



TC05253

Appeal number: TC/2015/02153

VAT – were prefabricated temporary classrooms immovable property – is it the units or the building which is, or is not fixed to the ground and or easily dismantled and moved - the units - were they fixed to the ground – no - were they easily dismantled and moved – yes - appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SIBCAS LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT

**Sitting in public at George House, 126 George Street, Edinburgh on Thursday 2
and Friday 3 June 2016**

**Philip Simpson QC, instructed by Maria McConnell, French Duncan LLP, for
the Appellant**

**Elizabeth Roxburgh, Counsel, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents**

DECISION

5 1. The disputed decision of the respondents (“HMRC”) is a decision dated 13 February 2015 in which it was determined that the supply by the appellant of temporary classroom accommodation was exempt from VAT.

10 2. The issue in the appeal is whether the appellant’s supply of modular temporary accommodation is “land” within the meaning of Group 1 of Schedule 9 Value Added Tax Act 1994 (“VATA”). If it is not characterised as a supply of land then it is chargeable to VAT at the standard rate.

The Law

3. Section 31 VATA provides as follows:-

“31 Exempt supplies and acquisitions

15 (1) A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 ...”.

4. Schedule 9, part II, group 1, item 1 of VATA provides as follows:-

“(1) The grant of any interest in or right over land or of any licence to occupy land ...”.

20 5. It is a well-known principle that VATA must be construed, so far as possible, consistently with the Principal VAT Directive (2006/112/EC) (“the Directive”) and therefore in this instance with Article 135(1)(l) which reads:-

“(1) Member States shall exempt the following transactions:

...

(l) the leasing or letting of immovable property.”

25 6. Of course, as with every other exemption the provisions must be interpreted strictly. When considering the meaning “of any licence to occupy land ...”, Lord Scott put it very clearly at paragraph 58 in *HM Customs & Excise v Sinclair Collis Limited*¹ when he stated “... the words should not be construed so as to include the grant of rights that would not, for the purposes of the ... Directive constitute ‘the leasing or letting of immovable property’”.

30 7. The expression “letting of immovable property” is not defined and in *Maierhofer v Finanzamt Augsburg-Land* (“Maierhofer”)² that expression was considered in detail. In that case single storey and two storey buildings were assembled from pre-fabricated components. The buildings then stood on a concrete base erected on concrete foundations sunk into the ground. The walls, which were made of panels, were secured to the foundations by bolts. The roofs were fully tiled. The construction

¹ 2001 STC 989 (HL)

² [2003] ECR I-563 (case C-315-00)

system was such that the buildings could be dismantled at any time by eight persons in ten days and subsequently re-used.

8. That was compared with the property at issue in *EC Commission v France*³ which comprised caravans, tents, mobile homes and light framed leisure dwellings, the primary characteristics of which were that they were either mobile or could be easily moved.

9. The first question for the Court in *Maierhofer* was whether “letting of immovable property” covered the provision for consideration of a building constructed from prefabricated components and the decision of the Court was that:

“35. The answer to the first question must therefore be that the letting of a building constructed from pre-fabricated components fixed to or in the ground in such a way that they cannot be either easily dismantled or easily moved constitutes a letting of immovable property for the purposes of ... of the Directive, even if the building is to be removed at the end of the lease and re-used on another site ...”.

10. In reaching that decision, the Court had the benefit of the Opinion of Advocate General Jacobs which recorded at paragraphs 32 and 33:

“32. The only property that is inherently immovable is land itself: even conventional buildings intended to be permanent fixtures may in many cases be removed and re-erected if sufficient care is taken. On the other hand there are clearly different degrees of ‘movability’ of property other than land: a true building with walls and foundations will, in view of the costs, only very exceptionally be moved whereas a circus tent’s core function is precisely to be movable.

33. The question whether buildings or other literally movable objects are in legal terms immovable property may in principle be answered either by objective criteria relating to the quality of the attachment of the object under consideration to the land on which it stands, such as for example the strength of the attachment (firmly attached) or its inseverability (‘inseverably attached’), or by subjective criteria such as the intended duration of the attachment.”

