



**TC02033**

**Appeal number: TC/11/05134**

*VALUE ADDED TAX – Value Added Tax Act 1994 (VATA) Section 30, Schedule 8, Group 5, Note 22 – DIY Builders Scheme – refund to persons constructing certain dwellings – vehicle turntable – whether ordinarily incorporated test met – No - Appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANTHONY COLLINS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE W RUTHVEN GEMMELL WS  
                  KAREN BRUCE LOCKHART**

**Sitting in public at Edinburgh on 19 April 2012**

**Anthony Collins for the Appellant**

**Bill Brook, instructed by the General Counsel and Solicitor to HM Revenue and  
Customs, for the Respondents**

## DECISION

### Introduction

1. This is an Appeal by Anthony Collins (“AC”) against a refusal, issued by the  
5 Commissioners for HM Revenue and Customs (“HMRC”) on 11 May 2011, of a  
claim under the DIY Scheme, for a vehicle turntable on the grounds that it was not an  
eligible building material because it was not ordinarily incorporated in a building.
2. The total amount of tax claimed was £771.13.
3. HMRC state that the criteria for a refund under the DIY Scheme has not been  
10 met.

### Facts

4. AC obtained a small part of his wife’s grandmother’s garden ground in  
Aberlady, East Lothian which is in a conservation area.
5. After a three year period, planning permission was given for the construction of  
15 a new build property which was subsequently called Davera, Haddington Road,  
Aberlady.
6. A claim for repayment of VAT was made on Form VAT431NB dated 21 March  
2011.
7. By letters dated 5 April and 11 April 2011 from HMRC, one item of the claim  
20 relating to a vehicle turntable was refused in relation to a VAT amount of £771.13.
8. AC stated he believed the installation of the turntable met five of the six criteria  
set out as notes in the claim form VAT431NB under the heading “Goods You Can  
Claim For”.
9. All other claims were allowed and met.
- 25 10. AC accepted that the notes made reference to the phrase “ordinarily  
incorporated in a building (or its site)” but felt this did not preclude goods or materials  
which were slightly less ordinary.
11. AC added that he considered the inclusion of the turntable was pivotable in  
claiming planning permission as it was a planning regulation requirement because he  
30 was required to satisfy the Planning Authority that he could enter and exit the  
property in a motor vehicle without having to do so in reverse gear.
12. In order to have a sufficient turning space, however, would have required “a  
hammerhead” style of driveway which would have the effect of reducing the garden  
or amenity ground and, therefore, falling foul of the Authority’s development policy.

13. A vehicle turntable is a rotating platform for turning around a vehicle so that a vehicle can have both access and egress from the property with the driver of the vehicle always facing and driving to the front.
14. The central hub of the turntable is a four metre diameter by 150 millimetres thick concrete base. It can only be removed by breaking up the concrete. The steel perimeter ring is also machine bolted to the substructure before the rest of the turntable is fixed on top of this.
15. The turntable is moved manually once a braking device is released for the purpose of allowing it to turn.
16. The development of the plot in Aberlady was not part of a general housebuilding scheme or estate and the area of land which could accommodate the house, amenity/garden ground and the driveway were limited.
17. The turntable, therefore, was necessary because of the lack of space at the front of the house to meet the planning conditions to allow the construction of the dwelling house.
18. AC accepted that planning regulation and planning requirements did not override the criteria to enable a refund of VAT.
19. The turntable was surfaced with paving stones and HMRC accepted that a claim could be made in relation to them.
20. HMRC also accepted that, if it had not been necessary to construct the vehicle turntable but instead a larger driveway in a hammerhead shape which would allow a three-point turn to be executed, this would have resulted in a successful claim for tarmac and/or paving stones.
21. AC and HMRC agreed that the point at dispute was the interpretation of the term “ordinarily incorporated” and the subsequent determination of eligibility for the VAT refund.
22. In both AC’s letters of 4 May 2011 and 23 November 2011, AC stated, “Despite the turntable itself being slightly out of the ordinary what it facilitates to our development is, in actual fact, ordinarily incorporated in almost every development”.
23. AC continued “as suitable development space becomes much more of a premium, vehicular turntables will inevitably become much more ‘ordinarily incorporated’ in the future”.
24. A review was carried out on 8 June 2011 in response to AC’s letter of 4 May 2011 which upheld the Decision to refuse the refund for the vehicular turntable.
25. The review explained why VAT incurred on the purchase of the turntable did not qualify for a refund under the DIY Scheme; that building materials must meet the

statutory definition that the articles are ordinarily incorporated in the building or its site; that they would ordinarily be incorporated by a builder in a building of that description and that they are not explicitly excluded from the definition of building materials.

