**Land and Property Liaison Group**

**meeting of 3 October 2023**

**Welcome and introductions**

HMRC welcomed attendees to the meeting – a list of attendees is at Appendix 1.

**Minutes of previous meeting (13th June 2023)**

These had been published on the Joint VAT Consultative Committee’s (JVCC’s) website.

**Litigation update**

HMRC confirmed that it would be appealing the *Sonder* case, on which two queries had been raised by LPLG representatives (see separate agenda items below)

**Outstanding queries**

*Information to be provided on invoices (Annex 2)*

HMRC had circulated shortly before the meeting started a response to a query raised at the June LPLG meeting regarding the level of information that HMRC expected to see on invoices in order to allow it to verify the goods or services being supplied. LPLG members were invited to notify HMRC of any queries.

**AP1: LPLG members to inform HMRC of any questions about the written response.**

**New queries**

*Sonder 1 (see Annex 3)*

This query contained a number of questions regarding HMRC’s reaction to the recent *Sonder* case. As HMRC were in the process of appealing *Sonder*, they were unable to provide any comment at this stage.

*Sonder 2 (see Annex 4)*

LPLG members were interested in HMRC’s interpretation of the reference to “advertising or holding out” in Sch 9 Group 1 item 1(e). In particular, in the context of holiday accommodation, does the identity or nature of the person doing the advertising or holding out (e.g. landlord/lessee/agent) impact on a premises’ treatment as holiday accommodation for VAT purposes?

HMRC noted that the holiday accommodation exclusion to the land and property VAT exemption applies to the person making the supply of holiday accommodation. If the supply is made by a lessee, then the exclusion applies to them. Supplies by a landowner to a third party (e.g. who may then make that property available for holiday accommodation) would normally be treated as exempt supplies.

LPLG members highlighted a situation in which HMRC had argued that a landowner’s supply of land to a caravan site operator was provision of holiday accommodation rather than an exempt supply of land.

**AP2: HMRC to provide written response to this query as soon as possible.**

*Catchpole and Fox (see Annex 5)*

In a written response that would be circulated after the meeting, HMRC confirmed that following the decisions in *Catchpole* and *Fox*:

* VCONST14010 said that ‘Throughout this guidance reference to building can also refer to buildings unless the context clearly indicates otherwise’. HMRC confirmed that the guidance referred to was the manual as a whole, and that they were unaware of any instances where it actually did ‘clearly indicate otherwise’
* Where HMRC’s VAT guidance referred to a building, this included buildings that were comprised of more than one physical structure.
* Where HMRC’s extant guidance pre-dated the cases noted above, it would be changed so as to be consistent with the outcome of those cases.
* HMRC would follow the same principle in the case of buildings designed as a number of dwellings. For instance, a block of flats with a laundrette in a separate building would be treated as the same building for VAT zero-rating purposes as long as the buildings were both constructed at the same time.
* The important point is that the buildings should together form a single living unit (i.e. should provide what might reasonably be expected to be needed in a modern living arrangement). HMRC would not view a block of flats with a gym/pool in a separate building (even if their use was restricted to residents) as part of the same building, as such leisure amenities are not necessary to form a single living unit.

HMRC further confirmed that if a block of flats contained leisure facilities within the same building as the residential accommodation then the cost of building these facilities could be zero rated. LPLG members were surprised at the discrepancy in treatment between leisure facilities that were in the same building as the dwellings and those that were in a separate building and queried how HMRC would view a separate building that contained both leisure facilities and elements necessary to form a single living unit (e.g. key components of heating/cooling systems).

**AP3: HMRC to confirm their position in writing as soon as possible.**

*Dwellings built before 1948*

HMRC confirmed it had no guidance on the point raised in this query and undertook to provide a response.

**AP4: HMRC to provide written response to this query as soon as possible.**

*Party walls (annex 6)*

In a written response that would be circulated after the meeting, HMRC confirmed that someone redeveloping adjoining houses in a terrace would normally only be treated as “constructing a building” if the party wall were demolished (the demolition test), even if new dwellings were to be built on the same footprint as the old ones.

