



**TC03042**

**Appeal number: TC/2012/04901**

*VALUE ADDED TAX – construction of buildings - whether zero-rated or standard-rated supplies - whether construction of a building by a college was an enlargement of, or an extension to, an existing building, or the construction of an annexe to an existing building - whether, if an annexe, it was capable of functioning independently from the existing building, and whether there is one main access to annexe and existing building - construction was an extension to an existing building and therefore supplies standard-rated - appeal dismissed - VATA 1994, Schedule 8, Group 5, Item 2 and Notes 16 and 17*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LEYTON SIXTH FORM COLLEGE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE EDWARD SADLER  
ELIZABETH BRIDGE**

**Sitting in public at Bedford Square on 10 and 11 October 2013**

**Sadiya Choudhury, counsel, instructed by Baker Tilly Tax and Accounting Ltd,  
for the Appellant**

**Amy Mannion, counsel, instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

### Introduction

5 1. This is an appeal by Leyton Sixth Form College ("the Appellant") against a decision of The Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") that supplies made to the Appellant in the course of constructing a building are taxable for value added tax purposes at the standard rate and not, as the Appellant claimed, at the zero rate.

10 2. The supplies in question were made to the Appellant in the course of the construction of a building ("Building C") physically connected to an existing building ("Meridian House") on land held by the Appellant and used for its purposes as a college. (The entirety of this building - original Meridian House as refurbished plus Building C - is now known as "Meridian House". In this decision we will refer to  
15 Meridian House in its original state as "old Meridian House"; to Meridian House as refurbished in connection with the construction of Building C as "refurbished Meridian House"; and to the entirety of the building resulting from the construction works - refurbished Meridian House plus Building C - as "new Meridian House".)

20 3. In October 2011 Wates Construction Ltd, the contractors carrying out the construction work, wrote to the Commissioners seeking a decision that the supplies it proposed to make to the Appellant in the course of the construction of Building C should be treated as zero-rated, on the grounds that Building C was to comprise an annexe to old Meridian House. On 14 October 2011 the Commissioners wrote to  
25 Wates Construction Ltd with their decision that the supplies should be standard-rated on the grounds that the construction works comprised an enlargement of, or an extension to, an existing building (that is, old Meridian House), and not an annexe to that building.

30 4. This decision was confirmed upon review by the Commissioners in their letter of 15 March 2012 to Wates Construction Ltd. It is against the decision of the Commissioners of 14 October 2011, as upheld on review, that the Appellant appeals to the tribunal in its notice of appeal dated 13 April 2012.

35 5. We are asked to decide the matter in principle. The parties produced no information as to the value of the construction supplies in question in the appeal, but at the hearing the Appellant indicated that the amount of VAT payable by the Appellant should those supplies be taxable at the standard rate is in the order of £500,000.

40 6. As set out in detail below, this appeal relates to Notes 16 and 17 to Group 5 of Schedule 8 to the Value Added Tax Act 1994 ("VATA 1994"). The first issue we have to decide is whether the construction of Building C is, for the purposes of Note 16, the enlargement of, or extension to, old Meridian House, or whether it is the construction of an annexe to old Meridian House. If it is the enlargement of, or

extension to, old Meridian House the supplies in question are chargeable at the standard rate of VAT, and not at the zero rate.

7. If it is decided that the construction of Building C is the construction of an annexe to old Meridian House, two further issues must be decided as required by Note 17: whether Building C, as such an annexe, is capable of functioning independently from refurbished Meridian House; and whether there is independent main access to each of Building C and refurbished Meridian House. If either or both of those issues are decided in the negative the supplies in question are chargeable at the standard rate of VAT, and not at the zero rate.

8. Our decision is that Building C is an extension to old Meridian House, and not an annexe to old Meridian House. On that ground the Appellant's appeal fails.

9. If we are wrong, and Building C is an annexe to old Meridian House, then it is our decision that Building C is not capable of functioning independently from refurbished Meridian House, and that the main access to refurbished Meridian House is via the annexe (that is, Building C). On those grounds the Appellant's appeal fails.

10. We make one further preliminary point: it is a condition of the zero-rating treatment which the Appellant is claiming that the building in question should be intended for use solely for a relevant charitable purpose, as defined. The parties are agreed that Building C is intended for such use.

## **The legislation and the relevant case law**

11. Section 30 VATA 1994 provides for supplies which are treated as taxable supplies, but at the zero rate. Section 30(2) VATA 1994 provides:

*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.*

12. Schedule 8 to VATA 1994 then sets out the various Groups of supplies in which are described those supplies which are zero-rated. Group 5 is headed "*Construction of buildings, etc*", and in Group 5 there is itemised a number of supplies relating to matters within this heading. Item 2, so far as relevant to the Appellant's case, provides as follows:

*2 The supply in the course of the construction of -*

*(a) a building ... intended for use solely for a ... relevant charitable purpose; or*

*(b) ... ,*

*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.*

As we have mentioned, the Commissioners accept that Building C was intended by the Appellant for use solely for a relevant charitable purpose.

13. Item 2 of Group 5 must be read subject to the Notes to Group 5. Notes 16 and 17 to Group 5 are relevant for the Appellant's appeal. They provide as follows (as at the date relevant to the appeal):

(16) *For the purposes of this Group, the construction of a building does not include -*

(a) *the conversion, reconstruction or alteration of an existing building; or*

10 (b) *any enlargement of, or extension to, an existing building except to the extent the enlargement or extension creates an additional dwelling or dwellings; or*

(c) *subject to Note (17) below, the construction of an annexe to an existing building.*

15 (17) *Note 16(c) above shall not apply where the whole or a part of an annexe is intended for use solely for a relevant charitable purpose and -*

(a) *the annexe is capable of functioning independently from the existing building; and*

20 (b) *the only access or where there is more than one means of access, the main access to:*

(i) *the annexe is not via the existing building; and*

(ii) *the existing building is not via the annexe.*

14. The parties are not in dispute as to the meaning of these provisions - their dispute is as to how, on the facts, these provisions apply to Building C and its construction.