He went on to say at paragraph 38 that the criterion should be objective and be “firmly fixed to or in the ground” , which, of course, was the decision of the Court.

11. The Upper Tribunal in *HMRC v UK Storage Company (SW) Limited*⁴ (“UK Storage”) looked in detail at the guidance set out in *Maierhofer* and stated at paragraph 21 as follows:-

“21. In our view applying *Maierhofer*, it is necessary in this case to ask the following questions:

- (1) Were the storage units fixed to or in the ground?
- (2) If so, could the units be
 - (a) easily dismantled and removed; or
 - (b) easily moved without being dismantled?”

³ [1999] STC 480 (Case C-60/96)

⁴ 2012 UKUT 359 (TCC)

In order for the storage units to be classified as immovable property, the answer to the first question must be 'yes' and the answer to both parts of the second question must be 'no'."

12. The Tribunal went on to state at paragraph 28:-

5 "In our view, whether a building is capable of being reassembled intact elsewhere is irrelevant in considering whether it can be easily dismantled."

13. At paragraph 30:-

10 "We consider that the question posed by the CJEU in *Maierhofer* has to be answered based on the objective characteristics of the structure. Approached in that way, we consider that the only conclusion ... was that the units were capable of being moved ... In the context of whether or not the unit is immovable property the relevant question is can it be moved easily from one place to another"

14. At paragraph 31 it was stated that:-

15 "Mr Conlon pointed out that it would be more difficult to move a unit in the middle of a row and we accept this but the fact that a number of units may have to be moved in order to reach a particular unit does not seem to us to increase the difficulty materially. In any event, that is not a relevant factor when considering the question of whether that particular unit, viewed in isolation can be moved easily which is the correct approach where, as here, there was no finding that the units were in any way structurally linked to each other or dependent upon each other for their structural integrity."

20 15. The FTT considered immovable property in *The University of Kent v Commissioners of Customs and Excise*⁵ ("University of Kent"). In that case the University had hired sleeping units as student accommodation. The units in question were approximately the same width as those in this appeal but were significantly smaller and were transported to the campus by lorry with three units on each lorry as opposed to the single units on each lorry in this instance. The units were set out in two rows, back to back, creating a service corridor between them. There were timber steps and landings to the door of each unit. They were placed on paving slabs and concrete blocks which had been installed to be located under the legs of the units since the ground was on a slope. The units were connected individually to services and, in some cases because of the slope they were fitted with skirtings attached to a timber frame which was bolted to the tarmac underneath the units. There were no foundations. The Tribunal held that the units were not immovable property on the basis that they were not "firmly fixed to or in the ground".

16. The Tribunal stated at paragraph 52 that:

35 "In the case of the ... units, there was a limited degree of attachment to the ground, both by the linkages to various utility services and by the attachment of skirting where this needed to be installed. We do not regard the linkages or this attachment as sufficient to enable the units to be regarded as having been firmly fixed to the ground. It took no more than an hour and a half to remove a unit, together with the work required to remove the service installations, skirting and attachments, and fencing. Subject to the contractors being present for two days to deal with the fencing, the other works took about half a day. The work involved was nowhere near as

⁵ [2003] UKVAT V18625

substantial as in *Maierhofer*. We regard the ... units as much closer to the structures considered in *Commission v France*.”

The arguments

5 17. It was accepted that the Directive intended the letting of movable property to be subject to tax as opposed to the letting of immovable property which is, in general, exempt. Both parties were in agreement that the length of the lease, the fact that the units had previously been used on a different site and were subsequently used elsewhere and that it was conceded that the units were not “inseparably fixed to or in the ground” were not relevant and that the Tribunal had to look at the objective
10 characteristics of the structure. (Had they been inseparably fixed that would have determined the matter!) Further, both parties were in agreement that the key issue related to the words: “firmly fixed to or in the ground”.

HMRC’s arguments

15 18. HMRC looked to the lease of “the prefabricated building constructed by the appellant” and argued that

(a) The building could not be removed from the site without being dismantled and nor could the building be easily dismantled and moved.

