



Case alert

Fortyseven Park Street Ltd

May 2019

Summary

This was an appeal by HMRC to the Court of Appeal from a judgment of the Upper Tribunal.

The case concerns the sale of fractional interests (time-share) in a refurbished residential building in Mayfair – London by Fortyseven Park Street Ltd (47PSL), a subsidiary of the Marriott group.

47PSL claimed that the sale of each fractional interest was a supply of an interest in land which was exempt from VAT. HMRC on the other hand argued that there was no such supply or that, if there was, what was being supplied was similar to accommodation provided in a hotel. In such circumstances, HMRC contended that the supply made by 47PSL was liable to UK VAT at the standard rate.

The litigation began in the First-tier Tax Tribunal (FTT) which decided that there was a supply of an interest in land but that it was similar to hotel accommodation. The company appealed to the Upper Tribunal which agreed with the FTT on the supply of land issue but disagreed that it was similar to hotel accommodation and allowed 47PSL's appeal.

HMRC appealed to the Court of Appeal.

Court of Appeal

Under UK VAT law, the supply of an interest in land is generally exempt from VAT. This implements the EU VAT Directive into UK law. The Directive, however, exempts 'the leasing or letting of immovable property' and the Court of Justice has ruled in previous cases that this term must be interpreted uniformly throughout the Member States. To qualify as a leasing or letting, the person acquiring the interest in land must be entitled to occupy the property in question and to exclude other parties from the property. If these conditions are met then the supply will, generally, be exempt from VAT (there are exceptions to this general rule).

In addition, in earlier VAT cases, the Court of Justice has also ruled that for a supply to qualify as a leasing or letting of immovable property, it must be a passive activity. Where the supplier of the interest in the land also provides other services to the tenant or lessee then it is possible that the passive activity (of letting the property in return for a rent) becomes ancillary to the additional services and changes the nature of the supply from one of an interest in land to a complex supply of services.

In this case 47PSL granted fractional interests in furnished apartments in a refurbished residential building in Mayfair – London. It considered that it met all of the conditions for the supplies to be treated as the leasing or letting of immovable property and that, as a result, the sale proceeds from the fractional interests were exempt from VAT. HMRC considered that the conditions were not met or, alternatively, if they were met, then what was being supplied was similar to the provision of hotel accommodation. The Upper Tribunal agreed with 47PSL and HMRC appealed to the Court of Appeal. In its judgment (issued May 17), the Court of Appeal concluded that, on the facts, the sale of the fractional interests was not a passive activity. The company also arranged the supply of additional services to the owner / members albeit that these additional services were sub-contracted to another company in the group. The reality of the contract between 47PSL and its customer was for the provision of a right to occupy the apartment and for the provision of additional 'hotel type' services. This was much more than the simple and passive activity of leasing or letting. Accordingly the Court of Appeal allowed HMRC's appeal.

Comment – This case demonstrates that there is often a fine line to be drawn between whether a supply qualifies as a supply of an interest in land (or in EU VAT law terms a leasing or letting of immovable property) and something else. The Court of Appeal found in this case that the additional hotel-type services were supplied by the Management company to 47PSL and then re-supplied to the customer by 47PSL. On that analysis, the Court concluded that what 47PSL supplied was not, simply, a passive supply of an interest in land but was a complex supply of hotel-type services combined with a supply of land. Accordingly, HMRC's appeal was allowed. The supply of the fractional interests were liable to VAT at the standard rate. Businesses involved with the supply of land should take note that, where additional services are provided the grant of the interest in land could be regarded as ancillary to those other supplies. Contact your usual Grant Thornton contact if you are in any doubt.

Contact

Stuart Brodie

Scotland

T +44 (0)14 1223 0683

E stuart.brodie@uk.gt.com

Karen Robb

London & South East

T +44 (0)20 772 82556

E karen.robby@uk.gt.com

Nick Warner

London & South East

T +44 (0)20 7728 3085

E nick.warner@uk.gt.com