15. It is helpful to deal at this stage with the guidance given by case law to the application of Notes 16 and 17 to any particular factual circumstances. Again the parties were in agreement on the authorities in this regard, and, indeed, they are the authorities which are invariably cited in tribunal cases in this area of dispute.

16. The first case is the VAT and Duties tribunal case of *Bryan Thomas Macnamara* VAT Decision 16039, which was decided in 1999 (Tribunal Chairman: Mr Stephen Oliver (as he then was)). At paragraph 13 of that decision the tribunal described the purpose and scope of Notes 16 and 17 in these terms:

35 *"The scheme of the 1995 code is to exclude from the expression 'construction of a building' a series of building works. Note (16) deals with these in descending order of their degree of integration with the existing building. Conversions, reconstructions and the alterations of existing building, the most closely integrated, are excluded.*  
40 *Enlargements of existing buildings are then excluded, the word 'enlargement' connoting structural work producing an overall increase*

5                    *in size or capacity. The word 'extension' in relation to an existing building refers, we think, to building work which provides an additional section or wing to that existing building; the degree of integration is one stage less than with enlargements. Then come*  
10                    *'annexes' which, as a matter of principle, are also excluded. The term annexe connotes something that is adjoined but either not integrated with the existing building or of tenuous integration. Annexes intended for use solely for relevant charitable purposes are re-instated into the zero-rated class by Note (17) only if they are capable of functioning independently from the existing building and if both the main access to the annexe is not via the existing building and the main access to the existing building is not via the annexe. Otherwise all annexes are excluded from zero-rating."*

17. At paragraph 17 of its decision the tribunal observes that:

15                    *"The scheme of Note (16) implies that the construction works falling within paragraphs (a), (b) and (c) are mutually exclusive. Moving down the degrees of integration, if the construction works are found on the facts to produce alterations to the existing building, they will not be works of enlargement or extension; and if they produce an extension, the structure will not be an annexe."*  
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18. The decision of the High Court (Lightman J) in *Cantrell and another (trading as Foxearth Lodge Nursing Home) v Customs and Excise Commissioners* [2000] STC 100 was concerned with whether particular construction works fell within Note 16. The court first noted (at [3]) that, "The question whether the works carried out constituted an enlargement, extension or annexe is a question of fact, not law." The court then set out the approach which a tribunal should take when considering that question of fact, at [4]:

30                    *"The two-stage test for determining whether the works carried out constituted an enlargement, extension or annexe to an existing building is well established. It requires an examination and comparison of the building as it was or (if more than one) the buildings as they were before the works were carried out and the building or buildings as they will be after the works are completed; and the question then to be asked is whether the completed works amount to the enlargement of or the extension or construction of an annexe to the original building (Customs and Excise Commissioners v Marchday Holdings Ltd [1997] STC 272 at 279). I must however add a few words regarding how the question is to be approached and answered, for this has been the subject of some lack of clarity (if not confusion) in a number of the authorities cited to me and it is the failure to approach and answer the question in this case in the correct way which flaws the decision. First the question is to be asked as at the date of the supply. It is necessary to examine the pre-existing building or buildings and the building or buildings in course of construction when the supply is made. What is in the course of construction at the date of supply is in any ordinary case (save for example in case of a dramatic change in the plans) the building subsequently constructed. Secondly the answer must be given after an objective examination of the physical characters of the*  
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5 *building or buildings at the two points in time, having regard (inter alia) to similarities and differences in appearance, the layout and how the building or buildings are equipped to function. The terms of planning permissions, the motives behind undertaking the works and the intended or subsequent actual use are irrelevant, save possibly to illuminate the potentials for use inherent in the building or buildings."*

19. For reasons which we are not concerned with, the *Cantrell* case came back to the High Court (Sir Andrew Morritt V-C) in *Cantrell and another (trading as Foxearth Lodge Nursing Home) v Customs and Excise Commissioners (No 2)* [2003] EWHC 404 (Ch), where the issue was whether the tribunal had correctly defined what constitutes an annexe for the purposes of Notes 16 and 17. On this question the Vice-Chancellor said as follows, at [16] and [17]:

15 *"[16] .... The terms of Note (17) indicate that a building may be an annexe to an existing building notwithstanding that it is capable of functioning independently from the existing building and notwithstanding that the only or main access to each of the annexe and the existing building is different. The reference to an 'annexe' in Note (16) when compared with the references to 'enlargement' of or 'extension' to the existing building introduces a different concept. Thus they may be physically separate so that the connection between the two is by way of some other association. But the Tribunal seems to have thought that any association is enough. In my view that cannot be right. If there were a sufficient association between building A and building B, on the Tribunal's conclusion each would be an annexe of the other. So to hold would ignore the plain inferences to be drawn from the use of the word 'annexe'.*

20 *[17] An annexe is an adjunct or accessory to something else, such as a document. When used in relation to a building it is referring to a supplementary structure, be it a room, a wing or a separate building. The Tribunal does not seem to have given consideration to this, in my view, crucial aspect of an annexe. In that respect their decision is vitiated by a mistake of law and is liable to be set aside."*

20. The Vice-Chancellor goes on to say, at [20], that whilst in deciding whether a construction is an extension the relevant considerations are those which arise from the comparison of physical features of the building before and after the construction works have been carried out, "in the case of an alleged annexe the requirement that such a construction should be an adjunct or accessory to another may require some wider inquiry".

21. In the course of their respective submissions, counsel for each of the parties referred us to a number of decisions of this tribunal which, on the facts of each case, concluded that construction works were either an extension or an annexe for the purposes of Note 16. We could discern no points of principle from those decisions - they all turned on the facts of the case in question - and interesting though they were, they offer no guidance to us in examining, with regard to the particular facts of this case, the issues we are required to decide.

### **The evidence and the findings of fact**

22. By way of documentary evidence we had a single bundle of documents which included the correspondence between the parties on the matter in dispute (and including the Appellant's replies to a number of questions posed by the Commissioners); a printout from the Appellant's website; a list of room use in old Meridian House and a list of room use in new Meridian House (that is, refurbished Meridian House plus Building C); photographs showing various aspects of the construction of Building C and the completed new Meridian House; and architect's plans, elevations and other drawings of the proposed new Meridian House.

