over a third of UK investment in machinery, equipment and purchased software in the UK last year.
3. We welcome the proposed simplifications put forward by the Office of Tax Simplification (OTS) and HM Revenue and Customs (HMRC) to simplify the operation of Partial Exemption Special Methods (PESMs).
4. Currently, our members rely on PESMs agreed with HMRC to recover the VAT on hire purchase (HP) agreements. However, these agreements can vary and the process is not simple to administer for the taxpayer or tax collector. We are discussing with HMRC officials how this can work better.
5. We would urge the Government to issue clear guidance, developed in consultation with industry stakeholders on what would be considered a “fair and reasonable” method of recovery for PESMs.
6. If a simple, voluntary framework for providers of HP and leasing agreements can be developed this would ensure a consistent and easily understood methodology for the recovery of VAT on these agreements, in compliance with recent court judgments.

PESMs and Hire Purchase

7. HMRC currently treats the provision of HP agreements as two separate supplies, a taxable supply of goods and an exempt supply of finance. Our members will therefore seek to reclaim VAT attributable to the supply of goods via a Partial Exemption Special Method (PESM).



8. Funders come to individual agreements with HMRC on an appropriate PESH which meets their needs, which is applied on a “per funder” basis. The PESH is developed with the agreement of HMRC after a thorough evidence-based analysis of the funders’ business model.
9. Following the recent ruling at the Court of Justice of the European Union (CJEU) in the case of Volkswagen Financial Services (UK) Ltd vs HMRC, the basis on which HMRC had been seeking to approach many PESHs has been ruled to be unlawful. Accordingly, HMRC is seeking to develop a common framework for all such PESHs which would apply a method of recovery consistent with the judgment.
10. The development of this framework also presents a timely opportunity to simplify the operation of PESHs in general in line with the recommendations put forward by the Office of Tax Simplification (OTS) and HMRC in the Call for Evidence.

PESH Proposals

11. The Call for Evidence proposes allowing businesses to put in place a PESH without first submitting it to HMRC for approval. Businesses would still be required to submit a signed declaration that the PESH was fair and reasonable and had been arrived at with due care and attention.
12. This recommendation is a positive reform which will make it easier for FLA members to conduct their business. However, for such a method to be successful, businesses need to be certain that their chosen recovery method would be considered “fair and reasonable” by HMRC, and that they would not be at risk of enforcement action unjustly.
13. To this end, HMRC would need to develop suitable guidance in full consultation with industry stakeholders. This guidance will need to take into account the needs of the particular market in which it is applied and establish clear and easily understood principles for any PESH.
14. We note the Call for Evidence suggests an increased reliance on industry frameworks. HMRC is currently developing a framework for hire purchase and leasing firms and is consulting with the FLA and its members as part of this process. If appropriate to the market, this framework could be used as the basis for any future guidance.
15. It is important that such frameworks should continue to be considered as strictly voluntary arrangements. Where a business believes that an alternative method which sits outside of a framework is an appropriate solution for their needs and still meets the “fair and reasonable” test, they should be allowed to use this method.



16. Any framework or guidance should be regularly reviewed to ensure that it reflects current market practice, including new methods of compliance, new technologies and other developments.
17. We also support the suggestions that businesses should have the ability to change a PESH “mid-life” to reflect the changing nature of the business. This would allow members to manage their arrangements flexibly.

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