



**TC04800**

**Appeal number: TC/2014/02598**

*VAT – DIY House Builders Scheme (s 35 VATA) – Construction of a dwelling and a garage – Whether dwelling and garage “constructed ... at the same time” (Note (3) to Group 5 of Schedule 8 VATA) – Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**B BOWLEY**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondent**

**TRIBUNAL: JUDGE CHRISTOPHER STAKER  
MR JOHN COLES**

**Sitting in public at Bristol on 1 October 2015**

**The Appellant in person assisted by Mr Robert Bowley**

**Mrs J Ashworth for the Respondents**

## DECISION

### Introduction

1. The Appellant appeals against a decision of HMRC to refuse to make a refund of VAT claimed by the Appellant. The Appellant's claim was made under the DIY House Builders Scheme. That scheme operates in accordance with s 35 of the Value Added Tax Act 1994 ("VATA").

2. The claim is in respect of a house, and an associated garage block and other works, constructed by the Appellant in Chedworth, Gloucestershire.

### Background facts

3. The Tribunal makes the following background findings of fact. These facts are essentially undisputed.

4. Planning permission for the construction of the house was applied for on 8 March 1982 and was granted on 13 July 1982. That planning permission described the permitted development as: "Erection of a building and garage. Construction of a new vehicular and pedestrian access and driveway".

5. In October 1986, work commenced on the foundations of the house.

6. Planning permission for a garage block, greenhouse, garden shed, pergola and swimming pool at the premises was subsequently applied for on 28 January 1993 and granted on 8 April 1993.

7. The Appellant contends that site excavation and foundation work for the separate garage block commenced in April 1993, and that a reinforced floor slab for the garage block was laid on 30 September 1994.

8. The certificate of completion for the house was issued on 29 June 1994, giving the "date of completion inspection" as 22 June 1994. The description of the work to which the certificate relates is "new house".

9. The house was occupied from 29 June 1994.

10. On 1 August 1994, the Appellant wrote to the then HM Customs and Excise ("HMCE"). Neither party now has a copy of that letter. According to the Appellant, in that letter he stated to HMCE that although the certificate of completion had been issued on 29 June 1994, a large amount of external and retaining walls works were still to be carried out together with completion of the garage block.

11. On 13 September 1994, HMCE wrote to the appellant agreeing to a belated claim for a VAT refund under the DIY scheme "for the reasons given" by the Appellant. The letter went on to say: "Please complete the D.I.Y. claim as soon as possible and submit it, complete with all documents, and I shall deal with it in due course".

12. It was then not until 2 February 2014, almost 20 years later, that the Appellant submitted to HMRC his claim under the DIY scheme. The claim, made on form VAT 431 in the sum of £7,856.12, stated that the “date of completion” was 25 November 2013. The claim form was accompanied by a covering letter in which the Appellant stated:

I ... apologize for the delay in submitting the claim since I wrote to you on 1<sup>st</sup> April 1994 regarding the phase II construction work, of a separate garage block and your reply dated 13<sup>th</sup> September 1994 ... I am sorry for the late submission of this claim.

10 13. In a decision dated 14 February 2014, HMRC refused the claim, reasoning as follows. The claim had not been made within 3 months after construction of the building was complete, as required by s 35(2)(a) VATA and regulation 201 of the Regulations. The dwelling had been completed on 22 June 1994, such that the claim should have been submitted by 22 September 1994. The claim was therefore 19 years and 4 months late. Although the 13 September 1994 letter from HMCE agreed to the making of a belated claim, it stated that the claim should nonetheless be made “as soon as possible”. Construction of the garage block was not an acceptable reason for the delay as a garage block can only be included as part of a claim if it is constructed at the same time as the dwelling. It is not possible to claim for construction of the garage block if it was constructed after the dwelling is complete. Construction of the garage therefore did not prevent the claim being made earlier.

14. In a letter dated 3 March 2014, the Appellant responded as follows. The dwelling and the garage block were a single project. The claim had been made within 3 months of completion of the garage block and retaining walls to the property, which thereby completed the whole project. The project took so long as it was a “one person project” undertaken by the Appellant in his retirement, and it would have been to his benefit to complete it earlier if this had been possible. The claim was therefore not out of time.

15. In a further letter to HMRC dated 31 March 2014, the Appellant requested a review of the decision, and stated as follows. If HMRC was unable to agree the full amount of the claim, then HMRC should reimburse him the amount of the claim in respect of the house only. The Appellant’s claim in respect of the house was ready for submission in 1994, but the submission was delayed by the HMCE letter agreeing to a belated claim.

