

DIY Builders Scheme – construction of a new dwelling wholly within an existing dwelling
[Ali Kia Jahansouz](#)

This case concerned the construction of a new flat and its eligibility for the DIY Builders Scheme. Mr Jahansouz constructed a new flat in the roof space of a building which already contained two flats (one of which was completely separate from the works). The description of the development in the planning permission was for “construction of a new gable end roof to replace the existing roof, including the erection of two dormer windows and two front roof lights to create an additional self-contained flat in the roof space”. Mr Jahansouz was not registered for VAT for the relevant period, but made a claim under s35 VATA 94 (the DIY Builders Scheme) for VAT in respect of the works undertaken. HMRC declined Mr Jahansouz’s claim on the grounds that a conversion of the loft space had occurred and so the conversion did not fall within the DIY Builders Scheme because it was not a residential conversion within the meaning of s35(1A)(c) of VATA 94: the loft space was not a non residential part of a building, because it was part of the top flat, even though of course no one actually lived in that space.

However, it is possible to claim the VAT in two other cases:

1. s35(1A)(a): the construction of a building designed as a dwelling or number of dwellings
2. s35(1A)(b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose.

Here, the definition of ‘construction of a building’ is given by Sch 8 Group 5 Note (16)(a) of VATA 94. The Court went on to show that Mr Jahansouz could claim the VAT on the basis of s35(1A)(a). In order for this to be the case it needed to be shown that:

The new flat has its own separate entrance - The flat concerned was a new flat built on the new second floor. There was also a flat on the first floor and a flat on the ground floor. The ground floor flat had its own separate entrance. The first and second floor flats shared a communal front door but then each had its own separate entrance.

It was held that this was sufficient.

The new flat is not a conversion, reconstruction, alteration, enlargement or extension of the existing building unless the enlargement or extension itself creates an additional dwelling - Although the council described the works in its completion statement as a loft conversion, the Court accepted Mr Jahansouz’s evidence that this was a mistake. The regularisation certificate dated the same day as the completion certificate described the works as a “conversion of existing house into two self-contained flats”, and this document accords with both his chartered surveyor’s letter and the planning permission. It was decided that the works did consist of an enlargement, but HMRC argued that the new dwelling was not “wholly within the enlargement or extension” as it was partly built in the old roof space, so the enlargement had not created a new dwelling. The Court held that if this were the case, then only people with completely flat roofs could ever reclaim VAT for building a new flat on top of an existing building, which is not a sensible interpretation. It was also noted that Note (16)(b) itself does not contain the word ‘wholly’. In any case, it was held that the new flat was wholly within the enlargement and amounted to an ‘additional’ dwelling rather than an enlargement of an existing dwelling.

Thus, the appeal was allowed and Mr Jahansouz was entitled to a VAT refund.