23. The Appellant had one witness, Alan Charles Leak. Mr Leak had prepared a witness statement for the hearing, and he also gave oral evidence and was cross-examined by Miss Mannion, who appeared for the Commissioners. Mr Leak is, by way of professional qualification, a chartered certified accountant. He has been employed by the Appellant since July 2001, initially as the Director of Finance, and since October 2007 as Deputy Principal, Corporate Services. He was the person at the Appellant responsible for carrying out the project which resulted in the construction of Building C and the related alteration and refurbishment of old Meridian House.

24. Mr Leak's evidence dealt with the following matters: the growth of the Appellant and its present size and the educational facilities and courses it now provides; the nature and extent of the major building project undertaken by the Appellant (of which Building C was part); the drawing up of plans for Building C and the refurbishment of old Meridian House and the appointment of Wates Construction Ltd as construction contractors for that particular project; the facilities and use of old Meridian House before the construction works; the facilities and use of new Meridian House; the differences in building style, building materials, design, layout, corridor and classroom sizes, number of storeys and other features as between refurbished Meridian House and Building C; the specialist classrooms in Building C for use by the Art Department of the Appellant; the entrances to refurbished Meridian House and Building C; the staffroom, toilet and other facilities in new Meridian House; and the way in which heating, water supply, security and electrical facilities are provided in new Meridian House.

25. Mr Leak was an entirely credible witness, and we accept his evidence without reserve.

26. We also had the benefit of a site visit to new Meridian House, with Mr Leak as our guide. This was most informative.

27. There were no witnesses for the Commissioners.

28. From the evidence before us (including what we observed on our site visit) we make the primary findings of fact set out in paragraphs 29 to 59 below.

*The Appellant and the courses it provides, and its major building project*

29. The Appellant provides free education principally to 16 to 18 year old students. It currently has over 2,100 students, and provides a range of courses including GCSE and A-level courses, vocational courses, and a foundation degree for the University of East London. The courses cover a wide and diverse range of subjects, some of which require standard classrooms, and some of which require specialist facilities and classrooms, such as courses in music and other performing arts; courses in computing, IT, media studies and TV studio work; courses in nursery child and other care; courses in business, tourism and travel studies; and courses in art, craft and design, including graphic design, textile design, 3D design, fine art, and photography.

30. In order to cope with the growth in student numbers and the rising expectations of students as to the range of courses and study facilities, the Appellant undertook a major building and refurbishment project. An objective of this project was to give an overall cohesion to the various buildings on the Appellant's site and to provide a secure environment for students and staff. The project included the refurbishment of old Meridian House and the construction of Building C, and also the refurbishment of a number of other existing buildings and the construction of a number of additional buildings on the site. A feature of the project was the construction of a wide and long atrium area which links all the major buildings on the site and is the main point of access to the college for staff, students and visitors and from there to the individual buildings. This feature is known as "the Street". The Street provides the main access to new Meridian House - that access is to Building C (rather than to refurbished Meridian House).

31. This major building project was commenced in stages after funding was obtained in September 2009. Wates Construction Ltd were appointed as the contractors for the project on the basis of a "design and build" contract.

*Old Meridian House*

32. Prior to the refurbishment of Meridian House, old Meridian House (built in the 1990's) comprised a three storey building constructed of yellow stock brick with metal or composite material cladding panels covering parts of the walls, and a roof pitched on all four sides and with an overhang. The main access was a doorway at the front of the building facing a staff car park beyond which was a gateway from the college site to the public highway.

33. At the rear of old Meridian House (adjacent to, but not connected to, it) was a Sports Hall (demolished to allow for the construction of Building C). There was access from the rear of old Meridian House to allow access to the Sports Hall.

34. Old Meridian House is rectangular in its ground plan. Before refurbishment there were 13 rooms on the ground floor, 12 on the first floor, and 13 on the second floor, comprising general classrooms, staff offices, changing rooms (on the ground floor, for use with the Sports Hall), toilets, and storerooms. On each floor all rooms were grouped around a central corridor and stairwell. Ground and first floor extended to the full ground plan of the building, but the second floor was set within the roof

space with skylight or mansard windows and a reduced floor plan. Access between floors was by stairs. There was a boiler and plant room on the ground floor, and for service facilities old Meridian House was largely independent of other buildings on the Appellant's site.

- 5 35. All the classrooms were for general, non-specialist, use, but two of the rooms had IT facilities including desk-top computers for students. Old Meridian House was used for a variety of study courses which required general classroom facilities. The rooms with IT facilities were used by students studying IT-related subjects.

#### *Refurbished Meridian House*

- 10 36. Although this case is concerned with supplies in relation to the construction of Building C, it is necessary to understand the changes made to old Meridian House by way of its refurbishment to assist in determining whether Building C was an extension to old Meridian House or an annexe to it.

- 15 37. The exterior of refurbished Meridian House remains unchanged, except for the rear wall which has been modified (and in part demolished) to enable it to be connected to Building C (which abuts refurbished Meridian House to the extent of its entire width and its height up to the roof eaves of refurbished Meridian House - that is, to the extent of the first two storeys of refurbished Meridian House).

- 20 38. The access at the front of refurbished Meridian House (that is, facing the staff car park and beyond that a gate to the public highway) remains as in old Meridian House. There is now access at the rear of the building from Building C by way of corridors at ground and first floor levels (see below for more details of the connection between refurbished Meridian House and Building C).

- 25 39. In total there are 20 rooms in refurbished Meridian House, comprising general classrooms; specialist class and work rooms (including a photographic room and a dark room for photography; an art classroom; a kiln room; a graphic design room with specialist IT facilities; and a classroom with kitchen facilities for use by the nursery and care courses); and staff offices. There are toilets for students (including a toilet providing for disabled access on the ground floor) and staff toilets. Access between  
30 floors is by lift and stairs. The lift is operated by a key, so that only staff and disabled students have use of the lift. As with old Meridian House, classrooms are around the periphery of the building, grouped around a central corridor and the stairwells (and now the lift), except where, on the ground and first floors, the central corridor leads into Building C.