16. In a review decision dated 16 April 2014, an HMRC reviewing officer upheld the 14 February 2014 decision, stating as follows. The Appellant did not fall within the HMRC guidance on the circumstances in which HMRC would exceptionally allow late claims. The 13 September 1994 HMCE letter could not be interpreted as giving an unlimited timeframe to submit a claim. That letter stated that the claim should be submitted “as soon as possible”, yet the claim was submitted only after 19 years. Even if the claim had been in time, the element relating to the construction of the garage was not eligible because the garage was not constructed at the same time as the associated dwelling, such that it fails the test in note 3(a) of Group 5 to Schedule 8 VATA.

17. On 12 May 2014, the Appellant brought this appeal before the Tribunal. The grounds of appeal state amongst other matters as follows. The garage was indeed constructed at the same time as the dwelling. The reinforced foundations and floor slabs were commenced prior to the completion certificate for the dwelling. The 13 September 1994 HMCE letter did not give any deadline for completion of the project.

**Applicable legislation**

18. Section 35 VATA provides:

- (1) Where—
  - (a) a person carries out works to which this section applies,
  - 10 (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
  - (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works,
  - 15 the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.
- (1A) The works to which this section applies are—
  - (a) the construction of a building designed as a dwelling ...;
  - ...
- (2) The Commissioners shall not be required to entertain a claim for a refund of VAT under this section unless the claim—
  - 20 (a) is made within such time and in such form and manner, and
  - (b) contains such information, and
  - (c) is accompanied by such documents, whether by way of evidence or otherwise,
  - 25 as may be specified by regulations or by the Commissioners in accordance with regulations.
  - ...
- (4) The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group ...

30 19. Note (3) to Group 5 of Schedule 8 VATA provides:

- (3) The construction of ... a building designed as a dwelling ... includes the construction of ... a garage provided that—
  - (a) the dwelling and the garage are constructed ... at the same time; and
  - 35 (b) the garage is intended to be occupied with the dwelling or one of the dwellings.

20. Regulation 201 of the VAT Regulations 1995 SI 1995/2518 (the “Regulations”) provides:

201 A claimant shall make his claim in respect of a relevant building by—

- 5 (a) furnishing to the Commissioners no later than 3 months after the completion of the building the relevant form for the purposes of the claim to these Regulations containing the full particulars required therein, and
- 10 (b) at the same time furnishing to them—
- (i) a certificate of completion obtained from a local authority or such other documentary evidence of completion of the building as is satisfactory to the Commissioners,
- 15 (ii) an invoice showing the registration number of the person supplying the goods, whether or not such an invoice is a VAT invoice, in respect of each supply of goods on which VAT has been paid which have been incorporated into the building or its site,
- 20 (iii) in respect of imported goods which have been incorporated into the building or its site, documentary evidence of their importation and of the VAT paid thereon,
- (iv) documentary evidence that planning permission for the building had been granted, and
- 25 (v) a certificate signed by a quantity surveyor or architect that the goods shown in the claim were or, in his judgement, were likely to have been, incorporated into the building or its site.

21. Regulation 201A of the Regulations prescribes the relevant form for purposes of the Regulations.

### **The issue**

30 22. By the end of the hearing of this appeal, the issues had been clarified.

23. HMRC accept that it is possible to make a claim under the DIY scheme within 3 months after completion of a dwelling, no matter how long the construction of the dwelling may take. Thus, a claimant might take 30 years to complete a DIY building project, and then make a claim within 3 months of completion which would include invoices up to 30 years old.

35

24. HMRC also accept that if the garage block was constructed at the same time as the house, then the construction of both constituted a single project in respect of the whole of which a claim could be made under the DIY scheme: see note (3) to Group 5 of Schedule 8 VATA (paragraph 19 above). It is not disputed that in this case the garage was intended to be occupied with the dwelling.

40

25. If that is so, it seems clear to the Tribunal that there can be no requirement that the house and the garage block must be completed at exactly the same time. If a

house and a garage block are being constructed at the same time, in practice the work on one of them is likely to be completed before the work on the other. Indeed, given what is said in paragraph 23 above, work on one of them might be completed many years before the other. In the present case, the fact that the house was completed  
5 some 20 years before the garage block is therefore not fatal to the claim that the house and the garage block were “constructed ... at the same time” for purposes of note (3) to Group 5 of Schedule 8 VATA.

26. On the other hand, if the garage block was not “constructed ... at the same time” as the house, then no claim could be made under the DIY scheme in respect of  
10 the garage block. This would mean that the construction in respect of which a claim could be made under the DIY scheme was completed in 1994, when the construction of the house itself was completed. In that event, the Appellant’s claim so far as it relates to the house has been made over 19 years after completion of the construction in respect of which a claim could be made. The claim would in that event be out of  
15 time by some 19 years.

