



**FINANCE & LEASING ASSOCIATION (FLA) RESPONSE TO THE
HMRC CONSULTATION PAPER “AMENDMENT TO VAT REGULATION 38:
STATUTORY INSTRUMENT TECHNICAL CONSULTATION”
April 2019**

1. Introduction

- 1.1. The Finance & Leasing Association (FLA) represents UK providers of asset finance (leasing and hire purchase). The FLA’s members include specialist lenders, subsidiaries of banks, independent asset finance providers, and captive finance companies owned by equipment manufacturers. In 2018 they provided £33 billion of funding to businesses and the public sector. They play a vital role in allowing SMEs to access the finance they need to grow their businesses, acquire new equipment, and invest in new technologies.

2. Executive Summary

- 2.1. The FLA is concerned that the proposed amendments to Regulation 38 will create significant difficulties for funders that offer hire purchase (HP) products for customers and may prove difficult or impossible to comply with. These proposals could create a significant degree of financial and administrative burden which could ultimately harm business customers in this market and disrupt the operation of the HP market more widely.
- 2.2. Whilst we understand HMRC’s stated aim to reduce abuse of Regulation 38, the proposed methodology as set out in the consultation document does not take into account the very specific challenges faced by funders offering hire purchase agreements, and instead appears to have been written with only a traditional transfer of goods or services in mind.
- 2.3. We therefore recommend that HMRC considers the concerns set out below, and either delays the implementation of these measures or amends the Statutory Instrument (SI) in such a way that funders offering hire purchase or similar solutions are either excluded from their scope or subject to a more practicable solution.

3. Our concerns

- 3.1. ***The proposed definition of an increase or decrease in consideration does not allow for the normal functioning of HP agreements***
- 3.2. The draft SI put forward by the Government replaces the definition of an increase or decrease in consideration currently set out in regulation 24. The new definition is likely to cause significant issues for FLA members. This is because, under a hire purchase agreement, it is typical that a decrease in consideration would legitimately occur in advance of a customer having paid the supplier in full for the goods. In not taking this into account, the proposals are likely to impair the typical accounting for such agreements.



- 3.3. ***The new 14 day requirement to issue a credit note reflecting a decrease in consideration is unreasonable for HP funders***
- 3.4. The requirement to issue a credit note within 14 days is unworkable and will create significant administrative burdens for funders of hire purchase agreements. The calculation required is complex and requires an investigation of the full history of the payments made to date, the apportionment of each payment into its capital and interest elements and potentially also the value of the proceeds of any subsequent resale of the repossessed asset. This data is typically held in systems designed to manage hire purchase agreements with customers, as opposed to finance systems and consequently any such adjustment requires significant manual intervention.
- 3.5. Many funders are unlikely to be able to finalise these calculations in order to comply with the 14 day deadline as currently drafted. For example, where an asset such as a vehicle is repossessed or there is an early termination, the funder may well be unable to issue a credit note and complete an adjustment under Regulation 38 until the asset has been re-sold. Within 14 days it is not practical for many funders to recover, remarket and re-sell the asset, and finally to make the appropriate calculations relating to the decrease in consideration. If, as is typical with cars, the asset is auctioned, this data can take some time to become available- the final sale amount is not known to the funder immediately.
- 3.6. Many HP funders provide data to HMRC under Regulation 38 on a quarterly basis and raise credit notes where required at that time, which means the notes may always be at least one quarter in arrears. The proposals as they are currently drafted would not facilitate this process, and would result in businesses having to continuously submit credit/debit notes and process them individually for each agreement.
- 3.7. The proposals appear to suggest that if a credit note has not been issued within 14 days, no reduction in consideration can be made. Taking into account the circumstances outlined above, this would mean an increase in costs for FLA members affected by the proposals. Alternatively, if a supplier can raise a credit note outside the 14 day period by submission of an Error Correction Notice to HMRC, then due to the retrospective nature price adjustments for HP type agreements outlined above, FLA members could be required to submit corrections each quarter. This would give rise to additional administrative burdens for both the taxpayer and HMRC.
- 3.8. The existing requirement for a taxpayer to repay VAT previously recovered as input tax has not been amended to be applicable only where a credit note has been issued within 14 days. This could mean that where the 14 day period has not been followed, the end customer of a hire purchase agreement would still have an obligation to pay the input tax recovered, but the supplier would not be able to decrease the consideration received. It is also not clear under the current proposals whether the re-sale of the asset would be outside of the scope of VAT, if the 14 day period was not followed.



- 3.9. ***The proposals do not recognise that, in a HP agreement, the title of the goods remain with the funder***
- 3.10. Draft regulation 24C(b) of the proposal states that “a *person who makes a **transfer of assets** to another person, the value of which is agreed by the supplier and the recipient of a supply to represent the amount by which the consideration for that supply is increased or decreased, shall be regarded as paying or making a payment to that other person.*” (Emphasis added). Under a HP agreement although the assets may be in the possession of the customer, the title always remains with the funder until the final payment is made. The phrase “transfer of assets” is therefore likely to create confusion.
- 3.11. **Our Recommendations**
- 3.12. We recommend amending the draft SI so that any business engaged in hire purchase or credit is completely exempt from the proposals.
- 3.13. Alternatively, we would support a delay to the proposals whilst ways of removing the impact on legitimate hire purchase businesses can be developed. One way this could be achieved would be to extend the 14 day period to up to a year for HP funders. Other possible methods could include clarifying when the 14 day period begins, so that it would only apply once a re-sale of the asset (if applicable) has taken place.
- 3.14. We would be happy to discuss this further with HMRC to identify a workable solution.

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