



TC02676

Appeal number: TC/2012/6275

*VAT – DIY Builders scheme s 35 VATA – construction of new dwelling -
VAT not recoverable unless supply bore VAT and only in respect of good;
supply and fitting of windows – whether zero rated -yes*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL CHARLES HUNT

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE CHARLES HELLIER
CHRIS PERRY**

Sitting in public in Bristol on 22 March 2013

The Appellant in person

Les Bingham for the Respondents

DECISION

1. Mr Hunt decided to build a new house on a piece of land adjoining his garage
5 business. The quotations he received from builders were beyond what he could
reasonably afford and he decided to do it himself. He engaged people recommended
to him to help, and he worked with them.

2. He was aware that he could reclaim VAT on materials supplied to him for the
construction under the DIY builders scheme, and, when the work was eventually
10 complete, he made a claim to HMRC.

3. His claim included VAT which had been charged by the suppliers and fitters of
the windows and doors to the new house.

4. On 30 January 2012 HMRC wrote to Mr Hunt saying that £1,796.22 of his
claim was not eligible for repayment. Mr Hunt accepted that £384.84 of this sum was
15 not due to him under the scheme. The remaining £1,411.38 relates to the VAT on an
invoice for the supply and installation of the windows and doors.

5. HMRC carried out a review, and on 24 April 2012 wrote to Mr Hunt saying that
they remained of the view that the £1,411.38 was not refundable to him under the
scheme.

20 6. Mr Hunt appealed against this decision on 30 May 2012. His appeal was outside
the permitted time limit. Mr Bingham did not object to extending the time limit. In
the circumstances we thought it just to extend the time limit and permit the appeal to
be heard.

The Statutory provisions

25 7. Section 30 VATA provides that supplies within Sch 8 shall be zero rated.
Included in Sch 8 is Group 5, Item 2 of which relates to the supply of services in the
course of construction of a building:

“The supply in the course of construction of –

(a) a building designed as a dwelling...

30 of any services related to the construction other than the services of an
architect, surveyor or anyone acting as a consultant or in a supervisory
capacity

8. Item 4 of that Group zero rates materials supplied with those services:

35 “The supply of building materials to a person to whom the supplier
is supplying services within Item 2 ...which include the
incorporation of the materials into the building...”

9. The windows and doors were fitted and provided by RH Windows Ltd. It will
be seen that, on a straightforward reading of these provisions, the service of fitting the

windows was zero rated by Item 2 and that the words of Item 4 also zero rate the doors and windows which that company supplied because they were “building materials” which were supplied to the person (Mr Hunt) to whom RH Windows was also supplying the service of fitting the windows.

5 10. On this basis RH Windows should not have treated the provision of either the services of fitting the windows or the provision of the windows as taxable. But RH Windows did treat their supply as taxable and added VAT to the bill.

11. Section 35 of the VAT Act 1994 is the provision which permits the reclaim of VAT by “do it yourself builders”. It provides:

10 35. (1) Where-

(a) a person carries out works to which this section applies,

(b) his carrying out of the works is lawful and not otherwise in the course or furtherance of any business, and

15 (c) VAT is chargeable on the supply, acquisition or importation of *any goods* used by him for the purposes of the works.

the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.”(our italics)

20 12. Subsection (1A) provides that the works to which the section applies include the construction of a dwelling (or a conversion). Subsection (1C) relates to *conversions* of buildings into residences and relates to the work done by a contractor. It permits the reclaim of VAT charges on the supply of *services* by such a contractor.

25 13. It will be seen that if you are constructing a dwelling then you can claim the VAT back on goods, and if you are converting a building into a dwelling you can claim the VAT back on services as well. The reason for the difference is that whilst the provision of services in constructing a dwelling is zero rated, their supply in a conversion is not. Thus the provisions dovetail to give relief from VAT in both the case of construction and conversion, but in slightly different ways: in both cases the goods supplied to a developer are VATable and the VAT may be claimed back under the scheme; but in the case of construction of a new building services are zero rated –
30 so there is no VAT to claim back, and for the conversion into a dwelling the services are not zero rated and the VAT can be claimed back. This (admittedly seemingly odd) dovetailing makes it clear that VAT on services cannot be reclaimed under section 35.