20 (b) Since the appellant had been required to prepare foundations for the prefabricated units, the building was therefore made up of the 66 prefabricated units and foundations which, in their view, were set in the ground.

(c) The prefabricated units had been attached to the steel levelling beams which were inserted into the ground.

25 (d) A wooden frame was fixed to the base of the unit and the ground, an access ramp was connected to both the building and the ground and the external stairs were fixed to the exterior of the building and the ground. The building was also connected to the ground by linkage to utility services and by the attachment of a skirting from the units to the ground.

30 (e) The structure was a two-storey building which required planning permission and was therefore substantial having taken the appellant 48 days to deliver the units to site, construct the building and fit it out and it took 14 individuals seven days to dismantle the building and physically remove it from the site.

(f) There is a scale of degrees of movability and immovability and whether or not a particular structure is moveable depends on where on the scale it falls.

35 *The appellant’s arguments*

19. The appellant looked to the lease of “the temporary units” not the building and argued that

(a) The units were not “fixed to or in the ground”.

5 (b) For “moveable units” to become immovable, connection to mains services did not count as being fixed to or in the ground on the basis that objectively the connection to services was not for the purpose of fixing the building to the ground but solely for the purpose of obtaining normal services. There were very few connection points to external services.

(c) Once the services were disconnected, dismantling the units was a straightforward matter of unclipping the units one from the other and then hoisting them one by one on to trucks for removal.

10 (d) The number of units hired is immaterial. The number of units involved did not make any difference in terms of how easily any single unit could be removed from the site.

(e) The fact that planning permission was obtained was immaterial since that was a matter of domestic law.

Preliminary issues

15 *HMRC*

20. By application dated 20 May 2016, HMRC sought a Direction from the Tribunal under Rule 5(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) to allow the witness statement of Mr Iain Coulthard to be lodged out of time. That application was opposed, but at the outset of the hearing that opposition was withdrawn.

The appellant

21. The letter of opposition in regard to HMRC’s application sought a Direction that HMRC provide a copy of the Statement of Case in the appeal by Ian Ramsay Church of England School (“IRS”) together with any other documentary evidence being relied upon by HMRC in that appeal not otherwise included in the joint bundle of documents in the present appeal and that those should be provided by Monday 30 May 2016. On 31 May 2016 HMRC wrote to HMCTS confirming that a Statement of Case was not lodged in respect of the appeal brought by IRS (TC/2014/03942) as that case was withdrawn in 2015. The application was therefore withdrawn.

22. The appellant lodged an undated application seeking a Direction that the Tribunal permit a short information video to be viewed during the hearing. That video apparently shows the full installation and subsequent dismantling and removal process of temporary units of the same type as those supplied in the present appeal. That application was opposed as was the application to lodge a “story board” containing still photographs from the video. After argument, that application was adjourned until after the completion of oral evidence for both parties at which juncture it was abandoned.

23. Of consent, the appellant’s applications during the hearing to lodge (a) replacement photographs, (b) new photographs, and (c) an engineer’s report with correspondence were all granted.

24. Of consent, it was agreed that the appellant's witness statement and exhibits be admitted late.

The hearing

5 25. I heard evidence from Mr Storrie, the Managing Director of the appellant, and found him to be a frank, straightforward and wholly credible witness. His witness statement had been lodged in process in the Joint Bundle which also included extensive correspondence, photographs and miscellaneous documentation including site and other plans.

10 26. HMRC's witness was Mr Coulthard who spoke to the photographs already lodged in process. He freely admitted that he was retained on a contingency fee basis by IRS and that depended on HMRC's success in this appeal. His evidence was entirely credible and since he spoke only to the photographs that he had taken, his evidence was not contentious.

The facts

15 27. The parties lodged an extensive agreed Statement of Facts which was a very helpful starting point but it does not require to be set out at length in this decision.

Findings in Fact

20 28. The appellant is a private limited company having its registered office in West Lothian, Scotland and has been registered for VAT since 1 April 1973. At no juncture has the appellant exercised an option to tax "leasing and letting of immovable property".

