

C3.5.2 Dwellings – Construction Work

existing building once the first set of works had been completed, so that the further works were an enlargement or extension of it.

- In *Birmingham Council for Old People* (VTD 15437), staff lockers were installed in a building after the main structure was completed, although before the building was ready for occupation. In the light of *University of Hull*, and apparently unaware of any other relevant case law, the Tribunal concluded that the work was not in the course of construction. (This was not the only problem here, as seen in Box C13.5A.)
- A similar approach to that in *Brahma Kumaris* was taken in the *Trustee of Sir Robert Geffrey's School Charity* (VTD 17667), where a shortage of funds led to a delay between completion of the school and the addition of further classrooms.
- The construction of *St Mary's Roman Catholic High School* (QB [1996] STC 1091) commenced in 1979. The plans envisaged several buildings and two playgrounds. The school opened to pupils in 1981, and all the buildings were completed by 1983. The playgrounds were not completed until 1994.

The High Court agreed with HMRC that the construction of the playgrounds was standard-rated. Although the playgrounds could have been zero-rated originally, zero-rating required 'a temporal connection between the construction of the building and the provision of the other services'. Eleven years was too long.

The problem here was not the length of time from 1979 to 1994, but that from 1983 to 1994. If the construction of the buildings had also been delayed, the outcome would have been different.

- *Graham Martin Morris* (VTD 17860) instructed a builder to construct a bungalow. The builder was originally going to lay paths and a patio, but Mr Morris decided to do this himself, and obtained a certificate of completion, apparently to secure the builder's removal from the site. He then took some 15 months to lay the paths and the patio.

The Tribunal held that the bungalow was complete when the certificate was issued – the building had been habitable, safe and hygienic from then, and Mr Morris had in fact been occupying it. Mr Morris was therefore too late to make a claim under the 'DIY' refund scheme (see C12.4, where this case is also referred to). The Tribunal also thought, more dubiously, that the law defined completion as when the certificate was issued.

- *J M Associates* (VTD 18624) supplied conservatories to the purchasers of new houses. The work only commenced after the house was completed, or substantially completed, and the Tribunal held that the work was standard-rated. It made no difference that it was contracted for, and partly paid for, while the house was still under construction.
- *Mr & Mrs James* (VTD 20426) built their own house. They used contract plasterers whose work proved wholly unsatisfactory and, after the certificate of completion had been issued, new plasterers had to be engaged to strip out the original plasterwork and replace it. HMRC refused zero-rating for this, saying that 'snagging or correction of faults ... carried out after the building had been completed ... can only be zero-rated if it is carried out by the original

contractors and correction of faults forms part of the building contract. When the snagging is carried out by a different contractor, the work is to an existing building and does not qualify to be zero-rated'. The Tribunal disagreed – despite the certificate, and the James's actual occupation, the construction could not be seen as complete until the new plasterwork was installed.

- *Sean Harrison-Devereux* (TC 00561) had commissioned the construction of a house, but the project was delayed and he moved in, in January 2004, before the work was completed. The building itself was finished by July 2004, although a dispute with the planning department meant that a certificate of completion was not issued until January 2009. In 2005, the contractor installed a new drainage system (the previous one having been only temporary) and laid a patio and driveway. The parties took the view that, as the house itself was complete, this work was standard-rated. The Tribunal held that it was still in the course of construction, and zero-rated, rejecting Mr Harrison-Devereux's 'DIY' claim.

Professional services and types of contract

C3.5.3 Zero-rating does not cover 'the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity'. But these people's services can still be zero-rated if they are provided as part of a zero-rated supply of construction services, for example under a design and build contract or a management contract. There is more about this in D1.2.7.

Building materials etc

C3.5.4 The rules described above deal only with supplies of services. Construction work also involves supplies of goods – such as bricks and mortar.

The law (Sch 8 Group 5 item 4) allows goods to be zero-rated if:

- they are supplied by a contractor supplying zero-rated construction services;
- in the course of doing so, he incorporates them into the building or its site; and
- the law defines them as 'building materials'.

'Building materials' are defined as goods of a kind 'ordinarily incorporated' by builders in a building of the kind in question – in this case, in dwellings. The law specifies some items as falling outside this – most furniture, most electrical or gas appliances, carpets and carpeting material – which are therefore standard-rated.

These points are discussed in C13.3 to C13.5. If building materials are supplied by someone other than the contractor, they will be standard-rated. The customer may be able to recover the VAT by granting a major interest in the dwelling (see C5.2) or under the 'DIY' refund scheme (see C12.2 to C12.4).

If the contractor's services are only partly zero-rated, the goods are only zero-rated to the extent that they are supplied in the course of the zero-rated element of the works. Some materials may clearly be used in one part of the development or the other, and should be treated accordingly. Others will need to be split according to the extent to which the development is zero-, reduced- or standard-rated, although there could be several ways of doing this.