



**TC05127**

**Appeal number: TC/2015/06078**

*VALUE ADDED TAX – protected building – whether certain works were works of alteration and not repair or maintenance – yes in part – whether works incidental to the installation of insulation qualifies for the reduced rate – yes – whether a granary within the curtilage of the main building qualifies as a dwelling – no.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**C. NEARY LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE TONY BEARE  
LESLEY STALKER**

**Sitting in public at Fox Court, 14 Gray's Inn Road, London on 18 May 2016**

**Mr. C Burnett for the Appellant**

**Mrs R. Pavely and Mrs K. Sharpe, for the Respondents**

## DECISION

1. This Appeal relates to works carried out by the Appellant at Breach Farm, Rams  
5 Hill, Dorset and arises out of decisions by HMRC:

(a) to raise recovery assessments (in relation to an error correction notification submitted by the Appellant) for VAT reclaimed by the Appellant in respect of VAT periods 06/012 and 09/012; and

(b) to assess the Appellant for under-declared VAT output tax in respect of VAT  
10 periods 12/12 and 03/13.

2. The building works in question related to an existing listed building (the “main building”) and an outbuilding within the curtilage of the main building (the “Granary”). The Appellant initially accounted for VAT output tax in respect of all of the works but subsequently reclaimed that VAT output tax on the basis that the works  
15 fell within Items 2 and 3 Group 6 Schedule 8 to the Value Added Tax Act 1994 (the “VATA”). After paying the reclaimed amount to the Appellant, the Respondents subsequently identified issues in relation to the correct VAT treatment of the works which led them to make the assessments described above. Those assessments were subsequently amended as a result of the process of review but the issues between the  
20 parties remain the same.

### The Issues

3. There are essentially four distinct issues between the parties, three of which relate to the work undertaken in relation to the main building and the last of which relates to the work undertaken in relation to the Granary. Those issues may be  
25 summarised as follows:

(a) Issue 1 – were certain of the works carried out by the Appellant to the main building precluded from qualifying for zero-rating under Items 2 and 3 Group 6 Schedule 8 to the VATA either because they did not involve supplies in the course of altering the main building or because they amounted to works of repair or  
30 maintenance?

(b) Issue 2 – were certain of the works carried out by the Appellant to the main building precluded from qualifying for zero-rating under Items 2 and 3 Group 6 Schedule 8 to the VATA on the basis that those provisions were withdrawn in relation to supplies made after 30 September 2012 (subject to transitional relief) and the works  
35 in question did not meet the conditions to qualify for any transitional relief?

(c) Issue 3 – did certain of the works relating to the supply of insulation materials qualify for zero-rating under Item 1 Group 2 Schedule 7A to the VATA; and

(d) Issue 4 – were the works carried out by the Appellant to the Granary precluded from qualifying for zero-rating under Items 2 and 3 Group 6 Schedule 8 to the VATA

on the basis that the Granary did not meet the conditions necessary to qualify as a “dwelling” for the purposes of Group 6 Schedule 8 to the VATA.

The relevant law

4. The relevant law is set out in the Appendix to this decision. The pertinent provisions may be summarised as follows:

- (a) prior to the repeal of the relevant legislation, the supply, in the course of an “approved alteration” of a protected building, of any services other than certain specified excluded services qualified for zero-rating (Item 2 Group 6 Schedule 8 to the VATA);
- 10 (b) prior to the repeal of the relevant legislation, the supply of building materials to a person to whom the supplier was supplying services falling within sub-paragraph 4(a) above which included the incorporation of the materials into the building (or its site) qualified for zero-rating (Item 3 Group 6 Schedule 8 to the VATA);
- 15 (c) for the purposes of the above, a “protected building” is a building which is designed (inter alia) to remain as or become a “dwelling” and which is a listed building within the meaning of (inter alia) the Planning (Listed Buildings and Conservation Areas) Act 1990 (the “PLBCA”) (Note (1) Group 6 Schedule 8 to the VATA);
- 20 (d) for the purposes of the above, a building is designed to remain as or become a “dwelling” where, in relation to each dwelling, the following conditions are satisfied:
- (i) the dwelling consists of self-contained living accommodation;
  - (ii) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling; and
  - 25 (iii) the separate use or disposal of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision (Note (2) Group 6 Schedule 8 to the VATA);
- 30 (e) for the purposes of the above, “approved alteration” means, in the case of a building such as the main building, works of alteration which may not be carried out unless authorised under, or under any provision of, Part I of the PLBCA and for which consent has been obtained under any provision of that Part but does not include works of repair or maintenance, or any incidental alteration to the fabric of a building which results from the carrying out of repairs or maintenance (Note (6) Group 6 Schedule 8 to the VATA);
- 35 (f) Items 2 and 3 Group 6 Schedule 8 to the VATA were repealed with effect in relation to supplies made on and after 1 October 2012 unless the supply in question was made pursuant to a written contract entered into, or a relevant consent applied for, before 21 March 2012 (Section 196 and paragraphs 3 and 7 of Schedule 26 to the Finance Act 2012); and