25 29. It is a family run business engaged in the manufacture and hire of relocatable, modular, pre-fabricated accommodation units ("the units"), supplied to a national customer base from four regional centres. Mr Storrie describes his business as being that of a broker of relocatable units which are then transported to their destination by road.

30 30. The length of hire of units is varied and largely determined by product type. Single units tend to be hired from one month up to 13 months with an average of seven months duration and multiple units from four months up to 36 months with an average 20 months duration. The units are manufactured in various sizes and the majority are in the range 6.8 metres to 9.2 metres long by 3 metres wide. They are effectively rectangular boxes. All units are moved by standard road haulage transport.

35 31. On 7 July 2011, the appellant submitted an offer to provide temporary classroom accommodation at IRS in Stockton-on-Tees. IRS' agent accepted the tender by way of a provisional agreement letter dated 17 August 2011 and the contract is contained in a variety of documents and emails. It suffices to say that IRS' agent was responsible for and obtained local authority planning consents with technical support provided by the appellant. Building warrant consent was obtained by the appellant.

32. The total number of units hired to IRS was 66, plus four landings and steps, one disabled access ramp to the ground floor, and two landings and stairs to the first floor. The accommodation was provided in three blocks of buildings comprising two floors. There was no roof framework, simply the flat top of the upper units. The completed
5 buildings looked exactly what a member of the public would expect of a two storey “Portacabin”, to use the colloquial term. The accommodation provided was 3876 square metres of classrooms, storage and offices. The original anticipated period for the contract was 24 months but that was extended to 32 months.

33. The units were to be located on the tennis court of the school adjacent to the
10 condemned school buildings. Surprisingly, the tennis court was not level and perhaps should better have been described as a tarmac playground which was utilised for tennis. It was prone to surface water and had a not inconsiderable level of declivity (or slope).

34. In July 2011, IRS’ agents had instructed “a minor ground investigation” consisting of
15 five driven sampler boreholes and those all showed similar strata with a thin layer of tarmac up to 0.1 metres on to brick, rubble and ash fill up to 0.28 metres overlying firm to stiff and then stiff clay strata.

35. Quite apart from the declivity, that did not offer adequate load bearing capacity. Since this was a school and the children moved together between classrooms the
20 dynamic load bearing capacity is very important and a higher load bearing capacity is required than would be needed for dead load where there is no such concerted movement. Accordingly, the base or foundation had to be secure to ensure that there was no settlement.

36. There were a number of possible methods of achieving the desired weight bearing
25 result and to an extent the choices related to whether the units would be on the site temporarily or on a semi-permanent basis such as five years. Foundation trenches were not the only option. Following discussions about load bearing, since the appellant had steel beams available from another job, it was decided that the preferred option was to utilise those steel beams to provide a levelling system to take up the
30 declivity on the site.

37. The appellant took possession of the site on 12 September 2011. The decision had
been taken to cut the tarmac with a saw and then excavate foundation trenches removing the inferior quality stone and, where appropriate some of the less stiff clay, down to the level of the stiffer clay strata in order to achieve optimal stability. Three
35 parallel trenches were dug to go underneath each of the three blocks of units. Two were approximately 30 metres long and the remaining one was approximately 36 metres long. The minimum cut in the trench was 300 millimetres and the maximum 600 millimetres. Stone was backfilled and compacted such that the stone level was 255 millimetres below the highest point of the tarmac. Prefabricated steel levelling
40 beams then rested on the compacted stone.