However, the demolition test does not apply where retention of the part wall is necessary for the structural integrity of a building being retained. This would suggest that a person could redevelop a terrace of e.g. six houses in a phased manner with the retention of party walls and still be treated as a person constructing.

**AP5: HMRC to provide written response to this query as soon as possible.**

**VAT Notices update**

HMRC continued to review and update Notice 742, where it has added more guidance on what constitutes a licence to occupy land and would add guidance on call options and overage payments, based on work recently undertaken by HMRC alongside LPLG members.

HMRC was also reviewing Notice 708, with a view to sharing draft updated sections of the Notice with LPLG members as and when they were ready. HMRC hoped to be in a position to seek LPLG input on the first updated section before the next LPLG meeting.

**AP6: HMRC to share first updated section of Notice 708 ahead of next LPLG meeting and seek comments.**

Prior to the meeting, HMRC had shared with LPLG members a JVCC memo dated 19th June 2019 and indicated that they were not planning to circulate it further. In addition, HMRC would be doing some communications work before the end of the year regarding its position on the VAT treatment of cladding remediation works. This would refer to both the liability of remediation works and the recoverability of input tax.

**TOGCs - article 5(2B) notification**

VTOGC6100, in wording taken from HMRC Brief 30/12, outlined HMRC’s view that where a 5(2B) notification could have been given they would accept that it was. Recently taxpayers had received correspondence suggesting that where one hadn’t been given to ensure a TOGC hadn’t taken place, they would insist that it had.  HMRC did not see that there was a policy justification for insisting that it had. However, to the extent that there were cases of HMRC officers taking this approach, the policy team would need to investigate further to understand why.

**AP7: Martin Scammell to seek client permission to send HMRC example of this situation happening**

**Business Briefs (BBs)21/04 and 30/04**

HMRC confirmed that it was satisfied that the information in BBs 21/04 and 30/04 remained correct. HMRC also noted its intention to include part of VAT Information Sheet (VIS) 14/03 into the relevant manual.

**Action points from previous meetings**

|  |  |  |
| --- | --- | --- |
| Date | Action point | Status |
| Nov 2020 | Value of commercial property upon deregistration – No update was provided. | Open – HMRC carrying out a fundamental review of the CGS. A representative from the relevant HMRC VAT policy team would attend the next LPLG meeting to provide an update. |
| Oct 2021 | Update to CGS Notice re VAT de-registration – HMRC to provide written update. | Open – as above. |
| Jan 2023 | **Change of trustees –** HMRC to engage with relevant LPLG members. | Open – HMRC to arrange a meeting to progress. |
| Jan 2023 | **L&P review** – LPLG members to provide examples of supplies that illustrate ‘passivity’ and ‘exclusivity’. | Closed – rolled into review of Notice 742. |
| Jan 2023 | **ESM installation** – HMRC stated that they have just updated guidance and would check their examples and come back with any additional thoughts. | Closed – government consulted on the VAT treatment of ESM installation earlier in the year and would soon publish a summary of responses covering this point. |
| Jan 2023 | **Modular buildings and zero rate** – LPLG members to provide more detail to enable HMRC to decide whether to update Guidance. | Closed – see AOB below for more detail. |
| Jan 2023 | **Modular buildings and zero rate** – Ruth Corkin offered to arrange a visit to a construction site near Bicester. | Closed – HMRC had recently been on a site visit – see AOB below for more detail. |
| Jan 2023 | **Fire and safety remediation** – NHF to send examples of HMRC’s withdrawal of written clearance. HMRC to review. | Open – NHF were trying to get the approval of relevant members to share details with HMRC. |
| Jan 2023 | **Notice 708 update** – HMRC to begin work on the updated Notice for LPLG comments | Open – see update above.. |
| Jan 2023 | **Sale and leasebacks** – draft RCB to be shared with LPLG members for comments | Open – HMRC considering appropriate place for guidance, and would respond separately. |

**Any other business**

*VIS 07/08*

LPLG members noted that the exceptional market conditions reflected in VIS 07/08 (i.e. housebuilders unable to sell homes and therefore letting them out) had begun to manifest again and it was noted that the current partial exemption guidance does not cover the key points in VIS 07/08. In particular, it was not clear who taxpayers should notify within HMRC that they were applying the treatment allowed by VIS 07/08.