- 35 40. Subjects taught in refurbished Meridian House include business, tourism and travel studies (ground floor); nursery and care studies (ground floor and second floor); art (fine art, graphic design, pottery) (first floor); and photography (second floor).

41. There is no plant room in refurbished Meridian House (it is served by a plant room in Building C, as described below).

### *Building C*

42. Building C was constructed according to the plans as at the date of supply (the commencement of construction) and therefore the building as it now stands is the building which, as at the date of supply, was the building it was envisaged would result from completion of the construction work then commenced.

43. Building C is constructed of red stock bricks with a low pitched roof (recessed and without overhang). It is rectangular in shape and has two storeys. The height of each storey exceeds the height of each storey of refurbished Meridian House, and the total height of Building C (including the roof) is less than the total height of refurbished Meridian House (including the roof) - in consequence (and this was a requirement of the design brief) from the street the roof line of Building C cannot be seen above the roof line of refurbished Meridian House.

44. We were not given the dimensions of either of the buildings, but the plans indicate that the ground plan of Building C is approximately 50% larger than the ground plan of old Meridian House. Given that old Meridian House has a third storey (albeit one whose floor plan is smaller than that of the first two storeys), it would seem that the area of usable space in Building C broadly equates with the area of usable space in old Meridian House.

45. Building C (at one of its "short" sides) adjoins the rear of old Meridian House and, as a matter of construction, the two buildings are attached. At the point of join the walls of Building C are slightly recessed for about a metre, by way of transition to the full height of the two storeys of Building C. In essence, and allowing for differences in storey heights (which results in the walls of Building C being a little higher than the walls of old Meridian House), Building C is contiguous with old Meridian House to the extent of the width of both buildings and to the height of the two storeys of Building C and the first two storeys of old Meridian House (that is, to the height of the wall of old Meridian House - the third storey is set in the roof space, as mentioned).

46. The site on which Building C is constructed falls away from refurbished Meridian House and in consequence the ground floor of Building C is below the level of the ground floor of refurbished Meridian House. At ground floor level the corridor in refurbished Meridian House which opens into the corridor in Building C is maintained for several metres into Building C at its Meridian House level, and then four steps down (with a ramp lift to one side for disabled persons' use) lead to the lower corridor level for the rest of Building C. At first floor level the corridor connecting the two buildings is at the same level throughout.

47. Direct external access to Building C is from the Street. This access is at the side of Building C at the furthest point from refurbished Meridian House, and is at ground floor only. This access point gives onto stairs in Building C which in turn give access to the first floor. The other points of access, as described, are by the corridors at ground and first floors from refurbished Meridian House.

48. Internally, Building C is arranged with its classrooms, staff rooms, toilets and other facilities on each side of the building with a single, and central, corridor for the full length of the building. Building C has a more spacious feel to it than refurbished Meridian House: classrooms are larger and with more natural light from larger windows; ceiling heights are higher (and in some of the rooms used for art and as a workshop on the first floor the rooms open into the roof space with additional natural light from skylights); and the corridors are a little wider.
49. The ground floor of Building C accommodates four general classrooms and three teaching room with IT facilities. There are toilets for students (including a toilet with disabled person facilities) but no staff toilets, a store room (which also houses computer servers and IT switches for the entire college site and the security electronic control units for new Meridian House - the security system permits a security alarm to be set individually for refurbished Meridian House and Building C). Access to all these rooms is from the corridor. There is also a plant room which houses the boilers, pumps, pipes and controls for space heating and hot water, and water tanks, pumps, pipes and controls for cold water facilities serving, in each case, the whole of new Meridian House. Access to the plant room is by an exterior door only.
50. The first floor of Building C accommodates six specialist workrooms (used for courses in art, textile design, and as a woodworking workshop) and a technician's office and store. There are also toilets for students. There are no staff offices in Building C. There is a staff kitchen.
51. The ground floor classrooms are principally used for business, tourism and travel studies, and the first floor rooms are used, as mentioned, for different courses run by the art department. The general classrooms in both refurbished Meridian House and Building C may be used for courses of departments based in other college buildings when they are otherwise not required for courses based in new Meridian House.
52. There is a lift in Building C, but there is no access to that lift at ground floor level from within Building C. Access at ground floor level is through a storeroom, and access to that storeroom is through an external (and locked) door. At first floor level the lift doors open onto the corridor. The lift can be operated only with a key. The function of the lift is to enable materials to be brought up to the first floor for use in the art and workshop rooms.
53. A person who is unable to use the stairs, and who wished to gain access from the ground floor of Building C to the first floor of Building C would have to go into refurbished Meridian House to use the lift in that building (and then back along the corridor into Building C). It would be possible for such a person instead to leave new Meridian House, to go round the exterior of the building and, if furnished with the right key, to enter the storeroom in Building C at the end of which is the lift giving access to the first floor corridor in Building C. Entrance to the storeroom requires stepping over the bottom of the doorframe.

*Connections between refurbished Meridian House and Building C*

54. As mentioned, the corridor through the centre of Building C continues, at both floor levels, into refurbished Meridian House, and internally there is no sense of passing from one building into the other, except that the corridor within refurbished Meridian House is a little narrower at ground floor level. The same flooring material is used along the length of all corridors. The basic decor is consistent through both buildings, and the same signage is used throughout, identifying the entirety of the building as "Meridian House". At the point the corridor enters refurbished Meridian House at each levels there are lockable doors (open and fastened back to the walls on our site visit during working hours) which can close the passage. There are also corridor doors (again, open on our site visit) half-way along the corridors in each of refurbished Meridian House and Building C.

55. At first floor level one of the art workrooms in refurbished Meridian House has a door which leads into the adjoining art workroom in Building C.

56. In the plant room located in Building C (but access to which is only from the exterior of the building) there are two boilers and a pumping and pipe system which enables refurbished Meridian House and Building C to be heated independently (the two boilers are not each dedicated to a separate building - the system is devised to enable each to serve either building). The plant room also houses a single water tank connected to the external mains supply, and from that tank the water supply is piped separately to each of refurbished Meridian House and Building C.