38. At the highest point those steel levelling beams consisted of two 300 millimetres high steel beams, welded together side by side, so the top was some 45 millimetres

- above the tarmac. However, as the ground fell away it became necessary to introduce a step (supported by a breeze block) and a further single beam which was 150 millimetres high was secured above the double beam. As the steel levelling beams rose from the ground they had less and less support from surrounding ground until ultimately there was no support since the levelling beam was simply resting on the compacted stone. Accordingly, at four metre intervals along the levelling beam, where it was no longer in the trench, a steel flitch plate was placed on either side in order to provide lateral stability.
39. The levelling beams were not fixed to the compacted stone at any point.
40. Whilst the foundation trenches were constructed other ground work was undertaken such as service provision for foul drainage, water, gas and mains electric.
41. All of the units involved in this appeal had originally been manufactured by the appellant at its Bathgate premises.
42. They are free standing and include RSJs, running parallel to the gable walls, as a base below the floors. Those integrated steel supports provide rigidity to the units and enable them to be sited on a surface that is not level. They allow units to be connected to each other both horizontally and vertically without the need for an additional support structure. The units each weighed seven tonnes.
43. All of the units used at IRS came from another customer of the appellant in London where they had also been used for educational purposes. There was no change to the overall complex foot print size but some minor internal modifications, such as moving doors or internal partitions, were made to meet IRS' specific requirements. The classrooms were equipped with whiteboards, projectors and IT cabling etc. The furniture was not supplied by the appellant.
44. The units had been priced and scheduled to go from the previous customer's site direct to the IRS site but the necessary local authority consents had been delayed for several weeks. Accordingly, the units were stored by the appellant and during the delay the minor modifications, such as a slight internal partition remap and installation of white goods, were substantially achieved at one of the appellant's service centres before delivery.
45. The appellant had completed a logistics profile for the site. The units were neither delivered nor uplifted all together since to have in excess of 70 large lorries converging on, or leaving, the site in quick succession would present significant problems for other road users. It would be difficult to manage on site.
46. The units started to arrive on site on Monday 3 October 2011 and the site installation was completed by 31 October 2011 having taken a total of 29 days.
47. When the first unit was delivered to the site it was lowered from the telescopic crane on strops. Once in position at the levelling point, the site operatives secured the RSJ in the bottom of the unit at that point to the levelling beam using what is known as a flush or friction clamp. That clamp works by compressing bolts and increasing

the friction between the RSJ and the beam. The first unit was therefore secured to a levelling point on the steel datum beam.

48. The next unit was then lowered down but, of course, could not be placed flush to the first module because of the strops suspended from the crane. Once the second
5 module was put roughly in place then a mechanical ratchet was utilised to pull it up proud with the first module. Effectively the first unit acted as an anchor.

49. The purpose of those friction clamps was to stop the first building moving as the others were put in and then they are also used at various other points during the installation to stop movement as the units were manoeuvred into place. They can be
10 removed after the units have all been put together but there was no specific reason to remove them and there was no “downside” to them being left in place. They had no subsequent function.

50. The appellant had commissioned and produced an engineering report calculating the overall stability of the units in order to check the need for structural tie-down, if
15 any. The critical FOS (factor of safety) was 1.5 and no tie down was needed if the check of the calculations of stability against uplift, sliding and turning all exceeded that figure. They all did by a significant margin.

51. When writing his witness statement, Mr Storrie had refreshed his memory by looking at that report (not having been directly involved in the installation) and had
20 therefore assumed that there had been no physical connection at all between the units and the steel levelling beams other than that the one rested on the other. It was only when he saw the photographs lodged in process by HMRC that he had realised that he had not commented on the friction clamps and their function in his statement. He then interviewed the site operatives, ascertained that they had taken 39 friction clamps with
25 them and used 36 at 20% of the contact points on the ground floor.

52. If the engineering report had identified a requirement for “structural tie down” a bolt would have been utilised since in the event of movement that would provide a margin of safety holding the RSJ and levelling beam together firmly. At worst, ultimately the bolt would have sheared. The friction clamp would simply allow the two to slide apart
30 as the friction would be insufficient to hold them together. The friction clamp is not a bolt itself and it is not designed to be used as a structural tie down. There are no holes in the RSJ or the levelling beam. If there had been a requirement for, or indeed any wish for, a structural tie down, then holes would have had to have been bored in the RSJs and the levelling beams and then bolts inserted. Since the units themselves
35 provided sufficient weight and mass to withstand anticipated loadings, that was not necessary.