**AP8: HMRC to confirm who taxpayers should notify regarding following the principles of VIS 07/08.**

*Construction forum / MMC paper*

HMRC’s Construction Industry Scheme (CIS) team regularly convened a construction forum with industry stakeholders. While the forum focused mostly on CIS matters, it had recently (and with input from HMRC’s VAT policy team) considered the CIS and VAT treatment of buildings constructed using modular construction, preparing a paper earlier in the year.

Separately, HMRC’s VAT policy team had recently visited a construction site where homes were being built using offsite preparation methods (though not modular construction). As a result of this visit and follow-up engagement with the construction firm in question, HMRC would be updating its VAT guidance on construction to reflect the terminology currently used in the industry.

However, the site visit had not provided further clarity on the application of “golden brick” in a modular construction setting. HMRC was considering reframing guidance on golden brick as part of its update of Notice 708 and BPF representatives offered to share their recent thinking on this issue.

**AP9: HMRC to circulate construction forum note on modular construction to LPLG members**

*VAT treatment of biodiversity net gain scheme*

LPLG members noted that HMRC had recently met with stakeholders on this and offered to put the VAT policy team in touch with relevant colleagues.

**Appendix 1 – attendees**

|  |  |
| --- | --- |
| Audrey Fearing | National Housing Federation |
| Ben Tennant | Chartered Institute of Taxation |
| Colin Smith | British Property Federation |
| Daniel Smith | Chartered Institute of Housing |
| David Jordorson | Association of British Insurers |
| Hugh Mitchell | Association of Tax Technicians |
| Ion Fletcher | British Property Federation |
| John Butterfield | Homes for Scotland |
| Julian Potts | British Property Federation |
| Karen Regan | Charity Tax Group |
| Karen Thomas | Chartered Institute of Public Finance and Accountancy |
| Martin Scammell | British Property Federation |
| Peter Hughes | Institute of Chartered Accountants in England and Wales |
| Paul Atkins | Home Builders Federation |
| Richard Dalton | Royal Institution of Chartered Surveyors |
| Robert Plumbly | VAT Practitioners Group |
| Ronnie Brown | Law Society of Scotland |

|  |  |
| --- | --- |
| Andy Tomlinson | HMRC |
| Andy Higgins | HMRC |
| Anthony Ugulu | HMRC |
| Brian Burke | HMRC |
| Daniel Taylor | HMRC |
| Gail Anderson | HMRC |
| Hina Kanwal | HMRC |
| Ian Broadhurst | HMRC |
| Ishrat Ali | HMRC |
| James Ormanczyk | HMRC |
| James Pattinson | HMRC |
| Lisa Allen | HMRC |
| Marie Williams | HMRC |
| Meenakhi Borooah | HMRC |
| Melanie Williams | HMRC |
| Mike Lee | HMRC |
| Nick Henderson | HMRC |
| Robert Zimmermann | HMRC |
| Tricia Burns | HMRC |

**Annex 2 – Invoices**

**Subject:** Details to be shown on invoices

**Representative body:** BPF

**Representative(s):** Martin Scammell

**LPLG Priority Level:** This is going to need a response from people who don’t normally attend LPLG, so I imagine it’ll come in writing, in a ‘post-meeting pack’. So there’s no need for much meeting time, unless others want to chip in. But it would need to be the post-meeting pack from this meeting, as I expect the next will be sometime next year.

**Description of the Supply:**

*What type of taxpayer is affected?*

Building contractors and their business customers, although the issue is a broader one

*What type of supply is being made?*

Typically standard-rated building work, not subject to the domestic reverse charge although, again, the actual issue is broader

*Who is making and receiving the supply/payment?*

In relation to building work, a contractor is making supplies to the owner of a building

*Potential impact?*

Customers being assessed for otherwise recoverable input tax. Customers and contractors not knowing how to comply with HMRC’s expectations, nor therefore whether there is a risk of an assessment.