5 26. It continued “This item must be one which it would be expected that a builder would ordinarily install as a fixture in the course of building. The word ‘ordinarily’ in this context means commonly or usually. For example, it would be anticipated that a builder would install as a matter of course in every property built a hot and cold water supply and some form of heating during the construction of new properties”.

10 27. HMRC stated that they did not believe that a rotating turntable was an item a builder would commonly install as a fixture in the course of the construction of a new property; that a tarmaced or paved drive is not the same as a rotating platform for a car; that some form of drive does have to be installed before the turntable may be fitted but that nevertheless, the drive could be there on its own and still function as car  
15 parking or turning space and that the installation of a drive or paving would not necessarily mean it would be used for the parking of a vehicle. HMRC stated “Your car turntable is for a vehicle alone. It does not have any other purpose”.

### **Legislation**

28. Value Added Tax Act 1994:-

#### **20 Section 30 Zero-rating**

(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

25 (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.

(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  
30 Schedule 8 or the supply is of a description for the time being so specified.

#### **Schedule 8 Group 5**

(22) “Building materials”, in relation to any description of building, means goods of a description ordinarily incorporated by builders in a building of that description, (or its site), but does not include—

35 (a) finished or prefabricated furniture, other than furniture designed to be fitted in kitchens;

- (b) materials for the construction of fitted furniture, other than kitchen furniture;
- (c) electrical or gas appliances, unless the appliance is an appliance which is—
  - 5 (i) designed to heat space or water (or both) or to provide ventilation, air cooling, air purification, or dust extraction; or
  - (ii) intended for use in a building designed as a number of dwellings and is a door-entry system, a waste disposal unit or a machine for compacting waste; or
  - 10 (iii) a burglar alarm, a fire alarm, or fire safety equipment or designed solely for the purpose of enabling aid to be summoned in an emergency; or
  - (iv) a lift or hoist;

#### **Cases referred to**

- 15 *Talacre Beach Caravan Sales Ltd v Customs and Excise Commissioners* [2004] BVC 538
- Tom Perry v HMRC* [2005] Decision Number 19428
- Rainbow Pools London Limited v HMRC* [2008] Decision Number 20800

#### **AC's Submissions**

- 20 29. AC says that the notion of what is “ordinarily incorporated” changes and referred to the statement from HMRC Notice 708 entitled “Buildings and Construction” at paragraph, 13.4 entitled “What ‘ordinarily’ means”:-

The range of items “ordinarily incorporated” in a building is likely to change over time in line with trends and consumer expectations.

- 25 30. AC believes the Tribunal should decide, as a test case, whether a vehicle turntable now meets the criteria for “ordinarily incorporated” given the increasing likelihood of turntables being used in the future.

- 30 31. AC says that there are half a dozen manufacturers of these turntables and HMRC stated to the Tribunal that the greatest known concentration of these types of turntables is in Hong Kong where there is a scarcity of building land.

32. AC says that the turntable itself is slightly out of the ordinary but what it facilitates, that is to say, a form of access and egress from a property for a motor vehicle without which no development would be allowed, is “ordinarily incorporated” in every development undertaken.

- 35 33. AC says that if he had to build a larger drive in order to facilitate this access and egress then a VAT refund claim would be allowed.

34. AC sees no correlation between a vehicle turntable and a moving swimming pool floor as referred to in *Rainbow Pools London Limited*.