53. The individual units, once placed adjacent to each other on the levelling beams were then clipped (or clamped, but not friction clamps,) together to form a building that afforded structural stability, particularly in regard to wind, achieved by the units’
40 mass and weight.

54. The units were connected to the mains services, and they were then made water-tight by use of a sealant membrane across the roof joint. All other vertical and horizontal joints were plated by pre-manufacture clip or pins pre-finished plates to provide weather seal and cosmetic finish. Effectively they were clipped together and the joins covered. The process was repeated between each additional unit until the overall floor plan met the IRS' specification.

55. Where units were placed together in order to create corridors and bigger rooms, the units were each brought to the site by standard large goods trucks and mechanically off-loaded as single units. At that juncture the units would be wind and water-tight with poly sheeting on the "open" side of the unit. Poly sheeting was also used when the units were dismantled and thereafter transported.

56. An example of the units being clipped together is the ladies toilet facility. One unit contained the cubicles for the toilets and the other unit contained the wash-hand basins etc. That had been the configuration for the previous customers and the fittings had been installed in the factory. The two units were placed adjacent to each other opening into a corridor. Another example is the IT lab where it appears that some three units were placed together. The cabling and so on for the overhead projector and all of the computers was included in trunking which ran around those units on the walls and ceiling.

57. Skirtings were installed between the ground and first floor and also below the ground floor for both cosmetic and health and safety purposes. The provision and installation of the pre-painted plywood debris skirt to the base of the units was basically for cosmetic purposes but also prevented debris gathering under the units and concealed mains service connections. It also stopped children crawling under the units.

58. There was a wooden frame attached to a 150mm joist above the RSJ in the base of the units and it resting on the ground below or the unit below. The skirting was affixed to that so that it hung from the unit. A picture was produced in evidence showing two possible nails which might have secured the base of the wooden frame to the tarmac in one place but those are small and it is clear that it is the weight of the units which ensured that the framework was secure between the units and the ground. The vertical frame is effectively held in place under compression. There is similar skirting and a frame between the disability access ramp and the ground.

59. The staircases at the end of two of the blocks were secured to the ground. It is a legal requirement that risers are maintained at exactly the correct level and that was the simplest method of doing so. An alternative would have been to use flagstones. The base of one staircase was surrounded by tarmac and the other staircase was bolted to metal plates secured to the tarmac.

60. The building was connected to fibre optic cabling, electricity, gas, water and drainage services. There was only one external connection for each of those. Internally, there was trunking along the skirtings, and on some ceilings and classroom walls, central heating radiators, ceiling lights and projectors and, of course, many

electric sockets. There was an internal lift for disability access. The building was well equipped and fit for purpose.

5 61. Of course there were the appropriate number of toilets, lights, alarms etc specified for Building Control purposes and all had been included in the units for previous, and indeed future, use.

10 62. At the end of the rental period the installation process was reversed although a less skilled workforce was required for removal. Preparations to remove the units began on 6 August 2014 with the decommissioning of the lift and disconnection of the gas supply. The keys to the units were handed over on Thursday 7 August 2014, being the last day of the rental. Over the next few days, excluding Sunday when no work was done, the services were disconnected. Most of the work involved in that consisted of disconnecting services inside and between the units rather than the external disconnection.

15 63. The wiring and fibre optics were stripped out of the trunking in the units. Compression fittings were attached to the central heating radiators which were left in place in each unit but the pipes were simply cut after the system had been purged. All the waste systems were above floor level so were simply disconnected and left. The rooms were broken back to units by cutting the roof and floor lines. The skirtings were detached and all the cosmetic plates clipped between the units were removed.

20 64. Each unit was removed individually, by being picked up by crane, loaded on to a lorry and thereafter driven away. Apart from the 66 units further vehicles were required to remove the internal lift shaft, external stairwells and steel beams. A total of 74 articulated vehicles were utilised. The entire removal was completed by 13 August 2014 and none of the units sustained damage during the removal process.
25 All of the units were subsequently re-hired to other customers. It took 14 individuals seven days to dismantle the building.