*Access to refurbished Meridian House and to Building C*

57. As mentioned, the only point of external access to refurbished Meridian House is at ground floor from the front of the building. Above that entrance is a sign, "Meridian House". There is also internal access at ground floor and first floor level from Building C (for a person who has used the point of external access into Building C).

58. Facing the doorway giving external access to refurbished Meridian House is a staff car park, and beyond that a gate leading to the public highway. This gate is locked except for approximately 45 minutes in the morning when many of the students are arriving and again in the afternoon when many are leaving. The main entrance to the college site is further along the road, through a gate which has shelter for the security guards who man the gate. Entrance through the main gate leads on to the main external entrance to the Street, and from there to all the principal buildings on the college site, including new Meridian House (at Building C).

59. Also as mentioned, the only point of external access to Building C is at ground floor level from the Street. Above that entrance there is a sign, "Meridian House". There is also internal access to Building C at ground floor and first floor level from refurbished Meridian House (for a person who has used the point of external access into refurbished Meridian House).

## The submissions of the parties

### *The Appellant's submissions*

60. Miss Choudhury appeared for the Appellant. After referring us to Notes 16 and 17 to Group 5 of Schedule 8, VATA 1994 and to the principles to be derived from the *Macnamara* case and the two *Cantrell* cases in applying that legislation, she submitted that Building C met the conditions for the supply of construction services in relation to its construction to qualify for zero-rating.

61. She submitted, first, that Building C is an annexe to refurbished Meridian House, in that it is an adjunct and accessory to that building, with no, or only tenuous, integration with refurbished Meridian House.

62. If, applying the approach set out by Lightman J in the first *Cantrell* case, the physical character of the completed building (new Meridian House) is compared with that of the building before the construction works were begun (i.e. old Meridian House) by reference to appearance, layout and how the buildings are equipped to function, it is the case that Building C is distinct from old Meridian House (and even refurbished Meridian House).

63. Thus the overall design, layout and function of Building C is very different from that of old Meridian House. In design, different building materials have been used for the construction of Building C, it is a two-storey, and not a three-story building, and it has a different roof line. Internally, Building C has higher ceilings and a wider corridor, and at ground floor there is a difference in floor level.

64. As to function, Building C, with its rooms for specialised teaching, study and work, is different from old Meridian House, where most of the rooms were general classrooms (only two had special IT facilities). In particular, the rooms on the first floor of Building C can be used only for teaching different and specialist art subjects - they provide facilities which were not available in old Meridian House. They are not simply an extension of what was there before.

65. The Appellant acknowledges that the Appellant's art and design department occupies the first floor of both refurbished Meridian House and Building C, but the Appellant does not accept that this points to the integration of the two buildings: that department runs a number of different specialised courses, and students on a particular course do not require to have access to all parts of the first floor of the two buildings: for example, a student on a photography course will find all the facilities he requires in refurbished Meridian House.

66. The Appellant points to the duplication in both buildings of facilities such as toilets, which suggests that the two buildings are not integrated. It is accepted that the plant room is situated in one building only (Building C), but neither building has access to the plant room (there is exterior access only), and the heating, water, and security systems are designed to enable the two buildings to be supplied with these facilities separately and independently, which is a further pointer to the lack of integration of the buildings.

67. The Commissioners place some reliance on the fact that a disabled student or staff member or visitor to new Meridian House cannot have access to the first floor of Building C without using the lift in refurbished Meridian House. The Appellant has not yet had to deal with such a case, but if necessary such a person could leave Building C to enter (by the exterior door) the lift which gives access to the first floor of Building C.

68. Taking all these factors in the round, they point to Building C being an annexe to refurbished Meridian House, rather than an enlargement or extension of that building.

69. It is therefore necessary to consider Note 17 and the conditions it specifies.

70. In the Appellant's submission Building C is capable of functioning independently from refurbished Meridian House. There is no interdependence of heating, water or security systems. Each building has its own toilet facilities. There is no need for a student or teacher using a classroom in one building to enter the other building. Each building can be closed off from the other by lockable doors. The first condition of Note 17 is therefore satisfied.

71. As to the second condition (independent access to both buildings), the main access to refurbished Meridian House is at the front of the building - that point of access faces a gate to the public highway which is open for students when they arrive at the college and when they leave. In the case of Building C, the main access is from the Street (and not via refurbished Meridian House). Thus the second condition is satisfied since for each building there is a direct main point of access which is independent of the other building.

#### *The Commissioners' submissions*

72. Miss Mannion, for the Commissioners, agreed with Miss Choudhury's exposition of the principles to be derived from the cases in applying the statutory provisions. The Commissioners' case is that, on the facts, the only reasonable conclusion must be that Building C is an enlargement or extension of old Meridian House, with the resulting building operating as a single integrated space.

73. The Commissioners accept that there are some differences of design and construction between the two buildings, but they are not, in their submission, of such significance as to determine the issue of whether Building C is an extension of, or annexe to, old Meridian House. Certain key differences (the number of storeys in Building C, the roof line and pitch) were dictated by matters extraneous to the question of the integration of the two buildings (namely, the planning requirement for the roof line of Building C to be masked by old Meridian House when viewed from the public highway, and the desire to have some conformity in design as between all the new buildings then being constructed on the Appellant's site).

74. As for such matters as ceiling height, corridor width and greater natural light, those again are not determinative of the key issue - just because a new building is

built some years after the original building, the fact that any design shortcomings in the old building are not replicated in the new building does not of itself cause what is otherwise an extension to the old building to become instead an annexe to the old building.

5 75. In the Commissioners' submission there are a number of sets of features of the building (new Meridian House) which demonstrate the degree of integration characteristic of one component building being the extension of the other component building.

10 76. First, the layout of new Meridian House is clearly designed to work as a single building. On each floor there is a central corridor which is the spine of the entire building, and classroom space in old Meridian House was sacrificed to accommodate this key design feature. There is unified decor, flooring and signage. A classroom on the first floor of refurbished Meridian House connects directly through a door into a classroom in Building C.

