



**TC06260**

**Appeal number: TC/2015/06460**

*VAT – replacing walls in prefabricated concrete houses - whether reduced rate for energy-saving materials applies - no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ADAM CHARLES GROVES**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE IAN HYDE**

**Sitting in public at Oxford on 7 November 2017**

**Christopher Ross for the Appellant**

**Mariko Lemos, counsel, for the Respondents**

## DECISION

1. This appeal concerns whether work carried out on prefabricated reinforced  
5 concrete houses qualifies for the reduced rate of VAT of 5% being the supply and  
installation of energy-saving materials within Group 2 of Schedule 7A of Value added  
Tax Act 1994 ("VATA").

2. The appellant has appealed against an assessment under section 73(1) VATA  
10 for under declared VAT of £26,641.13. This VAT represents the difference between  
the output tax accounted for by the appellant at 5% on supplies made by him in the  
period 1 April 2014 to 28 February 2015 and the VAT due at the standard rate of 20%  
which HMRC believe is due in respect of such supplies.

3. The Respondents issued penalty notices to the Appellant consequent upon the  
assessment but these are not the subject of this appeal.

### 15 **The facts**

4. There was, save to the extent described below, no dispute as to the facts which I  
find as set out below.

5. Prefabricated reinforced concrete ("PRC") houses, a type of "non-traditional  
20 housing", were constructed by local authorities after the Second World War to supply  
much needed low cost housing. They are of various types commonly known by the  
name of the construction company that built them (for example Wates or Airey) but in  
all cases the walls of these houses were constructed of steel reinforced concrete. Many  
PRC houses have since been sold to private buyers.

6. Due to defects including the corrosion of the steel reinforcing bars the Housing  
25 Defects Act 1984 was passed to require remedial work to be carried on the houses.  
However, the remedial work in the 1980s simply replaced the old walls with no  
improvement to their thermal insulation quality. From the 1990s local authorities  
require through building controls any structural work to meet higher thermal  
insulation standards although cheaper repairs do not require building consent.

30 7. The appellant carries on the business of carrying out repairs to PRC houses. The  
work carried out by the appellant, consists of;

- (1) propping up the roof of the house with scaffolding
- (2) removal of the sink, washing machine, cooker and radiators, temporarily  
reconnecting if necessary
- 35 (3) removal of the existing concrete wall,

- (4) laying additional foundations outside the footprint of the existing foundations
- (5) building a single thermal concrete block wall on the existing foundations
- (6) fitting thermal insulation material next to the block wall
- 5 (7) adding an exterior facing brick wall sitting on the new foundations on the exterior of the insulating layer
- (8) replacing windows and doors
- (9) interior plasterwork and decoration

8. The works are carried out on all exterior walls being four walls for a detached house, three for a semi-detached and two for a terraced house. Conceivably the extent and nature of the work carried out for each customer might be different - for example windows might be replaced separately - but the central work of replacing the wall, building a block wall with insulating material and a facing wall are constant.

9. In all cases the appellant's client is the house owner, whether a private owner or a local housing authority. Planning consent is not always needed.

10. The sample contracts and invoices produced in evidence by the appellant were essentially consistent. In the example of the contract with a Mr O'Rourke the contract provided as follows;

(1) In the recital;

20 'The Employer has requested the Contractor to carry out works to Thermally Improve and rectify the "Designated defects"... in a Wates type PRC House...in such a way that the property upon completion of the works will be able to attract lending from mortgage lenders"

(2) The contract sum payable was for;

25 "Thermal Improvement and repair to Airey dwelling £39,400"

(3) The invoice showed a single price for the supplies made and described as;  
"To carry out thermal upgrade at...."

11. The terms of the contract provided no costs schedule or breakdown of the sum payable. The appellant's evidence was that this was deliberate to ensure there was no reduce the price, for example the customer offering to do the work themselves. The sum payable was also a reasonably established standard price in the market.

12. A number of building control notices were produced which referred to the repair of the house, removal of concrete panels and posts and replacement with a new wall, for example;

“Repair to airey type PRC house by removing concrete panels and posts and replacing a cavity construction masonry wall”

13. The appellant produced evidence by way of a letter from a Mr Thorne a building control surveyor to the effect that local authorities charged different fee levels depending on whether the works on a PRC house amounted to (a) structural repairs or (b) structural repairs and thermal upgrade. The works of the type carried out by the appellant are accepted as being within (b).

### **The law**

14. Section 29A VATA provides that a reduced rate of VAT at 5% will apply to supplies which are of a description in Schedule 7A VATA.

15. Group 2 of Schedule 7A provides;

#### **"INSTALLATION OF ENERGY-SAVING MATERIALS**

Item No.

1. Supplies of services of installing energy-saving materials in residential accommodation
2. Supplies of energy-saving materials by a person who installs those materials in residential accommodation"

NOTES:

*Meaning of “energy-saving materials”*

1. for the purposes of this Group "energy-saving materials" means any of the following –
- (a) insulation for walls, floors, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings;
- (b)...."

