

New build – incorporation of swimming pools
Rainbow Pools London Limited v HMRC

The construction of indoor swimming pools in new houses is zero rated under Item 2 Group 5 Schedule 8 VATA 1994. This case concerns the related supply of retractable insulated covers and moveable floors. Rainbow Pools London Limited argued these are zero rated under Item 4 Group 5 as they fell within the definition of ‘building materials’ in Note (22) of Group 5. The Tribunal allowed the appeal in relation to the retractable covers but dismissed the appeal as regards to the moveable floors.

The Tribunal classed the electrically-powered, fully-retractable insulated swimming pool covers as building materials because the covers were built into the pool structure; and were ‘ordinarily incorporated’ within new indoor swimming pools (the Tribunal noted that in *Leisure Contracts Limited* these covers are often required under building regulations). HMRC argued the point that electrical appliances are excluded from zero rating. However, the Tribunal concluded that “it is purely incidental to their description that they are electrically powered”, making the analogy that “curtains are curtains even though some in offices and luxury houses may be drawn electrically”.

The moveable floors, a new and interesting invention designed to enable the level of the swimming pool floor to be altered to create varying depths, was regarded as an exceptional item not ‘ordinarily incorporated’ in buildings of any description.