15 77. Secondly, the teaching spaces and facilities indicate an integrated building, with departmental classrooms and staff facilities (business, leisure and tourism on the ground floor, and art and design on the first floor) organised by floor across the whole of the building, and not vertically within each individual building. Thus the floors act as integrated spaces. Matters of detail show this to be the case: the office for the art and design staff is in refurbished Meridian House, but the room for the technicians for that department, and the storeroom, is in Building C; the only staff kitchen is in Building C; a disabled visitor, student or staff member on the first floor of Building C would have to use the lift in refurbished Meridian House to reach the ground floor of Building C.

25 78. Thirdly, key services and facilities for the entire building are grouped in a single plant room in Building C – which is logical given the way in which the building operates, but points up the integrated nature of the building.

30 79. Finally, users of, and visitors to, new Meridian House view it as a single and integrated building. The signage at the entrance from the Street and at the front of the building refers to “Meridian House”, and care has been taken in the interior design and decor to give a sense of a single building.

35 80. These features show that there is far greater integration than the “tenuous integration” which, in the *Macnamara* case, was said to characterise an annexe. Applying the test in the *Cantrell No 2* case, Building C cannot be said to be an adjunct or accessory to refurbished Meridian House. The only reasonable conclusion is that Building C is an extension of refurbished Meridian House.

40 81. The Commissioners' final submission was that, if Building C were an annexe of refurbished Meridian House, then the two conditions of Note 17 were not satisfied. If refurbished Meridian House were cut off from Building C it would be incapable of functioning, since all the key services and facilities originate from the plant room in Building C. As for access, the Street provides the main access to both Building C and

refurbished Meridian House – it is clearly the main entrance for the entire building (new Meridian House). The door at the front of refurbished Meridian House does provide access to that building, but since for much of the day it faces a locked gate to the public road it is not realistic to describe it as the main access to that building.

## 5 Discussion

*Whether Building C is an extension to, or annexe to, old Meridian House - Note 16*

82. First we are required to decide whether the construction of Building C is, for the purposes of the relevant legislation (Note 16 to Group 5 of Schedule 8, VATA 1994), an enlargement of, or extension to, old Meridian House, or whether it is the  
10 construction of an annexe to old Meridian House. The case law guidance as to the approach we are to take in deciding this point is set out in paragraphs 16 to 20 above.

83. In order to determine this question we must examine and compare the building as it was before the construction work (old Meridian House) with the building after the construction work is completed (new Meridian House, that is, the entirety of  
15 refurbished Meridian House and Building C). That task must be undertaken by reference to the construction works in contemplation at the time they are begun, since that is the time of supply when it is relevant to determine whether the supply then made is taxable at the standard or the zero rate. In the present case, since the evidence is that Building C was constructed according to the works as planned at the outset, we  
20 can properly proceed on the basis that Building C as we saw it on our site visit in all material respects accords with, and is the result of, the construction works in contemplation at the time of supply.

84. The examination and comparison must be made objectively of the physical characters of old Meridian House and new Meridian House having regard to  
25 similarities and differences in appearance, layout and the way the buildings are equipped to function. Since the Appellant contends that Building C is an annexe to old Meridian House (or, more precisely, that building in its refurbished state) it is appropriate to make a wider enquiry in the course of that examination and comparison so as to reach a conclusion as to whether it has the characteristics of an annexe, that is  
30 as an adjunct or accessory to the original building in the sense of a supplementary structure. In making that wider enquiry we consider that it is relevant to consider the way in which old Meridian House was used and, more particularly, the way in which new Meridian House was intended to be used (taking present use - there being no evidence to the contrary - as the use intended as at the time of supply).

35 85. We have set out in paragraphs 32 to 35 above the appearance, layout and functioning of old Meridian House, and in paragraphs 36 to 53 above the appearance, layout and functioning of new Meridian House (distinguishing refurbished Meridian House from Building C).

40 86. First it is necessary to note that Building C is constructed integrally with old Meridian House in its refurbished condition in the sense that it is built on to that building, with the whole of the rear wall of refurbished Meridian House comprising

the whole of one side of Building C. The two buildings are not physically separate with some form of connection - such as a passageway or bridge - providing the association between the two buildings.

5 87. It should also be noted that Building C is a substantial addition: in floor plan it is about 50% larger than old Meridian House, and in volume of usable space (after taking account of old Meridian House's third storey) it would appear to be about equal to old Meridian House.

88. These two factors suggest that Building C is something more than a supplementary structure in its relationship with refurbished Meridian House.

10 89. Secondly, there are differences in the appearance of the two buildings. Both are constructed of brick, but in different colours, and parts of the walls of old Meridian House are covered with panels of metal or of a composite material. Both buildings have pitched roofs, but that of old Meridian House is of steeper pitch and accommodates the third storey of the building. Building C has two storeys only (with  
15 some rooms in the second storey using the roof space for extra height and to provide skylight windows for extra natural light). Building C has different styles of window, and more of them. An objective observer of the exterior of new Meridian House would certainly conclude that Building C was built on a separate occasion from old Meridian House, and if that observer had a sense of building style he would conclude  
20 that Building C was of later construction.

90. As for the interior, an objective observer would not detect that different building materials have been used as between the two buildings (in matters of decor and flooring it is clear that the aim has been to provide uniformity throughout new Meridian House). He would, however, observe a distinction between the styles of the  
25 two buildings: in essence, Building C is lighter and more spacious than refurbished Meridian House (and, one can reasonably assume, than would have been the case for old Meridian House). This is so in both the corridor areas and the classroom areas.

91. We do not consider, however, that these differences in appearance between old Meridian House and Building C (or between old Meridian House and new Meridian  
30 House) are such as to lead to the conclusion that Building C is an annexe to old (or refurbished) Meridian House. We consider that they point to Building C being an extension to, rather than an enlargement of, old Meridian House (the concept of enlargement has a connotation that the physical characteristics of the original building will to a certain degree at least be replicated in the enlarged building, and there is not  
35 that connotation in the case of a building which comprises an extension to the original building). A structure which is an annexe to the original building may well be physically different in appearance from the original building, but such a difference does not go to the question of whether it is a supplementary structure comprising an adjunct or accessory to the original building. That question is, instead, answered by  
40 reference to the layout, equipping and function of the building.