(g) the supply of energy-saving materials in residential accommodation qualifies for zero-rating (Item 1 Group 2 Schedule 7A to the VATA).

5. It follows from the provision referred to in sub-paragraph 4(e) that, in order for works to amount to an “approved alteration”, two conditions must be satisfied – first, the works must involve “alteration” which is appropriately authorised and, secondly, the works must not include repair or maintenance.

6. In relation to the first of these conditions, there is some judicial guidance on the meaning of the word “alteration”, albeit in the context of the phrase “construction, alteration or demolition” in what used to be Item 2 Group 8 Schedule 4 to the Finance Act 1972. In *ACT Construction Limited v Customs and Excise Commissioners* [1982] STC 25, the House of Lords held that “alteration” in that context meant “structural alteration” and therefore required a change to the fabric of the building. In reaching this conclusion, the House of Lords followed the reasoning of Neill J in *Customs and Excise Commissioners v Morrison Dunbar Limited* [1979] STC 406, where the position of the word “alteration” between the words “construction” and “demolition” suggested to the Judge that, in order to be works of “alteration”, works needed to involve some structural alteration to the building in question. The word “alteration” when it appears in Item 2 Group 6 Schedule 8 to the VATA is not similarly bracketed by the words “construction” and “demolition”. Instead, it stands on its own. Nevertheless, Moses J in *Customs and Excise Commissioners v Morrish* [1998] STC 954 at page 957 thought that the word “alteration” should probably be construed in the same way in this context and it is common ground between the parties that this is so. We agree that the word should be so construed.

7. In relation to the second of these conditions, as was noted by His Honour Judge Medd QC in *All Saints Parochial Church Council v Customs and Excise Commissioners* [1993] VATTR 315, it is not always easy to see precisely where the dividing line comes between, on the one hand, works which are clearly works of repair or maintenance but which alter a building and, on the other hand, works which, although not themselves works of repair or maintenance, effect an alteration to a building which was before the alteration in need of some repair or maintenance and which, because of the alteration, ceased to be in need of the repair or maintenance. He went on:-

“It would be unwise as well as difficult to attempt to define the dividing line. It does, however, seem to me that there is a distinction between works which after completion enable a part of a building to perform the same function in the same way as it did before the work was carried out even though using different materials, and work which after completion enables a part of a building to perform the same function in a different way to that in which it performed the function before the works were undertaken.”

8. This same dividing line was adopted by Ognall J in *Customs and Excise Commissioners v Windflower Housing Association* [1995] STC 860.

9. The proposition to be drawn from these cases is that, where works leave part of a building performing the same function in the same way as it did before the works were carried out even though using different materials, those works should be

regarded as works of repair or maintenance and should therefore be standard-rated and it is only if the works enable the part of the building to perform the same function in a different way from that in which it performed the function before the works were undertaken that zero-rating should apply.

5 10. Thus, in order for the works in this case to qualify for zero-rating under Items 2 and 3 Group 6 Schedule 8 to the VATA:-

(a) the works must involve a change to the fabric of the building and must not be works of repair or maintenance; and

10 (b) in relation to the latter requirement, the works need to enable the part of the building to which they relate to perform the same function in a different way from that in which it performed the function before the works were undertaken if they are not to be works of repair or maintenance.