16. The parties are agreed that the issue is whether the appellant supplies "energy-saving materials" for the purposes of Group 2, being "insulation for walls" within Note 1(a) or whether he is supplying general building services subsumed within which is the supply of insulation.

### **HMRC's arguments**

17. HMRC argued that the appellant is supplying a single composite supply of the renovation and repair of the PRC house which involves the construction of new,

structurally sound and properly insulated walls. The appellant is supplying energy-saving materials but by the appellant's own admission this is not severable from the construction of the wall and the provision of insulation does not predominate.

5 18. In *Beco Products v CCE* (2004) VAT Decision Number 18638, was an appeal on both the current and an earlier version of Note 1(a). The appeal concerned the supply, by the appellant of hollow polystyrene "wallform" building blocks. The blocks, which had integral tongue and groove edges, were designed to be fitted together to form a wall with concrete being poured into and around the hollow blocks. The appellant supplied the blocks as part of wider services, for example the  
10 construction of an extension with no breakdown as to the supply of the blocks against other goods and services although other services made up less than 10% of the cost of carrying out the works.

15 19. The VAT Tribunal found that the blocks themselves provided a higher degree of insulation than traditional building methods but that the structural integrity came from the concrete. The VAT Tribunal rejected the appellant's argument that the wallform blocks formed the dominant feature of any extension of building constructed and that the purchaser was ordering a "wallform" building when he specified "wallform".

20. If the "wallform" that blocks are part of a contract for construction, the dominant purpose of the contract will be the building that results;

20 "33. I accept Mr Stephon's submission that, if the "Wallform" blocks are installed as part of an entire contract for construction, the dominant purpose of the contract will be the building that results. The dominant purpose will not be the insulation provided by the system, even though that is probably why the purchaser chose "wallform" above other methods of construction. The  
25 purchaser wants a building first and foremost, and that is indeed what he gets. What does the purchaser get? He gets a solid structure, permanent and weatherproof-factors which in my judgment are more important to him than to know that the building is particularly well insulated, thanks to the fine quality of the system. If those factors are not even more important to him than the system,  
30 then, looked at objectively, they should be. Any amount of insulation is of no value if the building is no building"

21. Accordingly, whether a customer's primary purpose in having the works done is to have a structurally sound house or to carry out improvements to the thermal insulation must, in accordance with *Beko* and the Upper Tribunal decision in *HMRC v Bryce* [2010] UKUT 26, be considered objectively.  
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22. On that basis it is apparent that the PRC houses are structurally flawed and the nature of the supply is the demolition and replacement of the walls with new foundations. This is often described by the appellant as thermally repairing and upgrading or a thermal upgrade. However, viewed objectively, the supply is of a

structurally sound wall, albeit one that meets relevant modern standards of thermal insulation.

23. Further, HMRC argued that this Tribunal is bound by the Upper Tribunal's decision in *HMRC v Pinevale Ltd* [2014] UKUT 0202. In that decision the Upper Tribunal allowed HMRC's appeal against the First-tier Tribunal's decision allowing the taxpayer's appeal in respect of the supplies of polycarbonate roofs for conservatories, the issue turning on whether the roof panels qualified as "insulation for ...roofs" within Note 1(a). The Upper Tribunal distinguished between material which was installation for a roof and the roof itself;

10 "17. There is a distinction between Note 1(a), which specifies installation "for walls, floor, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings and paragraphs(c) to (j) which specify particular products such as central heating system controls or solar panels. A material which is installation for a roof is not the same thing as the roof itself. It presupposes that there is a roof to which the insulating material is applied. If the intention had been to apply the reduced rate of VAT to energy efficient roofs or walls this could have been specified, just as more generally building materials are specified in Schedule 8. The same point can be made in respect of water tanks. It is not energy-efficient water tanks, such as those that incorporate insulation as part of their construction, which attracted the reduced rate of VAT, but installation for water tanks. Again it presupposes that there is a water tank to which an insulating material is attached or applied."

24. In this appeal on the basis of the ratio in *Pinevale*, the appellant's is not supplying an energy-saving product "for" a wall but is supplying the walls themselves.

25. HMRC may have given guidance to other taxpayers which may or may not be wrong. However, the appellant is not entitled to rely on guidance apparently given to other taxpayers. The appellant was not raising any public law argument and so there is no need to consider evidence from the other traders. In any event the appellant cannot rely on an argument of legitimate expectation in this Tribunal as it does not have jurisdiction to do so, that jurisdiction being an exclusive matter for the Administrative Court, see *HMRC v Abdul Noor* [2013] UKUT 71 (TCC) STC 998, *Trustees of the BT Pension Scheme v HMRC* [2015] EWCA Civ 713 and *Shanklin Conservative and Unionist Club* [2016] UKFTT 135.

### 35 **The appellant's arguments**

26. The appellant argued that the work he carries out, being the totality of the new cavity wall and insulation, is a thermal upgrade of the house and so qualifies for reduced rate being the supply and fitting of energy-saving materials within Schedule 7A. The appellant did not argue that any element of the consideration for the supplies could be treated as a separate supply and so attract the reduced rate of VAT.

