

# Case Alert

## *Tribunal allows VAT appeal in sub-contractor case*

### *Summary*

This was a case relating to the VAT liability of a sub-contractor's services to a main contractor in a case where the building being constructed was a relevant residential purpose (RRP) building.

The 'user' of the building had issued a certificate to the main contractor claiming VAT zero-rating for the works. This was on the basis that the completed building was intended to be used solely as student accommodation. HMRC argued that the sub-contractor could not zero-rate its services to the main contractor in such circumstances, but the First-tier Tax Tribunal found that, in any case, the building qualified as a 'dwelling' or number of dwellings and allowed the sub-contractor's appeal.

### First-tier Tax Tribunal (Summit Electrical Installations Ltd)

UK VAT law zero-rates the supply of services in relation to the construction of a building designed as a dwelling (or a number of dwellings in the case of flats etc). The law also zero-rates the supply of services relating to the construction of a relevant residential building but this is on condition that the customer issues a certificate to the supplier stating that the building will be used for a relevant residential purpose. In this case, that purpose was use as student accommodation for students attending university in Leicester. The law also specifically states that the supply can only be zero-rated where the supply of construction services etc is made directly to the person that provided the certificate. In normal circumstances, therefore, this precludes a sub-contractor from zero-rating his services to the main contractor.

In this case, the Tribunal found that, in fact, the student accommodation met the statutory test of a dwelling (or number of dwellings). This was on the basis that the accommodation being constructed was 'self-contained', had no internal access to other accommodation, was built in accordance with planning consents and there was no planning restriction on either separate use or disposal. HMRC tried to argue that the restriction contained in the planning consent to only permit student use of the building after completion meant that the 'separate use or disposal' test had not been met but this idea was dismissed by the Tribunal. Restricting use to a particular class of person did not mean that the separate use or disposal test had not been met.

HMRC then tried to argue that, as the main contractor had zero-rated the construction of the building in response to the issue of the certificate, that was the only zero-rating that was available. The Tribunal also dismissed that assertion. Zero-rating was available to the main contractor on the basis of the certificated use of the building and zero-rating was available to the sub-contractor on the basis that the building was designed as a dwelling or number of dwellings.

***Comment – this case confirms that some buildings can meet the test of being both a relevant residential building and a dwelling with zero-rating being available to both main and sub-contractors. Main contractors should assess whether the statutory tests have been met before accepting invoices from sub-contractors where VAT at the standard rate has been charged.***

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