15 11. There is one final point which we should raise in this context following the decision of Moses J in *Customs and Excise Commissioners v Morrish* [1998] STC 954. In the course of that judgment, Moses J held that works of reconstruction cannot amount to works of alteration and must always be standard-rated and that the tribunal in that case had erred in law in failing to consider whether the relevant supplies were supplies in the course of reconstruction. Moses J based this conclusion on his reading of Item 1 Group 8A Schedule 5 to the Value Added Tax Act 1983 and Note (2) Group 8A Schedule 5 to the Value Added Tax Act 1983. It is not clear to us why the terms of that item and note necessarily mean that works of alteration should cease to be so when they are supplied in the course of reconstruction and therefore why it should be necessary to consider whether works which might otherwise be regarded as works of alteration should not be so regarded because they are works in the course of reconstruction. However, we are bound to consider the question of whether the works in this case could be precluded from constituting works of alteration because they amounted to works in the course of reconstruction. Nevertheless, neither party to this appeal proposed that the supplies made by the Appellant in this case should be regarded as supplies in the course of reconstruction and no evidence to that effect was advanced by either party to this appeal. We therefore have no reason to conclude that the supplies made by the Appellant in this case were supplies in the course of reconstruction and so we have approached Issue 1 below simply by considering whether the supplies in question involved alteration which was not repair or maintenance.

### Discussion

40 12. At the hearing, it became apparent that there was no dispute between the parties as to the relevant law or the application of the relevant law to the facts. However, there were misunderstandings on both sides as to certain factual matters which were clarified during the course of the hearing.

13. Our decision in relation to each of the four issues described above is as follows.

Issue 1 – Works to the main building – alterations which are not repairs or maintenance?

14. So far as Issue 1 is concerned, the parties took us through a schedule itemising the works which were done in relation to the main building and each party's position in relation to the various items. The schedule revealed eight items in which the parties disagreed on whether, before taking into account the implications of the repeal which forms the subject of Issue 2, the works in question should be capable of qualifying for zero-rating either in whole or in part.

15. Those items were:

- (a) the bathrooms;
- (b) the new kitchen;
- (c) the new double-glazed oak screen frames;
- (d) the glazed oak doors to the existing doorways of the kitchen;
- (e) the changes to the existing driveway and the creation of car parking;
- (f) the new hardwood flooring;
- (g) the electrics; and
- (h) the external decoration works.

Our decision in relation to each of these items is set out below.

The work on the bathrooms

16. The Respondents were of the view that the entire amount of consideration referable to the bathrooms should be standard-rated as repair or maintenance because their understanding was that there had been two bathrooms both before and after the works had been carried out. However, the Appellant pointed out that this was not the case. The Appellant explained that the works in question involved the refurbishment of only one bathroom and that the second bathroom was entirely new. So the Appellant's proposal was that (subject to any adjustment required by our decision in relation to Issue 2) the consideration referable to the bathrooms should be split in half and that half of the works which were referable to the bathrooms should be allocable to refurbishing the existing bathroom (and therefore standard-rated) and half of the works which were referable to the bathrooms should be allocable to the creation of a new bathroom (and therefore zero-rated). The Respondents accepted both the analysis and the allocation (subject to any adjustment required by our decision in relation to Issue 2 (see below)) as long as the work did include the creation of a new bathroom. We were shown some plans of the main building prior to the works which

showed that there was only one bathroom in the main building at that time. Accordingly, we agree with the Appellant's contention in relation to this item and therefore, subject to any adjustment required by virtue of our decision in relation to Issue 2 (see below), half of the consideration allocable to the bathrooms should be treated as consideration for a zero-rated supply.

The new kitchen

17. The Appellant was of the view that the works relating to the new kitchen should be zero-rated because the works were substantial and involved the gutting of the original kitchen and the installation of a greater number of units than were in place in the kitchen prior to the works. The Respondents pointed out that, despite the substantial nature of the works, the new kitchen as it stood following completion of the works was in exactly the same place, and performed the same function in exactly the same way, as the original kitchen. The Respondents therefore contended that these works did not change the fabric of the building and that, even if they had, they would be works of repair or maintenance. The Appellant accepted this. We agree that, based on the evidence produced to us, the works to the kitchen brought about no change to the fabric of the main building, and therefore did not amount to works of alteration and that, even if they did amount to works of alteration, the fact that the kitchen performed the same function in exactly the same way following the works meant that the works were works of repair or maintenance. We therefore hold that the entire consideration for those works should be standard-rated as proposed by the Respondents.