92. Therefore, and thirdly, we next consider the layout of old Meridian House as compared with new Meridian House. Old Meridian House is, in its floor plan, a

rectangular building, with two storeys reaching to roof level and a smaller storey within the roof space. The classrooms are arranged around the periphery of the building, and there is a central core of stairwell and corridor giving access to the classrooms. This remains the arrangement in refurbished Meridian House, with the  
5 exception that on the ground and first floors some classroom space has been sacrificed to extend the corridor into Building C, and the central core now includes a lift. Building C is a rectangular building of two storeys. Classrooms and other rooms line each of the "long" sides (apart from that part of one side which comprises the entrance to the building from the Street), and the stairwell takes up part of the "short" side  
10 farthest from refurbished Meridian House. On each floor a corridor runs the length of the building extending into refurbished Meridian House. As described at paragraph 52 above, although there is a lift in Building C, there is no access to it on the ground floor from within Building C.

93. A crucial feature of the layout of new Meridian House (and an important factor we have taken into account in reaching our decision) is the arrangement of the  
15 corridors, and in particular the way in which the corridors on each floor proceed directly from Building C into refurbished Meridian House. This is not just a matter of design, but, as we describe below, is a matter also of function or use of the building. At ground floor level there is a difference in that the floor of the corridor is at a lower  
20 level in Building C, but it is significant that the design provides for the level of the corridor in refurbished Meridian House to be maintained into the corridor in Building C, the change of level by steps occurring several metres into Building C. In layout the corridors passing through the entire building on the ground and first floors respectively provide a hub or spine unifying and integrating the building and  
25 reflecting (or perhaps determining) the way in which the building is used. This is so notwithstanding that the corridors can for security reasons be closed by doors (which are lockable) at the point which is the juncture of Building C and refurbished Meridian House (there are other doors in the corridors, both in those parts in Building C and those parts in refurbished Meridian House).

94. Other features of the layout which are material to our enquiry are that some key  
30 facilities are replicated in both Building C and refurbished Meridian House (such as toilets and stairway access to upper floors), but other facilities (a lift for use from within the building; teachers' offices) are found in refurbished Meridian House but not in Building C. Significantly (and a factor which strongly indicates the integrated  
35 nature of new Meridian House), the water, heating and security plant services the whole of new Meridian House and is located in Building C (a point we return to below in discussing the conditions of Note 17).

95. One further feature of the layout is in our view significant in indicating the  
40 integrated nature of Building C with refurbished Meridian House: in addition to the corridors connecting those two buildings there is a connecting door between an art workroom on the first floor of refurbished Meridian House and another art workroom on the first floor of Building C (we were told that this door is not used in practice, but that is not relevant - the fact that it is incorporated into the layout of the building is the  
45 relevant factor in determining the relationship of Building C to refurbished Meridian House). (It is worth noting that the layout precludes any connection from the other

three classrooms in refurbished Meridian House which abut Building C, since the corresponding space in Building C is storage or plant accommodation.)

5 96. We conclude that, with respect to layout, although there are some features which provide an indication that the two buildings are seen as having that degree of independence which might enable one to be characterised as an adjunct or accessory to the other, they are far outweighed by those features which establish that the entire building is designed in its layout as a single and unified entity. In consequence, by reference to these factors, Building C cannot be regarded as supplementary to, or an adjunct or accessory to, refurbished Meridian House.

10 97. This brings us, fourthly, to the manner in which the building is equipped to function, and the way in which it is used.

15 98. Some features which are relevant to the way in which the building is equipped to function are mentioned above in considering the layout of the building and the way its facilities are disposed around and between refurbished Meridian House and Building C. It is instructive to consider, in addition, the classrooms. In old Meridian House the classrooms were for general use. In new Meridian House there are special classrooms with IT facilities and special classrooms and workrooms for photography, art, design and craft. That in itself tells us nothing, but the disposition of those classrooms does give a clear indication of the nature of the association between  
20 refurbished Meridian House and Building C.

25 99. This is most apparent on the first floor where, in refurbished Meridian House there are rooms for art, textile design, photography, and a kiln; and in Building C there are six specialist workrooms (used for courses in art, textile design, and as a woodworking workshop) as well as storerooms and a technicians room for art and craft department staff. Thus the whole of the first floor of new Meridian House is equipped for the various student courses provided by the art, design and craft department of the Appellant. It may be the case, as Miss Choudhury pointed out, that a student studying a particular course (say, photography) will have no need to venture beyond refurbished Meridian House, but viewing matters in the round it is clear that  
30 the first floor of the entire building is designed and equipped to function as the Appellant's art, design and craft department without any regard to the possibility that Building C is structurally distinct from refurbished Meridian House.

35 100. The equipping of the ground floor provides a less clear marker in that some of the rooms in each of refurbished Meridian House and Building C are fitted with special IT equipment, but nothing beyond that. If, however, we take into consideration the way in which the ground floor of new Meridian House is used, there is a similar picture of the whole of the ground floor being used, without distinction between refurbished Meridian House and Building C, for the courses provided by the Appellant's business, tourism and travel studies department.

40 101. If one looks to the way in which the building is equipped to function, and the way it actually functions, the clear picture is that new Meridian House is designed to operate, and does operate, horizontally across each floor spanning the entire building

with the corridor as the spine, and not vertically (that is, between floors in, respectively, refurbished Meridian House and Building C) with the stairways as the spine. This picture was reinforced in our minds by our site visit which was led by Mr Leak: for our tour of new Meridian House he conducted us into Building C from the Street, and then along the whole of the ground floor corridor before (after leaving the entrance at the front of refurbished Meridian House to examine various external features) he took us to the first floor (with a diversion to the second floor and then the roof of refurbished Meridian House) where we passed back through Building C and down the stairs at the far end of the corridor and back to the ground floor. Thus, it would seem, the natural progression through new Meridian House is along its horizontal axes, and not by way of the separate vertical axes provided respectively in refurbished Meridian House and Building C.