27. The appellant argued that the works create a new thermally efficient house. The main reason for house owners to have the work done is to turn a damp unhealthy house into a warm, efficient and healthy house. The purpose of the work is not necessarily to repair the house with the installation of energy saving materials as a secondary benefit but the provision of energy saving insulation which requires other work to be done to be fitted.

28. As far as local authority owned PRC homes are concerned, the appellant argued that there were not likely to repair unless required to do so by new energy efficiency standards. In this context the appellant made reference to the Stroud District Council "non Traditional Homes Strategy" which refers to properties owned by the Council which said;

"....some works have been carried out where the structure is not considered to be failing, to insulate them externally and bring them up to acceptable standards of thermal comfort"

29. The appellant disputed HMRC's argument that the main purpose of private owners carrying out the works was to repair the house. There may not be corrosion problems on that particular house and in any event repairs could be carried out cheaply without building regulation approval. However, if home owners want a warm and healthy house they need to thermally upgrade and so carry out the works supplied by the appellant and others.

30. The appellant disputed that the work was required to obtain a mortgage as many customers already own the house when they contract with the appellant. A customer's purpose in obtaining a mortgage might be to fund the thermal upgrading although it does also remove the defect associated with PRC housing. However, in funding the works a homeowner would not have mortgage monies released unless and until the works have been certified by building control and for that to happen thermal efficiency standards have to be met.

31. The appellant disputed the relevance of the cases relied upon by HMRC. The appellant argued that *Beco* was concerned with extensions and alterations whereas the appellant is working within the original footprint of the house. Further *Pinevale* is not analogous as the roof in that case was a bought in product but it just happened to be thermally efficient. In the appellant's circumstances the energy efficient material provided is the envelope of the structure, being the walls, cavity, infill, floor and ceilings, all of which is built to thermal standards.

32. Without putting any reliance on the point, the appellant claimed that competitors charged the reduced rate and that HMRC have previously confirmed the application of the reduced rate to other taxpayers. He also made reference to a number of decisions by HMRC in respect of other taxpayers and that he relied on that guidance.

## Decision

33. The appellant raised a number of arguments based on what might be described as the understanding in the industry as to the application the reduced rate.

5 34. In light of the very clear authorities on the point as cited by HMRC I accept  
HMRC's argument that this Tribunal has no jurisdiction to hear any argument based  
on legitimate expectation nor any reliance placed on statements or guidance given by  
HMRC whether to the appellant, to other taxpayers or more generally. Even if I could  
10 hear such arguments the evidence presented by the appellants did not amount to  
anything upon which a defence of legitimate expectation could be based.  
Accordingly, even if other taxpayers have had confirmation of the reduced rate to  
their supplies, it is not relevant to this appeal.

35. As to the evidence of Mr Thorne the building control surveyor as to the fee  
structure for building control, aside from only being in the form of a letter, is not in  
15 my view relevant. Even if it were true (on which I have no opinion, the legislation not  
having been produced to me or Mr Thorne attending the hearing), the Tribunal can  
only decide an appeal on the tax law. For example there is no indication that Note 1(a)  
is replicated in building control fee structures.

36. On the substantive issue as to whether the works attract the reduced rate of VAT  
20 being within Group 2 of Schedule 7A, the essential facts as to the works are agreed. It  
is agreed by both parties that the appellant's supplies go beyond the supply of energy-  
saving materials to the construction of new cavity walls with insulation. Whilst there  
are differences in detail, all the relevant documentation including the appellant's  
contracts and invoices are all consistent with that composite supply by the appellant.  
25 The question however, is what is the nature of that supply.

37. There was no direct evidence from customers as to their purpose in engaging the  
appellant to do the works. The relevance of obtaining a mortgage, and the  
circumstances and purpose of doing so were not developed in argument and I do not  
find it of assistance either way.

30 38. However a customer's purpose must be viewed objectively and in the current  
circumstances that must be the purchase of construction works resulting in new walls  
rather than simply energy-saving materials. In doing so I accept the appellant's  
position that house owners have a choice as to whether to carry out cheap repairs or  
more expensive thermally efficient repairs. However, that does not change the nature  
35 of the customer's purpose in engaging the appellant.

39. In my view I am bound by the Upper Tribunal's decision in *Pinevale*. Even if I  
were not so bound I would decide the point in the same way. I find that the appellant's  
supplies cannot be described as just the supply of "insulation for walls" and related  
installation services. The appellant's services go much further than that to the  
40 replacement of the walls themselves. Applying *Pinevale*, Parliament has legislated for



a reduced rate of VAT to apply to the supply and installation of energy-saving materials not the construction of energy efficient walls. The totality of a new cavity insulated wall undoubtedly improves the thermal efficiency of the PRC house but that is not the test in Note 1(a).

5 40. The appellant's supplies are therefore not within Group 2 of Schedule 7A VATA and I therefore dismiss this appeal.

41. 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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**IAN HYDE  
TRIBUNAL JUDGE**

**RELEASE DATE: 07 DECEMBER 2017**

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