

## September 2017

*A bite-sized review of some of the more important developments in the world of VAT, including court rulings. For more information or interpretation of these stories, contact **Gerry Myton** or **Leo Donovan***

### **Newly converted dwellings fail to obtain zero rate**

*(Languard New Homes Ltd v HMRC/ DD & DM MacPherson v HMRC)*

Converting to residential use does not automatically guarantee a zero-rate sale on disposal.

In *MacPherson*, an old village shop with storage and living accommodation was converted into two semi-detached dwellings, each formed of areas that were previously residential and non-residential. The case was lost at First Tier Tribunal (FTT). In *Languard*, a public house and landlord accommodation was converted into two maisonettes combining the original commercial and residential areas. The case was won at FTT.

The Upper Tribunal took the view in each case that the new residential units included areas previously used for residential purposes. Accordingly, these could not be conversions from non-residential parts of a building into new dwellings and the zero rate did not apply.



*These cases highlight the need for careful planning in projects of this nature and to seek advice in respect of the VAT position.*

### **Construction alert: Broader definition of 'personal care'**

*Change in HMRC Policy, HMRC Brief 02/2017*

Following the loss of Pennine Care NHS Trust (2016) UKFTT 222, HMRC now accepts a broader definition of personal care. The case centred on whether the building was

to be used for 'personal care' of mental health patients, or whether the building was providing 'medical care' akin to a hospital.

What's the difference? About 20% in VAT on construction! Hospitals incur VAT at 20% when constructed, whereas a care home (used for a Relevant Residential Purpose) qualifies for zero rate VAT.

HMRC now accepts that personal care can go beyond basic feeding/washing and can include more specialised care packages.

 ***Service providers looking to construct new buildings related to providing this kind of care now have some assurance that the building will qualify as RRP and qualify for zero rating.***

## **Welfare services and VAT exemption – changes afoot?**

***Learning Centre (Romford) Ltd v HMRC***

LCR provides day care services to vulnerable adults with learning difficulties. HMRC asserted that LCR's supplies were welfare services but because they were not state regulated they could not be exempt, and VAT must apply.

LCR argued this was unfair because a similar provider based in Scotland or Northern Ireland legally had to be state regulated and could thus achieve VAT exemption. The FTT agreed this breached fiscal neutrality and that LCR could rely on direct effect of EU Legislation. Businesses can still rely on UK law where charging and recovering VAT.

## **When does a building cease to exist?**

***J3 Building Solutions Ltd v HMRC***

Works were undertaken to demolish a building and redevelop the site to form a new dwelling. Two exterior walls were retained along with part of a third exterior wall

The FTT concluded the original building had ceased to exist and that zero rating applied. The Upper Tribunal found the FTT had incorrectly failed to examine the interaction of Notes 16 & 18 within Group 5, Sch.8. The Upper Tribunal concluded the original building did not cease to exist, and as such, the works could not qualify for zero rate.



*This is another example of how retaining walls and facades can cause problems gaining zero rate status. This was a complex legal argument focused on legal language but it again shows that misinterpreting the law can prove costly.*

## **HMRC penalties: Incompetence on a grand scale?**

*Gekko & Co Limited v HMRC*

The case involved an appeal against penalties imposed by HMRC for fairly minor sums. However, the 37-page ruling issued by the FTT contained worrying features about how HMRC appeared to ignore the advice of the Reviewing Officer, change its mind on the behaviour type and apply the wrong behaviour category.

HMRC was also accused of failing to properly communicate with the business with some correspondence labelled as “muddled” and “spurious”, leaving the FTT to ponder was this “incompetence on a grand scale?”

The FTT cancelled all the penalties and awarded costs to the business.



*This is proof yet again that the HMRC penalty regime is overly complex, burdensome and, perhaps most important, an inconsistent approach applied by HMRC staff. If you receive ANY penalty from HMRC, check with an adviser as to its validity.*

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