35. AC says that the Appeal should be allowed.

### **HMRC's Submissions**

5 36. HMRC say that the vehicle turntable does not meet the definition of building materials at Note 22 of Group 5 of Schedule 8 of VATA because they are not “ordinarily incorporated by builders in a building of that description, or its site, and its failure to do so means HMRC cannot entertain a claim under Section 35 of VATA”.

10 37. HMRC say that the materials in the turntable being paving stones are ordinarily incorporated but that the turntable is not.

15 38. HMRC refer to HMRC Notice 708 and, in particular, to paragraph 13.4 “What ‘ordinarily’ means” which states “an article is ‘ordinarily incorporated in to a building or its site when in the ordinary course of events it would ordinarily be incorporated into a building of that generic type... Generic types of building are not split in to sub categories so no distinction is drawn between large detached houses and small terraced houses”.

39. HMRC say that their internal guidance V1-8A, available to the public on their website, discusses the “ordinarily incorporated” test at paragraph 14.5 where it summarises the Judgements in two tax cases as follows:-

20 “Instead, the test is whether the article is one that is ordinarily incorporated in a building without any special instruction during the course of its construction.”

40. HMRC say that the test is simple and is whether you expect to see a vehicle turntable in an ordinary driveway or not.

25 41. HMRC say that the requirement for the vehicle turntable as a condition of the planning permission does not make the article “‘ordinarily incorporated’ as it does not automatically override the exclusions from the VAT definition of ‘building materials’”.

30 42. HMRC refer to the *Rainbow Pools London Limited* case which involved a moveable tiled floor which could be the base of the swimming pool when it was filled with water or raised so that it became part of the tiled floor or raised as the swimming pool floor at heights in between.

35 43. The case also covered the issue of a retractable pool cover for which VAT reclaim was allowed but the Tribunal “somewhat reluctantly” refused the Appeal for the moveable floor.

44. HMRC say following this Judgement that the materials for block paving are allowable but the turntable itself is not.

45. HMRC refer to the Tribunal Chairman’s statement, “we have to conclude that if the notion of ‘ordinarily incorporated’ refers to something that is either common, or, at least ‘not exceptional’ then the moveable floors would still fail the test. At present they must be ‘exceptional’”.

5 46. The Judgement continued whilst “there appears to be no guidance as to how we should classify the moving floor in this manner we decide that common sense requires that we do treat the moving floor as something distinct from the pool”.

47. HMRC refer to the Chancery Division case of *Talacre Beach Caravan Sales Ltd* as authority that whether where there are two items, one with a principal element and  
10 one with an ancillary one, it did not follow that the tax treatment applied to the whole.

48. HMRC say that what is or is not classified as “ordinarily incorporated” would change from time to time, an example being turf which was previously not allowed but was so now.

49. HMRC referred to the case of *Tom Perry* concerning a VAT reclaim for the  
15 installation of electric blinds which opened and closed automatically according to the weather.

50. The Tribunal Chairman refusing the claim for the electric blinds stated “it may be that in the fullness of time that his blinds will be accepted as normal installation and be treated as solar panels became some years ago but that time has not been  
20 reached yet”.

51. Mr Perry claimed that although the blinds were not of a description commonly or usually incorporated in new houses, the time had come for them to be considered to be “ordinarily incorporated”. He also said there is nothing like a house that he had had designed and built, arguing that one had to start from somewhere”.

25 52. HMRC accept that the claim relates to a new building, that it is of a building material but that the refund on the vehicular turntable should be refused because it is not “ordinarily incorporated into a building or its site”.

53. HMRC say that the legislation guidance and case law support this position and that the Appeal should be dismissed.

30 **Reasons for the Decision**

54. The aim of the DIY Builders Scheme is to put a person who builds their own house on an equal footing as another person who buys their house from a developer and this in turn relies on relevant supplies being eligible for zero rating.

55. Zero rating is given by virtue of Section 30 VATA with specific details  
35 concerning construction and building being within Schedule 8, Group 5.

56. It was agreed by the parties that all the relevant criteria of Schedule 8, Group 5 regarding the vehicle turntable had been met with the exception of Note 22 relating to building materials.