The new double-glazed oak screen frames

18. The Appellant alleged that some of these works involved a change to the fabric of the building as it stood prior to the works and were not works of repair or maintenance. The Respondents agreed that, to the extent that the frames did involve an extension to the existing building and were not simply a replacement of that which was there before, zero-rating should apply. However, the Respondents noted that they had seen no evidence to that effect. From the material which was shown to us at the hearing, we too could see no positive evidence that this work involved any extension to the existing building and we therefore agree with the Respondents that the Appellant has failed to establish that the relevant works had that effect. We accordingly hold that the entire consideration relating to the supply and fitting of the double-glazed oak screen frames should be standard-rated as proposed by the Respondents.

The glazed oak doors to the existing doorways of the kitchen

19. The Respondents pointed out that the very description of this item, by referring to the "existing doorways", showed that the installation of these doors did not change the fabric of the building or that, if it did, it left the doorways performing the same function in the same way as previously and were therefore works of repair or maintenance. The Appellant was unable to produce any evidence to the contrary effect. We therefore agree with the Respondents that the Appellant has failed to

establish that the relevant works qualify for zero-rating and accordingly hold that the entire consideration which is referable to supply and fitting of the glazed oak doors should be standard-rated.

#### The changes to the existing driveway and the creation of car parking

5 20. The Respondents made a similar point in relation to this item – the very  
description of the item showed that it did not involve work to the fabric of the main  
building. The Appellant accepted that this was the case. We agree with the analysis  
of the Respondents and accordingly hold that the entire consideration which is  
10 referable to the changes to the existing driveway and the creation of car parking  
should be standard-rated.

#### The new hardwood flooring

15 21. Similarly, the Respondents pointed out that the new hardwood flooring was  
replacing the existing flooring in the building and that therefore it was precluded from  
qualifying as an “approved alteration” for the purposes of Group 6 Schedule 8 to the  
VATA. The Appellant conceded that this was the case. We agree with the analysis of  
the Respondents and accordingly hold that the entire consideration which is referable  
to the supply and fitting of the new hardwood flooring should be standard-rated as  
proposed by the Respondents.

#### The electrics

20 22. The Appellant contended that part of the consideration referable to the supply of  
electrics (£8,941 of the £28,941) should qualify for zero-rating on the basis that the  
work in question involved an extension of the electrics within the building (and not  
merely a replacement of the existing electrics within the building). The Respondents  
accepted both that analysis and the relevant apportionment, subject to any adjustment  
25 required by our decision in relation to Issue 2 (see below). We see no reason to depart  
from that agreed position and we accordingly hold that, subject to any adjustment  
required by our decision in relation to Issue 2 (see below), £8,941 of the £28,941  
attributable to the electrics should be zero-rated.

#### The external decoration works

30 23. The Respondents were of the view that, as there had been no extension to the  
main building, the external decoration works did not involve a change to the fabric of  
the building but were simply works of repair or maintenance. The Appellant was  
unable to provide any evidence to the effect that any part of the external decoration  
work had itself effected a change to the fabric of the building or could be said to be  
35 incidental to other works which had effected such a change. On that basis, we do not  
see how any of the consideration which is attributable to the external decoration  
works could be zero-rated. We accordingly hold that all of the consideration which is  
referable to the external decoration works should be standard-rated, as proposed by  
the Respondents.

## Conclusion in relation to Issue 1

24. It can be seen from the above that, with the exception of the apportionments described in paragraphs 16 and 22 above, we agree with the Respondents that all of the consideration which is referable to the disputed supplies in question should be standard-rated. As regards the excepted items mentioned in paragraphs 16 and 22 above, we hold that some of the work in each item should be zero-rated and that, subject to any adjustment required by our decision in relation to Issue 2 (see below), the apportionment proposed by the Appellant (which has been accepted by the Respondents) should be adopted.

