

## **Recovery of VAT on pre-incorporation/registration costs**

### ***TC00145 Oaks Pavilion Ltd***

The appellant (Mr Coram) conducted building operations for two houses behind his own residence, and leased out both after completion (exempt supplies). During the development, in order to recover VAT on building materials incurred in the course of construction, his accountant advised him to form a company, Oaks Pavilion Ltd (OPL), that would undertake a 'constructing new build house' business, for which it charged Mr Coram as the owner of the land. The service of OPL would then be treated as zero-rated, allowing it input tax recovery on related costs.

Mr Coram and his accountant asked HMRC to confirm the VAT position and believed they obtained the confirmation. OPL eventually became VAT-registered from 30 April 2006.

In October 2006, HMRC disallowed most of the input tax claimed by OPL on the first VAT return except a small amount incurred on supplies made to it after its registration on the basis that the claims for the earlier expenditure did not meet the conditions of Regulation 111 VAT Regulations 1995 (Exceptional claims for VAT relief – pre registration and pre incorporation VAT).

### **Held**

The Tribunal dismissed OPL's appeal for much of the recovery of VAT on pre incorporation expenditure because this was incurred before Mr Coram, who formed OPL, (on 23 February 2006) decided, (on 22 February 2006), that OPL would conduct a property construction business. Consequently the expenditure could not be 'for the business of the company' as there was no business anticipated at that time (see Regulation 111). The Tribunal allowed the expenditure incurred by OPL itself after its incorporation (under Regulation 111(1)(a)) as this was for the purposes of a business about to be conducted by OPL, which would result in OPL making taxable supplies.

HMRC had argued that the VAT on the building materials fell outside Regulation 111 because the materials were consumables which had been consumed before OPL was VAT registered because the two houses were complete before OPL registered. Thus the goods were not on hand at registration and had been used in making supplies before registration (such supplies block a right to recovery) so did not meet the conditions of Regulation 111. Also HMRC argued that any claims made by a company under Regulation 111 had to meet both 111 (1) (a) and (b) and these claims did not.

The Tribunal disagreed with HMRC's interpretation of Regulation 111 VAT Regulations 1995 in two respects:

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(1) The building materials were goods that had not been consumed pre registration as they still existed. Hence input tax recovery cannot be denied under 111 (2) (a)(ii). The Tribunal concluded that the construction services were not supplied until OPL was paid (in September 2006) and as this was post registration OPL could claim the VAT incurred on materials on and after incorporation;

(2) A company claiming deductions for pre-incorporation expenditure can not satisfy both Reg111(1)(a) and (b) as these are mutually exclusive, since Reg111(1)(a) assumes the taxable person exists when the VAT is incurred, but is just not VAT registered, whereas 111 (1)(b) assumes the taxable person does not exist at all when the VAT is incurred. Therefore HMRC were wrong to argue that a company had to meet both conditions to be able to recover the VAT.

***Comment***

*This case also further develops the decision in Community Housing where HMRC also unsuccessfully tried to argue that it was not possible to transfer the value of partly completed construction services in a way that gave right to input VAT recovery.*

[Click here to read the OPL case in full.](#)

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