57. It was also agreed that the turntable and paving were building materials so the issue before the Tribunal was whether the vehicle turntable was extraordinarily developed or incorporated into a dwelling or its site.

#### *Planning Requirements*

58. The issue was raised that the vehicular turntable was required in the construction of the dwelling or its site because it was a planning requirement.

59. This concerned the requirement for a means of access and egress for a motor vehicle in relation to the area available when considered with the requirement to have a specific area of amenity ground for the dwelling house.

60. The parties agreed that this did not make the vehicle turntable ordinarily incorporated, common or not exceptional for that reason alone.

61. The Tribunal accepts that planning considerations did not trump or override the provisions of the VAT legislation.

#### *Specific Type of Dwelling*

62. Notwithstanding this, the Tribunal view was that the size of the area of the building development was relevant and, accordingly, there was no reason why a vehicle turntable could not be ordinarily incorporated into dwellings, being dwellings built on small plots.

63. This follows the Tribunal Decision in *Rainbow Pools* where in relation to a luxury dwelling house the Tribunal Chairman, Howard Nolan, stated:-

“‘Any description of building’ means any description of building...

If however one is addressing what is ordinarily incorporated in high rise flats or luxury dwelling houses, it seems to us that those categories of building are ‘buildings of a description’ and that they both fall within the overall category of ‘dwelling houses’”.

#### *Turning Space Ordinarily Incorporated*

64. AC contends that the purpose of the vehicle turntable was to allow a motor vehicle to turn around and that this function of a turning space was ordinarily incorporated into a dwelling house, usually it was conceded by means of driveway with a hammerhead or similar design. This allowed a three-point turn and, furthermore, AC contended, and HMRC agreed, that all the components of such a larger driveway, such as tarmac or paving stones, would be allowed for VAT purposes.

65. The Tribunal considered whether, as a matter of common sense, a vehicle turntable is a drive with space to turn a car or whether, following the *Rainbow Pools* judgement on the retractable moving swimming pool floor, they were distinct.

5 66. The *Rainbow Pools* Tribunal Chairman stated, “we decide that common sense requires that we do treat the moving floor as something distinct from the pool. The moving floor is something very fundamental and distinct and we cannot accept the notion that it is just an incidental part of the swimming pool”.

10 67. HMRC made reference to Mr Justice Lindsay in the *Talacre* case which concerned the supply of a caravan and which contained standard removable items which were treated as one supply could, nonetheless, be taxed partially as zero rated and partially as standard rated.

The Tribunal find that there is a requisite degree of specific separation in the vehicle turntable and, consequently, there could be separate rates of tax charged on the vehicle turntable and the paving stones will form part of it.

15 *Evidence of being Ordinarily Incorporated*

68. Collectively the cases referred to set out the test or principles and guidelines that define “ordinarily incorporated” as follows:-

As per *Rainbow Pools*, the material should be:-

“Either common or at least ‘not exceptional’”.

20 The question is are they exceptional?

As per *Tom Perry*:-

“Accepted as normal installation and be treated as solar panels became some years ago.”

25 69. AC stated that the materials were “very modern” and that the vehicle turntables were “infrequently incorporated”.

70. HMRC say that the test must be retrospectively considered and it is, therefore, a matter of fact and not a matter of speculation as to what may or may not happen in the future.

30 71. The only evidence before the Tribunal was that there were four providers of vehicle turntables and anecdotal evidence that they were prevalent in Hong Kong.

72. HMRC had interrogated the internet for vehicle turntables in the context of building developments but found no significant results to support the common or not exceptional tests.

73. On the basis of this lack of significant evidence to the contrary, the Tribunal reluctantly find that vehicle turntables are not, currently, ordinarily incorporated in dwellings.

5 74. As in the *Tom Perry* case, the Tribunal concluded that whereas in the fullness of time vehicle turntables may be accepted as normal installations, based on the evidence before them, that time has not yet been reached.

75. The Appeal is accordingly dismissed.

10 76. 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  
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**W RUTHVEN GEMMELL WS  
TRIBUNAL JUDGE**

**RELEASE DATE: 18 May 2012**