## 10 Issue 2 - Repeal

25. We now turn to the implications on the VAT treatment of the supplies made by the Appellant of the repeal of Items 2 and 3 Group 6 Schedule 8 to the VATA effected by section 196 and Schedule 26 of the Finance Act 2012.

26. We would note that our decision on this point affects not only the two items forming part of the dispute under Issue 1 in which we have upheld the Appellant's claim for partial zero-rating but also the other items which both parties have agreed would have qualified for zero-rating had the relevant works been completed before the repeal took effect.

27. The goods and services which were supplied by the Appellant in relation to the main building straddled 30 September 2012, which is the date from which (subject to transitional rules) supplies of services (and related supplies of goods) in the course of approved alterations to listed buildings became chargeable at the standard rate instead of the zero rate.

28. The transitional rules would be in point only if the works in this case were effected pursuant to a written contract entered into, or a relevant consent applied for, before 21 March 2012 (see sub-paragraph 7(4) of Schedule 26 to the Finance Act 2012). The Appellant was unable to produce any evidence of a written contract in relation to the works entered into before 21 March 2012 or any evidence that the listed building consents in relation to the works had been applied for before that date. It follows that, in our view, neither limb of the transitional relief condition was met in this case and therefore such part of the overall works on the main building as would (but for the repeal effected by the Finance Act 2012) qualify for zero-rating should be disqualified from that treatment to the extent that the relevant goods or services were supplied on or after 1 October 2012. As noted above, this includes both the supplies which the Respondents have already accepted constitute supplies of goods or services in the course of an approved alteration and supplies which we have held in paragraphs 16 and 22 above to constitute approved alteration.

29. So far as identifying what part of those supplies should be treated or being made on or before 30 September, 2012, the parties agreed at the hearing that, in the absence of any evidence showing precisely when particular goods or services were supplied, the most reasonable approach to adopt in this case would be to pro-rate on a time-

apportioned basis the overall expenditure referable to the relevant items. We agree with this approach. In an ideal world, it would be possible to identify exactly when the items which qualify (or would, but for the repeal, qualify) for zero-rating were actually supplied but, in the absence of any evidence to that effect, the only reasonable approach would appear to be time-apportioned pro-rating.

30. We therefore hold in relation to Issue 2 that, in order to determine the portion of the aggregate consideration which is referable to supplies that fall within Items 2 and 3 Group 6 Schedule 8 to the VATA (or supplies that would have fallen within those items but for the repeal effected by the Finance Act 2012) that should be treated as relating to zero-rated supplies, the aggregate consideration which is referable to those supplies should be pro-rated on a time apportioned basis.

### Issue 3 – Insulation

31. The parties had previously agreed that certain works should qualify for the reduced rate of VAT in Items 1 and 2 Group 2 Schedule 7A to the VATA. However, the Respondents were disputing one item in relation to the supply of insulation. That item was described as follows:

“Remove all existing roof coverings to allow for 200mm of insulation between new and existing rafters, refit existing roof slate and supply reclaimed to make up shortfall”.

32. The Respondents accepted at the hearing that their refusal to agree that the supply described above qualified for the reduced rate was based on a mis-reading of the relevant description. The Respondents had been reading the relevant description as involving the replacement of existing rafters with new rafters (which would not have been incidental to the supply of insulation but a quite separate supply whose status for VAT purposes would need to be determined in accordance with the rules discussed in relation to Issue 1). In fact, upon re-reading the description at the hearing, the Respondents accepted that the work being described was simply the removal of existing roof coverings to allow for the installation of the insulation – in other words, a supply which was clearly ancillary to the supply of the insulation.

33. The Respondents accordingly accepted that the supply in question should be subject to VAT at the reduced rate of 5% as contended by the Appellant. We agree with this conclusion.

### Issue 4 – is the Granary a dwelling?

34. As a building within the curtilage of the main building, the Granary is deemed to be part of the main building for the purposes of the PLBCA. Logic would therefore suggest that it should be treated as if it were part of the main building when it comes to applying the provisions of Group 6 Schedule 8 to the VATA. Were that to be the case, any change to the fabric of the Granary would be treated in the same way as a change to the fabric of the main building and the two could be treated as a single dwelling for the purposes of applying Note (2) Group 6 Schedule 8 to the VATA.