27. Thus, the main issue in this appeal is ultimately whether or not the house and the garage block were “constructed ... at the same time”. If they were, the appeal would succeed given that HMRC have not suggested that there is any other basis for refusing the claim.

## 20 **The evidence**

28. It is only necessary to deal with the evidence relevant to the issue in this case.

29. The Appellant gave evidence that he has been involved in building all his life. He said that he had built two previous dwellings in the 1970s in respect of which he made claims under the DIY scheme, and that he was well aware of the requirements  
25 of the rules.

30. The Appellant explained that although the original planning permission included a garage (paragraph 4 above), that was for a garage attached to the house. Additional planning permission was obtained in 1993 (paragraph 6 above) because it was now planned to build a detached garage block, for which separate planning  
30 permission was required.

31. The Appellant said that in his 1 August 1994 letter to HMCE he would have explained openly that the house had been completed but that work was still continuing on the garage and retaining walls, and he would have asked what he should do. That letter probably did not explain that the garage was the subject of a separate planning  
35 permission.

32. The Appellant’s claim was made on pre-printed HMCE/HMRC forms, in which the relevant details have been entered by him in handwriting. The claim includes a list of invoices or receipts that are included within the claim. This list has been entered in handwriting on 16 pages of pre-printed forms. At the top of the 12<sup>th</sup> page  
40 of this list there has been entered a heading in handwriting: “Phase II—[illegible]

garages, store above, also retaining walls to main drive & front of property”. At the hearing, the Appellant’s evidence was that the entries on the first 11 pages of the list related to the house, and that the entries from page 12 onwards related to the subsequently completed garage and retaining walls.

5 33. The claim has been prepared by the Appellant using different versions of the  
blank HMCE/HMRC forms (various pages use versions from 1989, 1990, 1996 and  
2000). In the version of the form used for the 13<sup>th</sup> and 14<sup>th</sup> pages of the list of  
invoices and receipts, there is a column for the date of each invoice or receipt. The  
10 invoices listed on those two pages are in chronological order, the first dated February  
1997 and the last dated 10 December 2013. There is no date column in the pre-  
printed form used for any of the other pages of the list. At the hearing, the Tribunal  
noted that this was unfortunate. If there had been a date column on the 12<sup>th</sup> page, it  
would have been possible to see the dates of the earliest invoices relating to the  
15 building of the garage. From this it would be possible to see whether there was any  
gap between the completion of the house in June 1994 and the subsequent work on  
the garage.

34. In the circumstances, the Tribunal issued a direction, permitting the Appellant to  
submit after the hearing the receipts referred to on the 12<sup>th</sup> page of the list, as well as  
any other material and arguments on which the Appellant wishes to rely in this  
20 appeal. HMRC were given permission to submit a response in writing to anything  
submitted by the Appellant.

35. The Appellant duly submitted the receipts in question. They show that the  
items on the 11<sup>th</sup> page of the list are also in chronological order, the first dated 5  
August 1994 and the last dated 31 December 1996.

25 36. The Appellant also submitted a letter with those receipts stating that he had  
looked over earlier purchases of materials, and that some of the items on the first page  
of the list were in fact used for the garage. The Appellant contended that this showed  
that the house and the garage were a joint project from the beginning.

37. In response, HMRC submitted as follows. The invoices now submitted by the  
30 Appellant do not alter the HMRC position. None of the invoices relating to the  
garage block predate the certificate of completion for the house. Whilst preparatory  
and ground works may have been carried out prior to completion of construction of  
the house, this does not mean that construction of the garage block had started. The  
evidence of the Appellant at the hearing was that the timing of these groundworks was  
35 a question of convenience as the excavator was on site rather than a conscious effort  
to construct the garage block at the same time as the house. The Appellant’s evidence  
was that the garage block was laid on 30 September 1994, which was after completion  
of the house. The groundworks in any event were on the Appellant’s evidence only 6  
months before completion of the house. The house took 8 years to complete and the  
40 garage took 20 years to complete. The fact that there was a 6 month overlap would  
not mean that they were constructed at the same time.

### **The parties' submissions**

38. The parties' submissions are sufficiently set out above.

### **The Tribunal's findings**

39. The Tribunal accepts the evidence that the Appellant previously completed two other DIY homes, and considered himself familiar with the rules. The Tribunal can see no reason why the Appellant would wait 20 years in order to put in a DIY claim in respect of the house unless he was very confident that this would mean that he could ultimately make a single claim in respect of both the house and the garage. The Tribunal is therefore satisfied that the Appellant, subjectively, genuinely considered the house and the garage to be a single project. This is not conclusive, but is one matter to be considered when determining the objective facts.