1. Is it HMRC’s view that the description needs merely to be sufficient for the parties to identify the goods or services, such that there could be no doubt in the event of a dispute whether they had been supplied, invoiced and/or paid for? Or is it HMRC’s view that the description needs to be sufficient to identify the goods or services to HMRC, or to anyone else? If the latter, can taxpayers assume that HMRC are familiar with terminology conventionally used in the relevant sector?

VAT Reg 14 (1) (g) and (h) of the VAT Regs 1995 state that a supplier must provide a VAT invoice that contains:

(g) a description sufficient to identify the goods or services supplied

(h) for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in any currency.

This means that the description needs to be detailed enough to allow HMRC to verify the goods/services being supplied. This is to allow verification that the correct rate of VAT has been charged and to evidence the link between the business activity of the recipient and the cost incurred.

In the case of Deadoc Construction Ltd & Anor (2015) TC 04610 the FTT reviewed invoices that had been provided to support recovery of Input Tax on an individual basis to establish their ability to satisfy the requirements of Reg 14, particularly points (g) and (h). The judge commented on differences in the invoices specifically around whether a site/address of the work being completed was mentioned, or the time period for which the invoice was raised. Where those details were not present on the invoices, that Input Tax was deemed not recoverable.

So as shown in the previous paragraph, HMRC has to be able to verify/assure the details on the invoices to ensure the VAT has a business purpose and is charged at the correct rate of VAT. HMRC staff would not generally understand sector specific terminology but would be able to request clarification if needed.

1. Is it HMRC’s view that a description contained in supporting documents that are referred to in the invoice, and attached to or otherwise provided with the invoice, can be treated as contained in the invoice? Or are they ‘other evidence’ so that it is a matter for HMRC’s discretion whether these can be taken into account? Examples would be a breakdown of the work done, or in the case of interim payments a professional valuation of works done since the last invoice; the invoice itself might for example say ‘stage payment for works’ or ‘valuation’ with a reference number

As explained in question 1 the required contents of a VAT Invoice are described in Reg 14 of the VAT Regs 1995. For a VAT invoice to be valid it must contain all those points listed within the document, however there is no statutory definition of what constitutes an “invoice”, and anything else supplied would be treated as alternative/supplementary evidence.

VAT Notice 700, Para 16.8.1 states that an invalid invoice is one which falls short of any of the requirements set out in para 16.3 (which are the requirements of Reg 14). So other documents that may provide more clarity to the supply made can be used but as para 16.8.2 of the Notice states this would be at HMRC’s discretion. HMRC does not provide an exhaustive list of situations where discretion will be applied, but will review on a case by case basis dependent on the individual facts.

1. Similarly, is it HMRC’s view that a description contained in other documents unambiguously referred to in the invoice, but not attached to or provided with it, can be treated as contained in the invoice? Or, again, are they ‘other evidence’, and a matter for HMRC’s discretion? Examples might include a reference to:

* a contract between the parties, eg ‘our contract of [date]’ or ‘our contract [reference number]’
* a numbered purchase order issued by the customer
* a project name, used for example to preserve confidentiality
* planning permission
* a statutory requirement (eg ‘works to comply with regulation XX of the XX Regulations’)?

Documents which are separate to VAT invoices are other evidence. Reg 29 of VAT Regs 1995 and [VIT31200](https://www.gov.uk/hmrc-internal-manuals/vat-input-tax/vit31200) outlines when HMRC may apply discretion when considering alternative/supplementary evidence. Where claims to deduct VAT are not supported by a valid VAT invoice HMRC staff will consider whether or not there is satisfactory alternative evidence of the taxable supply available to support deduction. HMRC staff will not simply refuse a claim without giving reasonable consideration to such evidence. HMRC has a duty to ensure that taxpayers pay no more tax than is properly due.

Therefore, and in line with our response at question 1 if HMRC applies discretion and takes in to consideration supplementary evidence, the evidence should provide details of the supply that gives clarity to its extent and period to enable HMRC to verify.