35. However, in relation to this question, we are bound by the decision of the majority of the House of Lords in *Customs & Excise Commissioners v Zielinski Baker & Partners Limited* [2004] UK HL7. The majority in that case held that, even though a building within the curtilage of a listed building falls to be treated as comprising a single building for the purposes of the PLBCA, it is necessary to apply the provisions in Group 6 Schedule 8 to the VATA on a building by building basis. This means that it is necessary for the Granary to satisfy each of the conditions in Note (2) Group 6 Schedule 8 to the VATA in and of itself and without regard to the main building.

36. One difficulty which this creates is determining whether the Granary is itself a “protected building” given that it is not itself listed under the PLBCA but merely falls to be treated as part of the main building for the purposes of the PLBCA. In the *Zielinski* case, all three judges in the Court of Appeal held that a building falling to be treated as part of a listed building for the purposes of the PLBCA by virtue of falling within the curtilage of the relevant listed building could itself be regarded as a “protected building” for the purposes of Group 6 Schedule 8 to the VATA. However, the judges forming the majority in the House of Lords in that case were more circumspect – Lord Walker (with whom Lord Hope agreed) was inclined to the view that a building in these circumstances could be regarded as a “protected building” in its own right but Lord Hoffman and Lord Brown seemed more inclined to the view that it was not.

37. Be that as it may, it is clear from the majority decision in that case that, even if the Granary should be regarded as a “protected building” for the purposes of Group 6 Schedule 8 to the VATA, it still needs to satisfy each of the three conditions set out in Note (2) of that group. The third of those conditions is that “the separate use, or disposal of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision”.

38. The listed building consent in relation to the Granary – to which we were referred in the course of the hearing – states (in paragraph 3 of the Schedule of Conditions) that the development permitted by the consent “shall not at any time be occupied separately to the Listed Building known as Breach Farm nor for any purpose other than such purposes ancillary to the residential use of the listed building known as Breach Farm”. It follows that the Granary cannot be used separately from the main building and that this prohibition is set out in the terms of the statutory planning consent. Thus, the Granary fails to meet the third condition set out in Note (2). We would add that the restriction on use in this case is, if anything, a more onerous restriction in terms of linkage to the main building than the equivalent restriction in *Revenue and Customs Commissioners v Lunn* [2010] STC 486 and, in the latter case, the Upper Tribunal held that the linkage was sufficient to prevent the third condition in Note (2) from being satisfied.

39. We therefore hold that the Granary cannot be said to be designed to remain as or become a dwelling for the purposes of Note (2) Group 6 Schedule 8 to the VATA and that the supplies of goods and services made in connection with the works carried out at the Granary cannot qualify for zero-rating.

40. 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.

10

**TONY BEARE  
TRIBUNAL JUDGE**

**RELEASE DATE: 1 JUNE 2016**

15 537078715

## APPENDIX

5

### Group 6 — Protected buildings

#### *Item No*

- 10    1    The first grant by a person substantially reconstructing a protected building, of a major interest in, or in any part of, the building or its site.
- 2    The supply, in the course of an approved alteration of a protected building, of any services other than the services of an architect, surveyor or any person acting as consultant or in a supervisory capacity.
- 15    3    The supply of building materials to a person to whom the supplier is supplying services within item 2 of this Group which include the incorporation of the materials into the building (or its site) in question.

#### *Notes:*

- 20    (1) “Protected building” means a building which is designed to remain as or become a dwelling or number of dwellings (as defined in Note (2) below) or is intended for use solely for a relevant residential purpose or a relevant charitable purpose after the reconstruction or alteration and which, in either case, is—
- (a) a listed building, within the meaning of—
- (i) the Planning (Listed Buildings and Conservation Areas) Act 1990; or
- 25    (ii) the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; or
- (iii) the Planning (Northern Ireland) Order 1991; or
- (b) a scheduled monument, within the meaning of—
- (i) the Ancient Monuments and Archaeological Areas Act 1979; or