65. The site reinstatement was not the responsibility of the appellant and was undertaken by the IRS' agents.

Discussion

30 66. I agree with the appellant that the fact that domestic law required that planning consent etc had to be obtained does not determine whether or not the building or the units were immovable. "Immovable" in this context has, and can only have, a Community definition. That definition is derived from *Maierhofer* and in the first instance turns on the question of "fixed to or in the ground".

35 67. As can be seen from the arguments rehearsed above, HMRC focussed on the building as a whole and the appellant on the individual units.

68. The building and units in this appeal are very different to those in any of the cases which have been cited to me and to which I have referred. Furthermore, the quantity of units joined together is very different and very much larger.

69. At paragraph 31 of *UK Storage*, as I indicate at paragraph 14 above, the Tribunal pointed out that in that case there was no finding that the units were structurally linked or dependent on each other for structural integrity and therefore the correct approach was to consider each unit in isolation.

5 70. That point was not argued before me and nor was I referred to that paragraph. HMRC simply argued at all times that I was required to consider the *Maierhofer* tests in regard to the building because in this instance the service supplies were all at common points and were connected through the units and the units comprised an integrated building as opposed to the position in either *UK Storage* or *University of*
10 *Kent*. HMRC argued that I had to consider the whole structure including the foundation and the fact that the building could be dismantled did not mean that it was easy to do so.

15 71. By contrast the appellant accepted that the dismantling process was fairly involved and relatively lengthy but stated, correctly, that that was primarily because of the need to disconnect the units one from the other. At the heart of the appellant's argument was that the *Maierhofer* tests fell to be applied to the individual units. Therefore were they fixed to the ground, which it was argued they were not, and if they were then to decide how easy it was to dismantle and remove the individual units from the ground and not each other.

20 72. There is an obvious conflict. I have found that the units were clipped together and that that gave added structural stability. What is the impact of that?

25 73. In my view the wording of paragraph 35 of *Maierhofer* is very clear. Whilst it refers to the letting of a building it goes on to refer to the pre-fabricated components being fixed to or in the ground in such a way that **they** cannot be either easily dismantled or easily moved. It is quite clear to me that the relevant question is whether the prefabricated components and therefore the units are fixed to or in the ground and whether they can be easily dismantled or easily moved.

74. In case I am wrong in that, I considered the position for both the individual units and the building.

30 **Fixed to or in the ground**

35 75. I have discounted the wooden framework, to which the external skirtings were attached, as being a mechanism for fixing the units, or the ramp, to the ground. There were also skirtings with a wooden framework between the ground and first floors. I have no hesitation in finding that, as stated, the skirtings' function (and therefore that of the wooden framework) was for health and safety and cosmetic reasons. I accept that the wooden framework was held in place by the weight of the units (and the ramp) above.

76. That leaves only three possible substantive connections to the ground:

- (a) Foundation trenches, levelling beams and friction clamps,

- (b) the mains services, and
- (c) the two external staircases.

Foundation trenches, levelling beams and friction clamps

5 77. HMRC argued that the requirement for foundations, which were sunk into the ground, was key to ascertaining whether or not the building was fixed to or in the ground and, as foundations had been cut into the ground, the compacted stone with the levelling beams placed thereupon achieved the same objective as the concrete combination in *Maierhofer*. Further, since the levelling beams were connected to the RSJs at the base of the units by the friction clamps, the building and by definition the
10 units themselves were fixed in the ground.

78. As indicated above the only physical connection between the RSJs and steel beams was the use of the friction clamps. Mr Storrie was very clear that he had not been aware that the clamps had been left *in situ* and that in his view, having looked at the engineering report, there was absolutely no need for any means of securing the
15 units to the levelling beams. The engineering report is indeed explicit that there was no necessity for a “structural tie down”. It was the weight of the units and therefore, what Mr Storrie described as, “the compression factor” which kept the units and therefore the building in place. It is a large part of what kept the second floor on top of the first floor.

