DIXON WILSON
CHARTERED ACCOUNTANTS

VAT UPDATE ISSUE 2 2017

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FROM THE COURTS

BLUE CHIP HOTELS LIMITED [2017] BVC 516

Supply of land with no additional services is exempt from VAT provided there is no option to tax to override the position. Blue Chip Hotels Ltd (BCH) sought to argue that supply of a room in which a wedding ceremony was held fell within the exemption.

In reaching its decision the Upper Tribunal considered whether:

- the customer had the right to occupy the property as if the owner
- the customer had the right to exclude others
- the letting was for an agreed period
- the letting was in return for payment

The third and fourth considerations were not in dispute. The first and second were considered in light of Marriages legislation which stipulates that public access must be granted to the wedding ceremony. Although this impinges on the customers' rights for these two points; as the access is an obligation in law it did not suffice to lose the case for BCH.

The UT also considered whether BCH added value to the room which would change the nature of the supply from one of the passive supply of land. In order to be eligible to hold wedding ceremonies a room must be approved and deemed suitable for the proceedings to take place. As such, the Tribunal concluded that significant value was being added by BCH in supplying the room compared to a room which was not licenced for weddings. The significant fee charged for the room was also persuasive to the Tribunal's decision.

This case does appear to put to bed this question of whether supplies of rooms for weddings could ever by exempt.

LANGUARD NEW HOMES LTD [2017] BVC 522

This case concerns the VAT treatment on sale following the conversion of a pub into four maisonettes.

Sale of residential property is exempt from VAT except for the first sale of the property following construction or from conversion of an existing non-residential building when the supply is zero-rated and so input VAT is recoverable.

The pub in this case took up the ground floor of the building whilst the two upper floors were residential manager's accommodation. After the conversion the ground and first floor became two maisonettes such that half of the ground floor and half the first made up one property.

The upper floor, together with a new third floor, were also converted to maisonettes. It was not in dispute that the sale of these was exempt.

Languard took the view that the lower maisonettes were conversions from non-residential property and so subsequent sale would be zero-rated. This would allow VAT to be recovered on the costs of conversion.

HMRC challenged this on the grounds that the conversion was not from entirely non-residential, which it claimed is a pre-condition to zero-rating.

The First Tier Tribunal (FTT) had agreed with Languard on the basis that the intention in the drafting of the legislation was for zero-rating to apply where additional dwellings were created.

The Upper Tribunal (UT) overturned the FTT's decision agreeing with HMRC's interpretation of the legislation that the dwelling created needed to be entirely from the non-residential part. The UT also indicated that the FTT had gone too far in considering the intention of the draftsman as this was not necessary as the provision was meaningful without considering the intention.

KELLY AND ANOTHER (TRADING AS LUDBROOK MANOR PARTNERSHIP) [2017] BVC 526

The taxpayers, in partnership, owned and lived in Ludbrook Manor. A company, HHL (of which the taxpayers were also directors), let parts of the property to guests. HHL registered for VAT and charged VAT on supplies of holiday lettings.

Extensive refurbishment of the house, not previously let, was undertaken by HHL and related input VAT was claimed by HHL.

Subsequently, plans were changed such that the intention was for a new partnership (LMP) to operate the lettings business. In order to justify recovery of the VAT HHL recharged costs incurred to LMP in respect of management services.

Later, HHL became insolvent and did not account for output VAT on the invoice raised to LMP. Meanwhile LMP claimed the VAT charged by HHL on its VAT return which was then verified by HMRC. HMRC rejected the claim on the grounds that output VAT had not been declared and that there had been no supply by HHL to LMP. The FTT agreed with HMRC and the UT has now upheld that decision.

When HHL incurred the refurbishment costs which it subsequently recharged, it had done so with the intention of them being incurred for the benefit of its lettings business. It had not intended to invoice the taxpayers in any capacity, there was no agreement drawn up and so there was no obligation between the parties. The Tribunal therefore was obliged to conclude that there could be no supply of management services and neither was there a supply of improvements as the partners already owned the property.

This case serves as a reminder that arrangements between related parties benefit from being formally documented and thought through.

UPDATES TO VAT NOTICES

VAT Notice 700/45: how to correct VAT errors and make adjustments or claims – change of address of the VAT Error Correction Team

VAT Notice 700/58: treatment of VAT repayment returns and supplements – confirmation of recording of receipt of returns

VAT Notice 701/49: finance – update for prompt payment discounts

VAT Notice 702: imports – email address update

VAT Notice 702/7: import VAT relief for goods supplied onward to another country in the EC – update to contact details

VAT Notice 700: the VAT guide – various changes detailed in paragraph 1.2

VAT Notice 701/8: postage stamps and philatelic supplies – contact details updated

BREXIT

The European Union (Withdrawal) Bill has been published and provides some understanding of how VAT legislation will operate in the post-Brexit era.

VAT law is European in origin and the EU law at present takes precedence over the transposition into UK legislation.

Direct effect of the EU legislation (Directive) will cease; whereas currently if UK law has not been implemented in accordance with the EU Directive taxpayers may look to the EU to override the UK.

Going forwards, it looks like EU case law and new Directives will be persuasive to UK courts, but not legally binding. Similarly EU general principles will not be taken into consideration.

Following Brexit UK courts will no longer be able to refer questions to the CJEU as they currently do for opinion and rulings on the Directive.

Further guidance will follow.

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