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Case alert

HMRC v Summit Electrical Installations Ltd

May 2018

Summary

This is HMRC's appeal against a decision of the First-tier Tax Tribunal (FTT).

Summit Electrical Installations Ltd (Summit) acted as a sub-contractor when it supplied electrical installation services in relation to the construction of student accommodation in Leicester. The main contractor provided Summit with a zero-rating certificate on the basis that the building qualified as a dwelling (or a number of dwellings).

HMRC argued at the FTT that, firstly, as a sub-contractor, Summit was not entitled to zero-rate its services to the main contractor. Secondly, it argued that the development did not qualify as a dwelling because of a planning restriction restricting the use of the building. The planning permission imposed a condition restricting use of the building to students studying at the two main universities in Leicester.

HMRC argued that that this condition meant that separate use of the building was prohibited by the planning consent and, as such, it could not be regarded as a dwelling. The FTT disagreed with HMRC and it was in relation to this second issue that HMRC appealed to the Upper Tribunal.

Upper Tribunal

The Upper Tribunal has issued its judgment in this appeal by HMRC against the FTT's decision that Summit's supply of electrical installation services to its main contractor was zero-rated. UK VAT law states that services are zero-rated if they are provided during the course of constructing a building that is either a dwelling or a number of dwellings. The law imposes certain conditions, one of which is that if the separate use or disposal of the building in question is restricted by the term of any covenant, statutory planning consent or similar provision, the building will not meet the VAT definition of a dwelling and zero-rating is not available.

The planning consent issued by the local Council dictated that the building in question could not be occupied other than by full-time students attending either De Montfort or Leicester Universities. HMRC took that restriction to mean that the separate use of the building was limited by the planning consent but the FTT disagreed. The FTT examined relevant case law and concluded that the 'separate use' condition contained in the law relates to use separate from some other specific land or building. Simple attendance at one of the named universities could not be equated with a link to any specific land or building. In this context, it was clear to the FTT that the universities named in the planning condition were being identified simply as educational institutions rather than as specific land or buildings. As such, the planning consent condition did not mean that the separate use or disposal of the building was restricted. The FTT allowed Summit's appeal.

HMRC appealed to the Upper Tribunal. Its sole ground of appeal was that the FTT had erred in law when it came to its conclusion that the planning condition did not restrict the separate use or disposal of the building. Again, the Upper Tribunal reflected on relevant case law. In particular, it focused on the cases of HMRC v Lunn, HMRC v Shields and HMRC v Burton. All of these cases determined that 'separate use or disposal' must refer to separate use to other specific land or buildings. The Upper Tribunal confirmed that the FTT's reasoning was correct. In this case, the planning consent condition merely named the two universities as a educational establishments to which the students occupying the building must attend. This did not mean that the separate use or disposal was restricted by that condition. Accordingly, the FTT did not err in law and HMRC's appeal was dismissed.

Comment – the planning consent restriction is intended to prevent the construction of buildings such as 'granny flats' from being zero-rated where they are not independent dwellings, in the sense that they cannot lawfully be used separately from other premises. The restriction imposed by the planning consent in this case merely identified the two universities as educational institutions to which the students occupying the building must attend. It did not name any specific piece of land or building and, as such, the building qualified as a dwelling.

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