20 79. I accept that the only need for the friction clamps was to avoid movement when the building was being assembled. Thereafter they were irrelevant. On the balance of probability, I have no difficulty in finding that, as he suggested, there was no practical or other requirement that the clamps be left after the units were installed. The workmen simply did not remove them.

25 80. Accordingly, I do not find that the friction clamps attached or fixed the units and therefore the building to the levelling beams.

81. I do not accept that the levelling beams resting on the compacted stone in the foundation trenches were an integral part of the building as argued by HMRC. When the appellant left the site, the foundation trenches and stone remained. The units, steel
30 beams and flitch plates had simply been removed in turn by the appellant and were then taken away to be used elsewhere. For the same reasons I do not find that they can possibly be an integral part of the units.

82. I do not accept that the foundation trenches, stone and levelling beams are the equivalent of the concrete base on sunken concrete foundations in *Maierhofer*.
35 Although it was also argued that the stone itself was the equivalent of the concrete foundations, the point is that that concrete combination is a significant embedded and very solid enduring structure and the walls of the prefabricated components were bolted to it. That was not the case in this instance. In addition in *Maierhofer* there was a fully tiled roof framework on each building unlike in this instance.

83. Although there was no requirement for foundation trenches and stone in *University of Kent*, presumably because of the load bearing capacity of the ground in that instance (not least given that each of those units weighed one tonne and these seven tonnes), the levelling beams in this appeal are very similar in function to the paving slabs and concrete blocks utilised to support and keep level those units which were also on a slope. Those units were found not to be fixed to or in the ground.

The mains services

84. The external connection to mains services was very limited since there was only one ingress point for each service and that contrasts with *University of Kent* where there were multiple connections since each unit was individually connected. In that case it was accepted that that did not amount to an attachment to the ground whereby the units were firmly fixed to the ground. I am not bound by that case and HMRC pointed out that paragraph 25 of *Leichenich v Peffekoven and others*⁶ indicated that connection to the mains was a factor to be considered. I did consider it. However, I find that the connection to the services was a marginal connection to the building, and by extension to the units, since there were only very few points of connection. Mobile homes can and do have such connections. Those connections were easily disconnected.

The two external staircases

85. In a similar context, the fact that the bottom step of the two external staircases and the uprights were secured in or to the tarmac is, of course, relevant. What is the strength of that attachment? It is very limited since it is only the two external staircases that are so attached and they in turn are each connected to a unit and thus the building. Again, I find that to be a marginal connection which was easy to dismantle.

General

86. When I used the term “marginal” in regard to the attachment of the mains services and the two staircases, I deliberately do not use the term *de minimis* used by Mr Simpson. *Maierhofer* does not deal with *de minimis*. The question is whether or not, objectively considered, the attachment is sufficient to enable the building, or the individual units, to be regarded as “firmly fixed to the ground”, using the words of Advocate General Jacobs at paragraph 42 of his Opinion. In my view they are not.

87. Accordingly, I do not find that the building or the units were fixed to or in the ground.

88. However, if I am wrong in that, I must consider the other two questions posed in *UK Storage* in regard to moving and dismantling. Clearly the answer to question (b) is straightforward in that the units had to be dismantled before being moved.

⁶ ECLI:2012:720 (Case C-532-11)

89. I am bound by and agree with the Tribunal in *UK Storage* where it states at paragraph 29 that it is not possible to specify the number of persons or period of time required before a building or structure ceases to be easily dismantled. In that instance it was considered that two man days in relation to one storage unit weighing six tonnes presented no material difficulty. In this instance we are dealing with seven tonnes units. Those 66 units plus other items were dismantled in 98 man days.

90. I find that it was a straightforward matter to disconnect the individual units from the ground and once the internal wiring, connections etc had been stripped out, the removal of the units was also very straightforward. The appellant moves such units all over the country on a regular basis with no particular difficulty.

91. It was simply the sheer large number of units that absorbed the man power and time. If I look at how easily the building was dismantled, given the scale of the building, I find that it was indeed dismantled and moved quickly.

92. For all these reasons I allow the appeal.

93. 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.

ANNE SCOTT
TRIBUNAL JUDGE

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