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Potential VAT Opportunity for Housebuilders

A legal ruling has opened the door for house builders to potentially recover VAT on furniture and other items associated with dressing or equipping show homes. *Gerry Myton* reports



Background

Taylor Wimpey plc lodged a Fleming claim (1973-1997) for input tax that companies in its group had foregone under the VAT Input Tax Blocking Order on items such as cookers, washing machines, fridges and carpets. Its case was based on two distinct arguments, revolving around the word 'incorporated' and the permissibility of the provision under the EU VAT Directive.

Scope of the Blocking Order

The issue before the court (the Upper Tribunal) was whether items such as those listed above were covered by the Blocking Order and, if not, were they then part of the zero-rated supply of the new dwelling or not? This all centred around the definition and interpretation of the term 'incorporated'.

In brief, the court held that *an item will be incorporated in a building if it is a fixture, and also if it is installed as a fitting. ... "Without setting a prescriptive test, there must, in our view, be a material degree of attachment to the building, albeit less than the degree of annexation required for something to be a fixture. In our judgment, mere attachment to an electricity supply by a removable plug is not, on its own, sufficient for*

the item to be regarded as installed as a fitting, or incorporated. Some other feature or features of installation is necessary, whether by housing the item in a particular structure, or by fixing the item in a manner designed to be other than temporary either to a physical part of the structure or to a supply of electricity, gas or water or means of ventilation or drainage”.

Applying this approach, the Upper Tribunal made some preliminary observations on the types of item covered by the claim.

“Our view essentially is that, from the list of Claim Items, the only items that will be neither fixtures nor installed fittings will be white goods that are free-standing and attached to the building by means only of a removable plug or other temporary attachment to the mains services, in circumstances where the equipment is of its nature portable in the ordinary course. An example would be a microwave oven that is simply placed on the kitchen work surface, and which is plugged in for use. Finally, fitted carpets would clearly be fittings.”

Zero-Rated?

To the extent that items were not ‘incorporated’ (or installed as fittings), they were not subject to the Blocking Order but the question then was whether output tax was due on them. HMRC had maintained that it was but the Upper Tribunal acknowledged that an item might not be incorporated while also not being the subject of a separate supply in Card Protection Plan (CPP) terms. The Upper Tribunal reached no conclusion on this issue, noting that it would be more productive to address it once the items in question, if any, had actually been identified.

Potential Opportunity

The ruling poses a very interesting question around furniture in show homes and consideration should be given to amending a retrospective claim and/or submitting a new four-year capped claim.