1. Can HMRC please indicate whether, in the case of building work, they see it as essential that the address is specified, either on the face of the invoice or (depending on the answers to the above) in other documentation? If so, and given that the customer and their address will be known, how much detail is required? If, for example, the customer was HMRC, which of the following would be acceptable:

* 14, Westfield Avenue, Stratford, London E20 1HZ
* Westfield Avenue, Stratford, London E20
* 14, Westfield Avenue, Stratford
* Westfield Avenue, Stratford
* Your offices in Stratford

As per answer to question 1 the level of detail provided should allow HMRC, to determine, with the provision of any other documentation, to verify the supply, the correct liability of the supply made. So if the location/and address of a building is necessary to determine that, then that would be advisable to be prominent within the invoice issued.

In Deadoc Construction Ltd TC (2015) 04610, the Judge comments that “Part of the purpose of Reg 14 is to ensure that invoices contain sufficient information to enable an independent observer (typically HMRC) to be satisfied as to the identification and quantification of the goods or services supplied”.

HMRC would see the identification of goods/services from a compliance perspective to include a possible site visit to premises to verify any work that has been invoiced, so an identifiable address for work being completed is important.

1. Which of the following would HMRC regard as ‘a description sufficient to identify the goods or services supplied’? Where relevant, would it make a difference if the part of the building, eg the first floor, or the bathrooms, was specified?

* Building work
* Refurbishment
* Conversion work
* Conversion of offices to four flats
* Demolition and site clearance
* Landscaping works, provision of access and fencing
* Electrical work
* Installation of electrical sockets and light switches
* Installation of one XYZ type 3 boiler
* Installation of one XYZ type 3
* Fire safety works

As referenced in earlier responses, the details provided on the invoice for each different type of supply should be sufficient for HMRC to verify that the supply has been charged at the correct rate of VAT. Technical detail of the supply is not immediately required, although could be requested by HMRC officers at a later date if needed.

So using a supply of a biscuit as an example. The word biscuit would not solely allow HMRC to verify whether the sale of that biscuit was made at the correct VAT rate. It would need to include further identifiers to allow HMRC to verify whether the correct VAT rate had been applied (e.g. plain, chocolate covered etc.).

Using one of the bullet points in your question, if conversion work was to a building which resulted in a particular rate of VAT being charged, then HMRC would expect the invoice to demonstrate and assure that VAT rate accordingly.

1. VAT Notice 700 para 16.7 gives an example of a VAT invoice for goods. Can HMRC please provide some examples of wording for building work, which they would regard as ‘a description sufficient to identify the goods or services supplied’? Would HMRC consider including these in guidance?

We would suggest that following the response above, wording should allow HMRC to verify that the correct liability of the supply has been determined. HMRC cannot be prescriptive and list wording that would cover all scenarios in enough detail to include in any VAT guidance.

**Annex 3 – HMRC Reply to Sonder 1**

**Subject:** Sonder Europe Ltd <https://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08852.pdf>

**Representative body:** BPF

**Representative(s):** Martin Scammell

**LPLG priority level:** HMRC must know the answers to at least some of the questions below, in particular 1, so there is no reason why these can’t be provided at the October meeting. To any extent that they do not know, they are of course welcome to consider them over the next few months, and to respond at or before the next meeting.

**Description of the supply:**

*What type of taxpayer is affected?*

Providers of short-term accommodation who rent it from the owners.

*What type of supply is being made?*

Letting of short-term accommodation, ordinarily likely to be seen as taxable as holiday accommodation or as accommodation in a hotel, inn, boarding house or similar establishment.

*Who is making and receiving the supply/payment?*

The provider is making the supply to (and receiving payment from) guests or their employers.

*Potential impact?*

The application of TOMS, in line with the Sonder decision, would increase costs to businesses using serviced flats etc for employees – they would be unable to recover the supplier’s TOMS VAT, and there would be further irrecoverable VAT in the supply chain. TOMS would seem to reduce costs to private travellers, unless the 28-day rule would otherwise apply, but the extent of this would depend on what VAT the supplier incurred. Applied retrospectively, it would mean that affected taxpayers had not been entitled to reduced-rating in 2020-22.

**The question for HMRC:**

1. Do HMRC consider the FTT decision in Sonder to have been correct?

Answer - HMRC are appealing the decision. As such questions 2-4 don’t need to be addressed.

