The conflict between national heritage rules and complex VAT legislation

Indirect Tax

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The reconstruction of a listed building highlights the conflict between national heritage rules and complex VAT legislation.

Key Points

What is the issue?

The case of *Richmond Hill Developments (Jersey) Ltd v HMRC* is very pertinent in calculating the future costs of redeveloping listed buildings.

What does it mean for me?

The First-tier Tribunal ruled that the redevelopment of a listed building that still retained its internal features did not amount to ‘substantial reconstruction’ and so did not qualify for VAT zero-rating.

What can I take away?

There appears to be a conflict between the national heritage rules and VAT legislation. Those faced with similar situations must seek professional VAT advice in relation to their development projects.

Work to listed buildings is complex with specialist buildings needing specialist tradesmen. Most repairs and renovation work to listed buildings require ‘listed building consent’ and failure to have this is a criminal offence as opposed to a civil offence. Many consider that all old buildings are ‘living buildings’ and understandably the costs of renovation are burdensome. The result of a recent VAT tribunal will therefore come as a disappointment.

The case was *Richmond Hill Developments (Jersey) Ltd v HMRC* [2021] UKFTT 290 (TC) and is very pertinent in calculating the future costs of redeveloping listed buildings. The First-tier Tribunal ruled that a reconstruction of a listed building did not qualify for zero-rating as the retained element of the existing building was not de minimis. The tribunal was of the view that the redevelopment of a listed building that still retained its internal features did not amount to ‘substantial reconstruction’.

Richmond Hill converted the building into a series of flats with a communal swimming pool, gym and communal sitting and dining areas. After two and a half years of reconstruction, only the exterior walls, roof and several internal features remained to comply with the planning permission. However, this was deemed to be too much in the eyes of the tribunal, resulting in the redevelopment being classified as exempt from VAT, rather than qualifying for the advantageous zero-rating. The input tax incurred on the redevelopment therefore could not be claimed back under this status.

The relevant legislation is Value Added Tax Act 1994 Sch 8 Group 6 Item 1, which zero-rates the supply of dwellings that are the result of a ‘substantial conversion’ of a listed building. The caveat in Group 6 Item 1 is that zero-rating will not apply if anything more of the original building is left other than the external walls and any other external features of architectural or historical interest.

Richmond Hill argued that the internal features retained were required for structural integrity and were of a de minimis nature, requiring them to be ignored for the purposes qualifying for a zero-rated VAT status.

The facts

The listed building had previously been a care home before Richmond Hill acquired it. A major project was undertaken to convert the buildings into 86 flats with a wide range of facilities, retaining the external walls, the majority of the roof, the internal chapel, marble walls, staircase, internal structure support items and certain features of the King’s Room and Queen’s room. The preservation of these features was in accordance with the planning requirements.

The tribunal referred to a case called *HMRC v Zielinski Baker & Partners* [2004] UKHL 7. It observed that if VAT was to be zero-rated, the protection of national heritage is second to the housing objective of the VAT provisions. The tribunal found that in order for a building constructed from a listed building to be zero-rated, only external walls and features are to be retained and this ruling had to be applied stringently.

Retention of additional features

HMRC had argued that the retention of the additional features precluded zero-rating and the sale of the converted flats was exempt from VAT, thereby preventing VAT recovery on conversion costs.

Conversely, Richmond Hill argued that specific features were retained in order to maintain the structural integrity of the exterior of the property. It stated that features such as the chapel and marble staircase were de minimis and maintained that the EU principle of fiscal neutrality and proportionality should apply in its favour.

Group 6 Item 1 is an exception to the general rule in Group 5 that to gain zero-rating, a building would need to be demolished and rebuilt as a new building, with internal structural items being ignored if they formed part of the external walls and/or qualified as de minimis. The tribunal accepted that features which were attached to external walls and necessary for their stability formed part of these walls. However, given that the floor slabs provided flooring as well as support for the

external walls, these did not. Similarly, the vertical steel truss supported both the external walls and the floor slabs and therefore qualified as an internal feature too. The retained features accounted for 7% of the floor space and therefore could not be deemed as trivial.

The tribunal also considered fiscal neutrality and proportionality and found that neither of these principles were breached and therefore dismissed the appeal by Richmond Hill.

In conclusion

All those who are involved in listed building projects will be disappointed by the decision, considering that ordinary language would imply that the development is substantial.

Unfortunately, there appears to be a conflict between the national heritage rules and VAT legislation and, as is often the case, it seems impossible to please everyone. Clearly all those faced with similar situations must seek professional VAT advice in relation to their development projects about what qualifies as zero-rated and what qualifies as exempt.

On a project of this size, a ‘substantial conversion’, it is essential to see what has to be retained to meet the requirements of various authorities. It can be argued that it is worth approaching the planning permission in a different way if zero-rating can be achieved and input VAT claimed back.