(ii) the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

- 5 (2) A building is designed to remain as or become a dwelling or number of dwellings where in relation to each dwelling the following conditions are satisfied—
- (a) the dwelling consists of self-contained living accommodation;
  - (b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
  - (c) the separate use, or disposal of the dwelling is not prohibited by the terms  
10 of any covenant, statutory planning consent or similar provision,
- and includes a garage (occupied together with a dwelling) either constructed at the same time as the building or where the building has been substantially reconstructed at the same time as that reconstruction.
- 15 (3) Notes (1), (4), (6), (12) to (14) and (22) to (24) of Group 5 apply in relation to this Group as they apply in relation to that Group but subject to any appropriate modifications.
- (4) For the purposes of item 1, a protected building shall not be regarded as substantially reconstructed unless the reconstruction is such that at least one of the following conditions is fulfilled when the reconstruction is completed—
- 20 (a) that, of the works carried out to effect the reconstruction, at least three-fifths, measured by reference to cost, are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works, would, if supplied by a taxable person, be within either item 2 or item 3 of this Group; and
  - 25 (b) that the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest;

and in paragraph (a) above “excluded services” means the services of an architect, surveyor or other person acting as consultant or in a supervisory capacity.

5 (5) Where part of a protected building that is substantially reconstructed is designed to remain as or become a dwelling or a number of dwellings or is intended for use solely for a relevant residential or relevant charitable purpose (and part is not)—

10 (a) a grant or other supply relating only to the part so designed or intended for such use (or its site) shall be treated as relating to a building so designed or intended for such use;

(b) a grant or other supply relating only to the part neither so designed nor intended for such use (or its site) shall not be so treated; and

15 (c) in the case of any other grant or other supply relating to, or to any part of, the building (or its site), an apportionment shall be made to determine the extent to which it is to be so treated.

(6) “Approved alteration” means—

(a) in the case of a protected building which is an ecclesiastical building to which section 60 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, any works of alteration; and

20 (b) . . .

(c) in any other case, works of alteration which may not, or but for the existence of a Crown interest or Duchy interest could not, be carried out unless authorised under, or under any provision of—

25 (i) Part I of the Planning (Listed Buildings and Conservation Areas) Act 1990,

(ii) Part I of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,

(iii) Part V of the Planning (Northern Ireland) Order 1991,

(iv) Part I of the Ancient Monuments and Archaeological Areas Act 1979, or

(v) Part II of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995,

5 and for which, except in the case of a Crown interest or Duchy interest, consent has been obtained under any provision of that Part,

but does not include any works of repair or maintenance, or any incidental alteration to the fabric of a building which results from the carrying out of repairs, or maintenance work.

10 (7) For the purposes of paragraph (a) of Note (6), a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

(8) For the purposes of paragraph (c) of Note (6) “Crown interest” and “Duchy  
15 interest” have the same meaning as in section 50 of the Ancient Monuments and Archaeological Areas Act 1979.

(9) Where a service is supplied in part in relation to an approved alteration of a building, and in part for other purposes, an apportionment may be made to determine the extent to which the supply is to be treated as falling within item 2.

20 (10) For the purposes of item 2 the construction of a building separate from, but in the curtilage of, a protected building does not constitute an alteration of the protected building.

(11) Item 2 does not include the supply of services described in paragraph 1(1) or  
25 5(4) of Schedule 4.

#### **Group 2 Schedule 7A VATA 1994**

Item No.

30

1. Supplies of services of installing energy-saving materials in residential accommodation.

2. Supplies of energy-saving materials by a person who installs those materials in residential accommodation.

NOTES:

*Meaning of “energy-saving materials”*

- 1 For the purposes of this Group “energy-saving materials” means any of the following—
- (a) insulation for walls, floors, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings;
  - (b) draught stripping for windows and doors;
  - (c) central heating system controls (including thermostatic radiator valves);
  - (d) hot water system controls;
  - (e) solar panels;
  - (f) wind turbines;
  - (g) water turbines;
  - (h) ground source heat pumps ;
  - (i) air source heat pumps;
  - (j) micro combined heat and power units;
  - (k) boilers designed to be fuelled solely by wood, straw or similar vegetal matter.