1. If not, do they simply propose to ignore it, or will they take any action to head off similar arguments? Will they be adding anything to guidance?
2. If HMRC *do* think that the decision was correct, do they propose to take any action to limit the scope of TOMS going forward? Will they be commenting in guidance? And where do they see the limits to the decision? Sonder had taken leases of, apparently, several years, had typically furnished the apartments, and sometimes done some minor decoration work. Do HMRC have any views on what changes to these facts would have meant that Sonder was providing the accommodation from its own resources, or was undertaking ‘material alteration or further processing’, such that TOMS would not have applied?
3. Sonder was concerned with the legislation prior to Brexit implementation. Is it HMRC’s view that the answers to any of the points above would be different under current legislation?

**Any other supporting evidence or comments:**

**Date:** 16 September 2023

**Annex 4 – HMRC reply to Sonder 2**

**Subject:** Sonder Europe Ltd <https://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08852.pdf>

**Representative body:** BPF

**Representative(s):** Martin Scammell

**LPLG priority level:** The question is about HMRC’s own arguments in litigation,

so we might assume that they had considered the matter beforehand, and can provide a response at October’s meeting. If, on the other hand, HMRC ran their arguments without having considered them, it would be understandable if they needed to think about them now, and entirely acceptable if they responded at or before the next meeting.

**Description of the supply:**

*What type of taxpayer is affected?*

Landlords of accommodation that is advertised or held out by their tenant as holiday accommodation, or as suitable for holiday or leisure use.

*What type of supply is being made?*

The letting of the accommodation.

*Who is making and receiving the supply/payment?*

The landlord is making the supply to the tenant, who is paying rent.

*Potential impact?*

Potential errors in whether VAT is being accounted for and recovered.

**The question for HMRC:**

The following is an extract from the Sonder decision (paras 56-57):

HMRC also accepted that Sonder provided short term travel accommodation in the apartments which it leased from the landlords. HMRC’s case, however, was that renting exempt residential accommodation and then subletting it to travellers does not fall within the TOMS.

Sonder leased the apartments from the landlords for a term of years for an annual rent. The landlord’s supply was an exempt supply of land, ie the apartments, for residential purposes. Sonder used the property to make supplies of short term accommodation to travellers which was, in principle, subject to VAT. Mr Macnab submitted that the landlord did nothing but make a bare supply of accommodation to Sonder and played no part in Sonder’s supplies of the furnished and serviced apartment to travellers.

Absent TOMS, Sonder’s lettings were taxable, either as a letting of sleeping accommodation in a hotel, inn, boarding house or similar establishment (Sch 9 Group 1 item 1(d)) or as a letting of holiday accommodation under item 1(e). Note 13 to the Group says that:

‘holiday accommodation’ includes any accommodation in a building … which is advertised or held out as holiday accommodation or as suitable for holiday or leisure use, but excludes any accommodation within paragraph (d)’.

It is apparent from the decision, and from websites, including the company’s own at

<https://www.sonder.com/en-gb>, that the accommodation was advertised and held out by Sonder in this way.

It is not suggested that the lettings to Sonder, by the various landlords, were taxable under item 1(d). But it might be thought that they were taxable under item 1(e), because of the way in which the accommodation was being advertised and held out by Sonder. The provision does not suggest that this needs to be done by the person actually making the supply.

In view of this:

1. Can HMRC confirm that it is indeed their view that the lettings to Sonder were exempt, as they maintained at the Tribunal?

Answer – It would not be appropriate for HMRC to comment on speculative “facts” that are not recorded as such in the decision.

The case was about the nature and treatment of the supply by Sonder, not the supplies to Sonder. HMRC did not “rule” that the supplies by the landlords were exempt but, in as far as it may have been material, were content to accept that they were in this instance.

Para 27 of the decision records that *“The landlords were not hoteliers and their aim was simply to lease apartments to Sonder. The landlords did not provide any additional services such as the concierge and cleaning services described below.”* That is, the landlords rented furnished and unfurnished residential property to Sonder for a terms of years for an annual rent - as is recorded in paragraph 57.

1. How do HMRC interpret the reference to advertising or holding out in item 1(e)? The provision clearly applies to a landlord who is doing the advertising or holding out themselves. Presumably it also applies if it is done by an agent, or by an associated company?

