

'Serviced' plots of building land sold to private individuals are a single exempt supply
Lammermuir Game Services (20259)

Summary

The Appellant developed an access road and installed utility connections to the boundaries of fifteen plots of land and sold them to individuals for house building. The Tribunal rejected HMRC's contention that there was a mixed supply of exempt land and taxable civil engineering works, or that the Appellant incurred VAT on the civil engineering works which was not recoverable if the land sale was exempt.

Background

The Appellant developed land into 15 separate plots with planning permission for the construction of new houses. The development works encompassed the initial earthworks, construction of an access road around which the plots were situated and installation of electricity, water and sewerage connections to the boundaries of the plots. The purchasers of the plots were to be responsible for the connection of the utilities from the boundary to the house.

The contractors carrying out the works zero-rated their supplies to the Appellant on the basis that they were supplied "in the course of construction of dwellings (Item 2(a), Group 5, Schedule 8 to the VAT Act 1994). The contracts for sale of the plots obliged the Appellant to install the road and utilities connections as described and the Appellant sold the plots at a single price, treating the sale as exempt.

Following a VAT inspection, HMRC ruled that the supply of land was exempt but that output VAT was due on the value of the services supplied in relation to each plot and issued an assessment based on the value of the services included in the sales of the plots.

The Appellant argued that there was a single exempt supply of land or, if there were two supplies, the land was exempt and the civil engineering services were zero-rated.

HMRC argued that:

- obtaining the supply of the services was a distinct aim of the purchaser from obtaining the land, not a means of better enjoying the land;
- the fact that there was a single price was not determinative; and
- the supply of services was not made 'in the course of construction of dwellings because the chain of events between the works and the construction of the dwelling was broken by the sale of the land to the purchaser: the Appellant could not force construction of the dwelling and there might be a significant delay between sale and construction.

The Tribunal considered that there was a single exempt supply of land which placed a number of obligations on the Appellant, including the provision of the road and service connections. The purchaser would never subscribe for the services without subscribing for the land to which they were adjacent (although the converse could apply) and the whole point of contracting for a serviced plot with road access was a 'classic example', in the Tribunal's words, of 'a means of better enjoying the principal supply', on the Card Protection Plan principles.

The Tribunal also emphasised the difficulty which would be encountered in ascribing a value of the services to each plot, as the cost of servicing each would vary according to the proximity to the site entrance and other factors. Whilst this was not determinative, it was indicative that the supply was a single, indivisible unit which should not be artificially split.

If it was wrong in this conclusion and there was a supply of land (which was exempt) and a supply of services, the Tribunal held that the services (of the contractors or of the Appellant) were supplied 'in the course of construction'. Services were connected with the construction of the building if they facilitated or had a substantial connection with its construction, provided that there was a temporal connection with the

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construction. In the present case, the contractors' works spanned the time-frame of the project, some (e.g. the final road surfacing) not being completed until the houses had all been built and therefore there was a temporal link and those supplies were zero-rated.

The Tribunal considered that it would be unusual for a purchaser to acquire a serviced plot and then delay construction inordinately, barring some unforeseen circumstance. Consequently, if there was a separate supply of services by the Appellant, it would be zero-rated.

Implications

Paragraph 3.3.4 of Notice 708/2, 'Buildings and construction', indicates that services which enable construction of the building to take place (demolition, site clearance and ground works) or enable the building to be used (e.g. providing water and power connections, roads, footpaths etc.) are provided in the course of construction. However, paragraph 3.3.6 seeks to impose the standard rate where "the services for a building (water, electricity, etc) are installed on land which is to be sold as building land". Extra Statutory Concession 3.16 provides for zero-rating of the first gas and electrical connections to a dwelling, but this does not extend to land to be used for the construction of a dwelling.

Notice 701/16/02, 'Water and sewerage services' states that following supplies are standard-rated:

- first time connection of existing dwellings to the water and sewerage mains; and
- first time connection of buildings converted from a non-residential to residential use to the water and sewerage mains.

Consequently, the Tribunal's decision is contrary to HMRC's guidance and it remains to be seen whether HMRC will appeal the decision. However, it is likely that the policy pursued by HMRC has incorrectly given rise to VAT costs. Claims may be possible for VAT overpaid by contractors and/or vendors of land (subject possibly to the unjust enrichment provisions) or for input VAT which the vendor has been prevented from recovering where contractors have charged VAT which has been attributed directly to an exempt supply.