102. Taking these factors into account we conclude that Building C is an extension to, and not an annexe to, old Meridian House (whether in its original state, or as refurbished). It cannot be said that Building C is in any way a structure which is supplementary to refurbished Meridian House so as to be an adjunct or accessory to that building. The building which has resulted from the construction works, new Meridian House, is designed to be used, and is used in practice, as a coherent and integrated building across its two floors. In the *Macnamara* case the tribunal said, "The term annexe connotes something that is adjoined but either not integrated with the existing building or of tenuous integration." It is clear that the degree of integration of Building C with refurbished Meridian House far exceeds that which could be said to be "tenuous".

*Whether Building C, if an annexe, satisfies the further conditions of Note 17*

103. If we are wrong in so deciding, and Building C is an annexe to refurbished Meridian House, we have to consider whether, additionally, Building C satisfies both of the conditions of Note 17 - only if that is the case will the supplies in question be chargeable at the zero rate of VAT.

104. The first condition is that Building C is capable of functioning independently from refurbished Meridian House. This is also a question which looks to the integration of the two buildings. It looks not to the optimum, or ideal, use of the buildings, but the question of capability: could one building function if the other did not exist.

105. Our conclusion is that, in order to function, the two buildings that together comprise new Meridian House are interdependent, and that therefore the first condition of Note 17 is not satisfied.

106. We do not need to look beyond the plant room to reach this conclusion, although, as we have mentioned, the Commissioners identified a number of other features of the two buildings which also lead to this conclusion.

107. The plant room is located in Building C, but the heating and water plant it houses is essential to the functioning of both Building C and refurbished Meridian

House. The same is true of the IT and security plant housed in an adjoining room in Building C, and servicing all of new Meridian House.

108. The plant room houses two boilers which function on the basis that both or either of the boilers provide space heating for either or both of refurbished Meridian House and Building C - separate pipe work takes the hot water from the plant room to each of those buildings, but the boilers are interchangeable in terms of supplying hot water into those separate systems. The heating system for the two buildings is thus fully integrated.

109. As for the cold water supply, the external mains comes into the plant room to supply a single tank there, and from that tank separate pipe work provides the water supply for each of refurbished Meridian House and Building C.

110. These arrangements not only confirm that Building C and refurbished Meridian House are integrated and interdependent to the extent that Building C cannot be regarded as an annexe to refurbished Meridian House, but demonstrate that the two buildings cannot function independently of each other. It is true that Note 17 looks to whether the annexe is capable of functioning independently from the existing building, and with the plant room located in Building C it could be said that it could function independently from refurbished Meridian House. That argument clearly negates the very idea that Building C, the building that can function independently, is an annexe to the building which has now become dependent upon it.

111. The Appellant cannot therefore show that the first condition of Note 17 is satisfied.

112. The second condition of Note 17 looks to the means of access to refurbished Meridian House and to Building C. Does each have independently its main access, or does one building depend upon the other for its main access?

113. Building C has two points of access: from the Street, and from refurbished Meridian House (access from the Street is not access from the exterior, it is access from another building, but given the campus arrangements of the Appellant commonsense should prevail to treat access from the Street as a point of access to Building C). Refurbished Meridian House also has two points of access: from the front of the building (the original entrance to old Meridian House), and from Building C.

114. It is clear that the main access to Building C is the access from the Street. For students and staff the Street is the hub of the college campus, and anyone entering Building C from any other part of the college would use the entrance from the Street. All visitors (and this was our own experience) to Building C are required first to report to the reception area, which itself adjoins the Street, so entrance from the Street to Building C is the main access to that building for visitors.

115. As for refurbished Meridian House, there is no reason why any student or staff member should use its separate entrance at the front of the building during most of the day (and at no time would visitors use that entrance): that entrance does not naturally

lead to any other college building, nor is it possible to enter the Street (other than very circuitously) having left the building through that entrance. During most of the day we can therefore conclude that the main access to refurbished Meridian House is via Building C - that is the means whereby those using refurbished Meridian House gain access to the Street, and those using the Street gain access to refurbished Meridian House.

116. That is not so clearly the case during those periods when students arrive at the college and leave the college at the times when the gates onto the public road which face the entrance at the front of refurbished Meridian House are open to permit access to the college by that means. We can see that during those periods students and staff whose day begins (or ends) in refurbished Meridian House, and who enter through those particular gates, will use the front entrance to that building.

117. We do not consider, however, that this limited (albeit significant) use of the front entrance to refurbished Meridian House is sufficient to constitute that entrance as the "main" entrance to that building when for the rest of the college day the main entrance is from the Street via Building C. Further, those students who approach the college from other directions will not use the gates facing refurbished Meridian House, but instead will use the main gates, which more naturally lead to the Street, and therefore if they are nevertheless heading for refurbished Meridian House they are more likely to approach it from the Street and thence through Building C.

118. The simple truth is that the Appellant's overall refurbishment and building project, which puts the Street at the heart of the college campus, has resulted (as no doubt was the intention) in all the major buildings on the campus facing onto the Street. Whatever was the position of old Meridian House, refurbished Meridian House is now at the margin in the re-ordered campus, and its natural point of access to what is now the hub of the campus is through Building C.

119. For these reasons we conclude that the main access to refurbished Meridian House is via Building C, and accordingly the second condition of Note 17 also is not satisfied.

### 30 **Decision**

120. For the reasons give we therefore decide:

- (1) the construction of Building C is, for the purposes of Note 16 to Group 5 of Schedule 8, VATA 1994, the extension to old Meridian House and not the construction of an annexe to old Meridian House; and
- 35 (2) if we are wrong in so deciding, then for the purposes of Note 17 to Group 5 Building C is not capable of functioning independently from old Meridian House and the main access to refurbished Meridian House is via Building C, so that the conditions of Note 17 are not satisfied.

121. Accordingly the supplies made to the Appellant in the course of the construction of Building C are chargeable to VAT at the standard rate and not at the zero rate.

122. The Appellant's appeal is therefore dismissed.

**Right to apply for permission to appeal against the decision**

123. 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  
5 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.

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**EDWARD SADLER  
TRIBUNAL JUDGE**

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**RELEASE DATE: 13 November 2013**