Answer - Paragraph 5.1 of the VAT Notice 709/03 states “*Accommodation advertised or held out as suitable for holiday or leisure use is always treated as holiday accommodation.*” This would apply to any advertising irrespective of whether it is done by the owner of the accommodation or it is done on his behalf by a third party.

How far does it extend where the tenant decides for themselves to advertise or hold the accommodation out as holiday accommodation? Does the landlord need to know that this is happening, or to expect it to happen, as they would seem to have done in Sonder? Does it make any difference whether the landlord has any financial interest in the matter?

Answer – This applies to the person making the supply of the holiday accommodation. It would not normally apply to a landlord who has merely granted a lease or tenancy in his property to a third party unless there is a restriction under which occupation of the property throughout the year is not permitted. In which case the supply by the landlord to the tenant will also be caught as a supply of holiday accommodation.

1. Is it HMRC’s view that item 1(e) only applies during periods when the accommodation is being advertised or held out as holiday accommodation, so that the liability of a landlord’s supplies might change during the course of a letting?

Answer – Yes it is possible that the liability of the supply may change in certain circumstances, see Paragraph 5.6 Off-season letting of VAT Notice 709/03.

**Any other supporting evidence or comments:**

**Date:** 16 September 2023

**Annex 5 – HMRC reply to Catchpole and Fox**

**Subject:** Catchpole and Fox

**Representative body:** BPF

**Representative(s):** Martin Scammell

**LPLG priority level:** If HMRC already know the answer, there is no obvious reason why it cannot be provided at the October meeting. If they do not, the matter may not be time-critical, in that it is not new.

**Description of the supply:**

*What type of taxpayer is affected?*

The example given below is of someone commissioning the construction of flats and associated facilities, but the question is potentially more wide-ranging.

*What type of supply is being made?*

In the example, construction work.

*Who is making and receiving the supply/payment?*

In the example, a contractor is making the supply to the developer, who is paying for it.

*Potential impact?*

In the example, the point is relevant to whether the contractor should be charging VAT, and to whether the developer is at risk of an assessment if they seek to recover VAT that the contractor purports to charge.

**The question for HMRC:**

VCONST14010 says that:

‘The law generally refers to a ‘building’ rather than ‘buildings’. However, following the First-tier Tribunal decisions in Mark Catchpole (TC01995) and Mr T Fox (TC01957) HMRC has accepted that in certain cases, under the Interpretation Act, the term ‘building’ can refer to more than one building. For example, a dwelling can consist of more than one building. Throughout this guidance reference to building can also refer to buildings unless the context clearly indicates otherwise.’

1. Can HMRC confirm that ‘this guidance’ refers to the entirety of VCONST? If not, what does it refer to? –

Answer: *HMRC can confirm that when the legislation refers to a building, following catchpole if that building consists of more than one building to be used at the same time to create a single unit then a “building” can comprise of more than one building. This term refers to any reference to a new build for the purposes of the VCONST.*

1. The wording quoted above was added in June 2022, and so post-dates most of the manual. References to ‘building’ are therefore likely to be older, and so not specifically to say that they cannot refer to more than one building. Can HMRC give an indication of how readers might tell that the ‘context clearly indicates otherwise’? - Are they aware of any instances in the manual where ‘building’ cannot be read as ‘buildings’?

Answer: *We will look at the guidance to ensure that there is a common thread throughout the guidance.*

1. Catchpole and Fox were both about whether the reference in Sch 8 Group 5 Note 2 to ‘a building … designed as a dwelling’ included two buildings that, together, served as a dwelling. Are HMRC content that the same point can apply to the reference, also in Note 2, to ‘a building … designed as a number of dwellings’?

Answer: *Building designed as a number of dwellings will follow the same rules, only additional building that are integral to create a single living unit would apply.*

1. VCONST14190 says that:

‘Shared living and leisure facilities in blocks of flats, such as lounges, laundries, swimming pools that are used only by the residents and their guests are accepted as part of a building designed as number of dwellings.’

Is this a case where the reference to a building can include more than one building, or in which ‘the context clearly indicates otherwise’?

