



TC01414

Appeal number: TC/2011/02393

VAT – DIY housebuilder – provision of services – repayment of tax refused - Appeal dismissed.

FIRST-TIER TRIBUNAL

VAT

KEN HEWITT

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS (VAT)**

Respondents

TRIBUNAL JUDGE: JOHN M BARTON, WS

**Sitting in public at George House, 126 George Street, Edinburgh on Wednesday
17 August 2011**

The Appellant did not appear and was not represented

Mrs Liz McIntyre, for the Respondents

DECISION

1. This is an appeal by Ken Hewitt (“Mr Hewitt”) against a Decision of the Commissioners for Her Majesty's Revenue and Customs (“HMRC”) to refuse a Value Added Tax (“VAT”) refund under a DIY builders claim made by Mr Hewitt in accordance with Section 35 of the Value Added Tax Act 1994 (“the Act”).
2. The appeal was heard in Edinburgh on 17 August 2011. Mr Hewitt had intimated that he would not be attending the Hearing; and that he would not be represented. HMRC was represented by Mrs Liz McIntyre.
3. The Tribunal did not hear evidence from any witness; and Mrs McIntyre addressed the Tribunal.

Material Facts

4. The material facts were not in dispute and are as follows –
- (1) Mr Hewitt constructed a new dwellinghouse Beech Cottage, Blackcraig, Newton Stewart. The building was completed and occupied on 1 December 2010.
- (2) On 28 January 2011, Mr Hewitt submitted a claim under the DIY Housebuilders Scheme for a refund in the total sum of £11,313.71 in respect of VAT incurred in the construction of the said dwellinghouse. The form was headed “VAT refunds for DIY Housebuilders” and required the listing of “goods supplied to you for which you will be claiming back VAT”.
- (3) By letter dated 28 February 2011, HMRC notified Mr Hewitt of the decision to allow the claim in the sum of £9,205.35, but to disallow that part of the claim which related to invoices totalling £2,108.36.
- (4) The disallowed invoices included the following -
- (a) Armstrong Ltd for groundworks on which VAT of £197.74 had been charged.
- (b) Armstrong Ltd for groundworks on which VAT of £172.77 had been charged.

It is only these items which were the subject of the appeal.

Statutory Provisions

5. The Act contains the following:
- 30 Zero-rating
- 30(1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section
- (a) no VAT shall be charged on the supply; but

(b) it shall in all other respects be treated as a taxable supply; and accordingly the rate at which VAT is treated as charged on the supply shall be nil.

5 30(2) A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified.

Within Schedule 8, Group 5 includes the following items –

2 The supply in the course of the construction of

10 (a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose; or

15 (b) any civil engineering work necessary for the development of a permanent park for residential caravans, of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

20 4. The supply of building materials to a person to whom the supplier is supplying services within item 2 or 3 of this Group which include the incorporation of the materials into the building (or its site) in question.

Section 35, which is headed “Refund of VAT to persons constructing certain buildings” provides –

25 35(1) Where

(a) a person carries out works to which this section applies,

(b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and

30 (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works, the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.

35(1A) The works to which this section applies are

35 (a) the construction of a building designed as a dwelling or number of dwellings;

(b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose; and

(c) a residential conversion.

40 35(1B) For the purposes of this section goods shall be treated as used for the purposes of works to which this section applies by the person carrying out the works in so far only as they are building materials which, in the course of the works, are incorporated in the building in question or its site.

35(2) The Commissioners shall not be required to entertain a claim for a refund of VAT under this section unless the claim

(a) is made within such time and in such form and manner, and

5 (b) contains such information, and

(c) is accompanied by such documents, whether by way of evidence or otherwise, as the Commissioners may by regulations prescribe or, in the case of documents, as the Commissioners may determine in accordance with the regulations.

10 **Submissions**

6. In his Notice of Appeal, Mr Hewitt submitted the following:

15 (1) As the supplier of the groundworks, Armstrong Ltd, was no longer in business, he had been unable to reclaim from them the VAT which had been wrongly charged. He had paid £370.57 in VAT. This money was now with HMRC. He had paid the money in good faith. Accordingly he contended that HMRC should refund to him the amount of £370.57.

20 (2) Mr Hewitt further contended that the situation was not well known and that HMRC were profiting when VAT is wrongly charged and the contractor then goes out of business. He added that building a house had been a very expensive business and this VAT of £370.57 would have helped considerably in paying off some bills that he had incurred.

7. On behalf of HMRC, Mrs McIntyre contended:

25 (1) Mr Hewitt should have been aware of the fact that he would have been unable to recover the VAT as the position was clearly stated in the notes which were issued with the claim form.

(2) Section 35 of the Act is quite specific in what can and cannot be claimed and HMRC has no discretion within the legislation to repay an amount which is not an amount where VAT is chargeable.

30 (3) The only recourse for Mr Hewitt was to have approached the supplier who had incorrectly charged VAT and request a refund.

35 (4) Mrs McIntyre further observed that VAT is a self assessed tax and that it is the responsibility of the supplier of the goods or services to determine the VAT liability of any such supply. HMRC publish a variety of Public Notices providing advice for businesses and the public. She added that if a business has a particular enquiry which is not covered by the guidance available they can contact HMRC for specific advice.

40 (5) The time which can elapse between the work being carried out and the "DIY Claim" being made is a hazard of the act of "Self building".

45 (6) The services were zero-rated by virtue of Schedule 8, and that under the provisions of section 35(1) of the Act, HMRC were bound by the law only to refund the amount of VAT chargeable on a supply. The critical word in the legislation was "chargeable" and that the legislation did not extend to any amount which had been incorrectly charged by a supplier.

Reasons

8. It is clearly set out in s 30 and schedule 8 of the Act that the supply of *services* for the construction of a dwellinghouse is zero-rated, and that “no tax shall be charged on the supply”. The consequence of this is that no VAT is *chargeable* and it follows that no refund can be claimed under s 35.

9. HMRC accordingly acted in accordance with the legislation in refusing Mr Hewitt’s claim for a refund in respect of the services supplied by Armstrong Ltd. It is therefore appropriate that the appeal should be dismissed.

10. In the particular circumstances, it had been open to Mr Hewitt to advise Armstrong Ltd that the groundworks were zero rated; and to arrange to be invoiced on this basis. After this aspect of Mr Hewitt’s claim had been refused, the opportunity was still available to him to go back to the contractor, as indeed he did in relation to another contractor; but the legislation does not provide any alternative if the contractor is no longer able to repay the amount of VAT which was wrongly charged.

11. The Tribunal accordingly has considerable sympathy for Mr Hewitt in that he is unable to obtain repayment of VAT; but the legislation precludes any refund from HMRC in the particular circumstances.

12. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JOHN M BARTON, WS
TRIBUNAL JUDGE**

RELEASE DATE: 24 AUGUST 2011