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Case Alert

Taylor Wimpey PLC v HMRC

Summary

Taylor Wimpey PLC submitted a claim for £53 million in March 2009 arguing that UK VAT law (known as the 'builder's block' was unlawful. The law prevents the recovery of input VAT on the purchase of certain goods when they are sold together with a new dwelling.

The First-tier Tribunal dismissed Taylor Wimpey's appeal.

The Upper Tribunal has confirmed that UK law is not contrary to EU law and has found that the goods were incorporated in the dwellings if they were 'fixtures' or installed fittings.

The Tribunal has adjourned the hearing to allow the parties to agree the extent of the claim that relates to goods that are not fixtures.

Upper Tribunal

The Upper Tribunal has issued its judgment in the above case which concerns whether UK VAT law – which has always blocked the recovery of input VAT on the supply of "white" and other goods into new dwellings – is lawful. Taylor Wimpey PLC appeals from decisions of the First-tier Tribunal.

Ever since VAT was introduced into the UK in 1973, UK VAT law has prevented the recovery of VAT incurred on certain goods (known as 'white goods') where they are supplied as part and parcel of the supply of a dwelling. The purpose behind the law being to prevent house purchasers obtaining such goods on a VAT free basis as part of the purchase price of the dwelling. There are exceptions to the input VAT block if the goods are incorporated into the dwelling and are either building materials, builder's hardware, sanitary ware or they are other articles that are ordinarily installed into dwellings by builders as fixtures.

Taylor Wimpey argued that firstly, the UK law imposing the input VAT block was contrary to EU law and secondly, that the 'white goods' it had supplied with dwellings since 1973 were not 'incorporated' into the dwellings. Alternatively, it argued that the goods were 'ordinarily installed as fixtures'. As such it argued that it was entitled to reclaim the VAT it had incurred. The First-tier Tribunal dismissed Taylor Wimpey's appeal and it appealed to the Upper Tribunal. The Upper Tribunal considers that the UK's block is not contrary to EU law so dismissed Taylor Wimpey's case on that ground. It then went on to consider whether the goods had been 'incorporated' into the dwellings. The Tribunal concluded that an item is incorporated in a building if it is a fixture and also if it is installed as a fitting. The relevant test for this is whether the item has any material attachment to the building. The Tribunal adjourned the appeal to allow the parties to reach agreement (if possible) on which items should be regarded as installed fittings and will hear further argument at a later date if necessary if there is no such agreement.

Comment – This is a complex case and, on first reading, it seems that there is a very small chink of light for Taylor Wimpey's claim in relation to the goods that are not fixtures. There are many cases stood behind this lead case and it seems that we will have to wait a little longer before we will have a definitive answer.

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