*Meaning of “residential accommodation”*

- 2 (1) For the purposes of this Group “residential accommodation” means—
- (a) a building, or part of a building, that consists of a dwelling or a number of dwellings;
  - (b) a building, or part of a building, used for a relevant residential purpose;
  - (c) a caravan used as a place of permanent habitation; or
  - (d) a houseboat.
- (2) For the purposes of this Group “*use for a relevant residential purpose*” has the same meaning as it has for the purposes of Group 1 (see paragraph 7(1) of the Notes to that Group).
- (3) In sub-paragraph (1)(d) “*houseboat*” has the meaning given by paragraph 7(3) of the Notes to Group 1.

## Section 196 and Schedule 26 FA 2010

196 Changes to the categorisation of supplies

- 5 (1) Schedule 26 contains provision about the categorisation of supplies for the purposes of value added tax...

### Schedule 26 CATEGORISATION OF SUPPLIES

10

#### Part 1 ZERO-RATED SUPPLIES

##### ...3 Protected buildings

- 15 (1) Group 6 (protected buildings) is amended as follows.
- (2) Omit items 2 and 3 (approved alterations and building materials).
- (3) In Note (3), for “(12) to (14) and (22) to (24)” substitute “and (12) to (14)”.
- (4) For Note (4) substitute—
- 20 “(4) For the purposes of item 1, a protected building is not to be regarded as substantially reconstructed unless, when the reconstruction is completed, the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest.”
- 25 (5) In Note (5), in paragraphs (a), (b) and (c) omit “or other supply”.
- (6) Omit Notes (6) to (11)...

##### ...Part 4 COMMENCEMENT AND TRANSITIONAL PROVISION

30 7

- (1) Subject to sub-paragraphs (2) and (3), the amendments made by this Schedule come into force on 1 October 2012.
- (2) Paragraphs 4 and 6 come into force on 6 April 2013.
- (3) Paragraph 3(2) to (6) comes into force, in relation to relevant supplies, on 1 October 2015.
- 35

- (4) A supply is “relevant” if it is—
- (a) a supply of any services, other than excluded services, which is made—
    - (i) in the course of an approved alteration of a protected building, and
    - (ii) pursuant to a written contract entered into, or a relevant consent applied for, before 21 March 2012, or
  - (b) a supply of building materials which is made—
    - (i) to a person to whom the supplier is supplying services within paragraph (a) which include the incorporation of the materials into the building (or its site) in question, and
    - (ii) pursuant to a written contract entered into, or a relevant consent applied for, before 21 March 2012.
- (5) In relation to supplies made on or after 1 October 2012 but before 1 October 2015, Group 6 has effect as if, for the purposes of item 1 of that Group, a protected building were also regarded as substantially reconstructed if sub-paragraph (6) or (7) applies.
- (6) This sub-paragraph applies if at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works would, if supplied by a taxable person, be relevant supplies.
- (7) This sub-paragraph applies if—
- (a) at least 10% (measured by reference to cost) of the reconstruction of the protected building was completed before 21 March 2012, and
  - (b) at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works would, if supplied by a taxable person, be relevant supplies but for the requirement for a written contract to have been

entered into or relevant consent to have been applied for before that date.

5 (8) For the purposes of sub-paragraph (4), works carried out that are not within the scope of the written contract entered into, or the relevant consent applied for, as it stood immediately before 21 March 2012, are not a supply made pursuant to that contract or relevant consent.

(9) In this paragraph—

“*excluded services*” means the services of an architect, surveyor or other person acting as consultant or in a supervisory capacity;

10 “*Group 6*” means Group 6 of Part 2 Schedule 8 to VATA 1994 (protected buildings);

“*relevant consent*” means—

15 (a) in the case of an ecclesiastical building to which section 60 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, consent for the approved alterations by a competent body with the authority to approve alterations to such buildings, or

(b) in any other case, consent under any provision of—

20 (i) Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990,

(ii) Part 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,

(iii) Part 5 of the Planning (Northern Ireland) Order 1991,

25 (iv) Part 1 of the Ancient Monuments and Archaeological Areas Act 1979, or

(v) Part 2 of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

30 (10) The Notes of Group 6 apply in relation to this paragraph as they apply in relation to that Group, except that in applying Notes (9), (10) and (11), references to item 2 are to be read as references to sub-paragraph (4) of this paragraph.