Other matters

35 14. RH Windows Ltd’s invoice was for the supply and installation of windows and doors. The invoice was dated 13 February 2006. It included VAT of £1,411.38. Mr Hunt explained to us that, after he had accepted their quotation, they came and measured up, and then a little later two lads came for a couple of days to fit the windows and doors. They gave a guarantee of their work, but only if they fitted the windows and doors themselves. Mr Hunt did the staining afterwards. The invoice
40 related to four doors and a window.

15. Mr Hunt was able to obtain a breakdown of the invoice into the labour and materials elements. The vast majority was materials.

16. Mr Hunt told us that HMRC had not disputed his claim for the recovery of VAT on another invoice from the same supplier for the supply and fitting of windows.

5 Discussion

Single or Multiple supply

17. We have referred at para [9] above, to a “straightforward” application of Items 2 and 4 of Group 5. In VAT rarely is anything completely straightforward. Where several things are provided by a supplier as a package a question arises as to whether the supplier is making one supply or two. When applying provisions of the European Directive the European Court of Justice has held that the test to apply in such situations is that if the individual items are economically indissociable or if there is a principle element to which the other elements are ancillary, the supply should be treated as a single one (see eg *Levob*). But it has also held that slightly different rules apply in the case of zero rating provisions which are seen as exceptions from a unified EU scheme. In such a case the zero rating is limited to that in the domestic provisions in existence at the time of the adoption or coming in to effect of the relevant part of the directive even if from a normal EU perspective there would be a larger single supply (See eg *Talacre Beach Caravans*). That in turn raises the domestic question of whether or not the domestic rules would treat a supply as a single one or as several separate supplies.

18. In this case however, it seems to us that:

(1) If RH Windows is to be treated as making two separate supplies – one of the doors and windows, and one of the labour of fitting them, then both those supplies should have been zero rated: the first because of item 2 of Group 5 and the second because of Item 4 of Group 5; (such treatment would not be dependent on having two separate invoices).

(2) If on the other hand they are to be treated as making a single indivisible supply then it seems to us that, because of the importance of proper fitting and the availability of the guarantee, it cannot be treated as a supply of windows and doors to which the fitting was ancillary or incidental, but can only be seen as an integral supply of construction services within Item 2, and even if it were a single supply of goods it would, given the nature of the domestic provisions, fall within Item 4 as a supply of goods made with construction services.

19. Thus whether treated as one supply or two, the supply or supplies would be zero rated.

20. As a result the VAT properly chargeable on the supply was nil. Section 35 only permits the recovery of the “VAT Chargeable” on the supply. No VAT was chargeable, so no VAT is recoverable.

21. Mr Hunt says that this is unfair. He should not have had to bear VAT, and yet he has. We agree that it bears harshly on him. But it is the result of RH Windows' error in failing to zero rate their supply. Unfortunately it may now be too late to pursue them for the recovery of the VAT they should not have charged because they would no doubt resist the claim because they would no longer be able to reclaim the VAT they for which accounted to HMRC because of a four year cap on such claims, and they may be able to argue that Mr Hunt is now out of time to claim against them since more than 6 years have elapsed since their invoice.

22. We can however do nothing to alleviate this burden. The law only permits VAT to be recovered under section 35 if it is chargeable on the supply; we are given no discretion. Nor does HMRC's acceptance of the refundability of the VAT on the other invoice form RH Windows affect the position. If VAT has been refunded on it when it should not have been, Mr Hunt has been lucky. We cannot help him push his luck.

23. As a result we must dismiss the appeal.

15 Rights of appeal.

24. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 29 April 2013

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