40. It is unfortunate that the Appellant's 1 August 1994 letter to HMCE is no longer available. Without it, it is difficult to determine the actual import of the 13 September 1994 HMCE response. From the circumstances and the evidence as a whole, the Tribunal considers it likely that the 1 August 1994 letter said in one way or another that the house had been completed but that work was still continuing on the garage and retaining walls, and that the Appellant proposed to submit his claim when the latter had been completed. No doubt the Appellant did not say that completion of the garage would take 20 years, and no doubt the HMCE officer assumed that the garage would be completed relatively quickly. This would explain the HMCE response that the Appellant should "complete the D.I.Y. claim as soon as possible". The Tribunal considers that this exchange of correspondence confirms at least the Appellant's subjective view referred to in paragraph 39 above.

41. It is true that the Appellant, when submitting his claim in February 2014, referred to his "delay" in submitting his claim, and to his "late submission of this claim" (see paragraph 12 above). The Tribunal does not consider that this detracts from its conclusion above. On the Appellant's case, his claim was not in fact late, and the Tribunal does not read the February 2014 letter as conceding otherwise. The Tribunal understands this language in effect to be apologising for the fact that it ultimately took so long for the building project to be completed. However, as noted in paragraph 23 above, HMRC accept that the Appellant was quite entitled to take that long to complete a DIY building project.

42. The Tribunal does not consider it to be decisive that the garage was the subject of a separate planning permit. Planning permission for the garage was applied for almost a year and a half before the house was completed, and was granted more than a year before the house was completed. The plan had originally been for the house to have an attached garage. The decision to have instead a separate garage was a change in plans during the course of construction. That does not mean that the detached garage was necessarily a new project, rather than simply a change in the original project.

43. The Tribunal accepts the Appellant's evidence that site excavation for the separate garage block commenced in April 1993, and that a reinforced floor slab for

the garage block was laid on 30 September 1994. The Tribunal accepts that the timing of the site excavation may have been due to the fact that there happened to be an excavator on site at the time for work on the house.

5 44. The Tribunal considers that for purposes of Note (3) to Group 5 of Schedule 8 VATA, a dwelling and a garage will be “constructed ... at the same time” if they are both built as part of a single continuous building project. If there is a single continuous building project, it should not matter in what order work on different components of the project is undertaken. Work on some components may be started or finished before others. If that is so, it should make no difference if one component  
10 is built first and then the next component built immediately thereafter, provided that there is one single continuous building project.

15 45. HMRC submit that a 6 month overlap in work on the house and the garage would be insufficient to make the two a single project (paragraph 37 above). The Tribunal views the matter differently. For the reasons above (especially paragraphs 39 and 42), the Tribunal considers that the house and the garage were conceived by the Appellant as a single project. The question is whether there was a gap in time between completion of the house and the construction of the garage such that in practice they were not built as a single continuous building project.

20 46. In the case of many DIY projects, work is not undertaken all day or every day. Work may take place in bursts, with gaps in between. In the two pages of the list in the Appellant’s claim giving dates of invoices, it can be seen that there are periods where there are several receipts on the same day or close in time. There are also gaps between dates of invoices of varying length. There is for instance a gap of some 4 months between receipts dated July 1999 and November 1999. There is a gap of a  
25 year between receipts dated June 2000 and June 2001. There is another gap of a year between receipts dated March 2002 and March 2003. There is then a gap of some 4 years between receipts dated March 2003 and April 2007.

30 47. It is presumably not in HMRC’s interest to be presented with claims for repayment of VAT many years later. However, HMRC accept that there is no limit to the amount of time that a DIY project can take. Furthermore, it is also not in an applicant’s interest to extend artificially the amount of time taken to complete a DIY project. A claim can only be made at the end of the project. Although the full nominal amount of the VAT paid can be claimed at the end of the project, at the time  
35 of payment of the claim it will be significantly less in real terms that it was at the time of original payment of invoices by the applicant. Therefore, the Tribunal does not consider that a DIY building project ceases to be a single continuous building project by virtue of the fact that there are significant gaps between bursts of activity, provided that the project can overall still be characterised as a single continuous building project.

40 48. In the present case, a reinforced floor slab for the garage block was laid on 30 September 1994, some 3 months after work on the house was completed. There is a receipt dated 5 August 1994 (paragraph 35 above), which was only some 5 weeks after the certificate of completion for the house. In view of what is said in paragraphs

45-47 above, the Tribunal considers that it can be said that work on the garage in effect followed on immediately after completion of the work on the house. Furthermore, preliminary groundwork for the garage had already been undertaken before the house was completed. The Tribunal considers that both house and garage were constructed as a single continuous building project.

**Conclusion**

49. For the reasons above, the appeal is allowed.

50. 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.

**DR CHRISTOPHER STAKER**

**TRIBUNAL JUDGE**

**RELEASE DATE: 22 DECEMBER 2015**