It would mean, for example, that the construction of a block of flats, together with a laundry facility in a separate building, would be wholly zero-rated if the laundry was only for the use of residents and their guests, giving a similar result to Sch 8 Group 5 Note 5, about ‘a number of buildings … intended to be used together as a unit solely for a relevant residential purpose’.

*Answer: If there was a separate building with laundry facility for use solely for the residents this is correct the supply would be zero-rated when:*

* *constructed at the same time,*
* *included on the original plans and*
* *only available to the residents.*

*However, a separate building for a swimming pool or gym would not be allowed as these are leisure facilities and are not required to create a single living unit. These types of structures are considered as works unconnected to the construction of a building. (Para 3.3.5, Notice 708, Buildings and construction).*

**Any other supporting evidence or comments:**

References to legislation and guidance as above. The example is reminiscent of St George’s Augustinian Care <https://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05316.html>, and would seem to suggest that HMRC had been correct both to accept zero-rating in 2005 (when the original buildings were being constructed) and to reject it in 2015 (in relation to an additional building). Catchpole and Fox were mentioned in the decision. The Tribunal seems to have assumed that they were only relevant to a building designed as one dwelling, but this would not have affected the outcome.

**Date:** 16 September 2023

**Annex 6 – Party walls**

**Subject:** Demolition and retention of party walls

**Representative body:** BPF

**Representative(s):** Julian Potts

**LPLG Priority Level:** If there is a simple answer this could be dealt with quickly as it is a single point issue

**Description of the Supply -**

What type of taxpayer is affected? Contractors, Subcontractors and Residential Property developers

What type of supply is being made? Construction services or sale of new dwellings

Who is making and receiving the supply/payment? Contractors or sub contractors making supplies to property developers or property developers selling new dwellings

Potential impact? Difference between zero rate applying and standard rate of VAT applying or difference between zero rated and exempt supplies for property developers

**The question for HMRC:** In HMRC Notice 708 section 3.2.3 there is the following paragraph

But if you’re re-developing adjoining houses in a terrace, the party wall between the houses being redeveloped will also need to be demolished before you’re seen to be ‘constructing a building’ for VAT purposes.

Does this paragraph only refer to a situation where adjoining houses in a terrace are demolished and then a single dwelling (single building) is constructed in their place. The sentence refers to ‘constructing a building’.

What happens where adjoining dwellings are replaced on same footprint. Each new dwelling would generally be understood to be a separate building so in this case do HMRC agree that each dwelling be zero rated despite the retention of the party wall between the two new dwellings.

For example six dwellings in a terrace are demolished and six new dwellings constructed on the same footprints. Would the retained party walls between each new dwelling being ignored for the purposes of zero rating as each new dwelling is a separate building?

What happens if there are different owners to the adjacent dwellings?

Is this only an issue only when existing dwellings are demolished (other than the party wall) at the same time? So that in a situation where one dwelling is fully demolished but the neighbouring property is not fully demolished would zero rating be available? For example if works are phased would works also be zero rated?

**Any other supporting evidence or comments:**

e.g. references to legislation, HMRC guidance

Items 2 and 4 of Group 5 of Schedule 8 VAT Act 1994

2 The supply in the course of the construction of—

(a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose; or

(b) any civil engineering work necessary for the development of a permanent park for residential caravans,

of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

4 The supply of building materials to a person to whom the supplier is supplying services within item 2 or 3 of this Group which include the incorporation of the materials into the building (or its site) in question

Notes 2, 16 and 18 to Group 5 of Schedule 8 VAT Act 1994

(2)A building is designed as a dwelling or a 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 term of any covenant, statutory planning consent or similar provision; and

(d)statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.

(16) For the purpose of this Group, the construction of a building does not include—

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

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

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

(18)A building only ceases to be an existing building when:

(a)demolished completely to ground level; or

(b)the part remaining above ground level consists of no more than a single facade or where a corner site, a double facade, the retention of which is a condition or requirement of statutory planning consent or similar permission.

Extract from HMRC Notice 708

3.2.3 Demolition and retention of party walls

In determining whether a building has been demolished completely to ground level, you can ignore the retention of party walls that separate one building from another building that is not being demolished.

So, for example, you’re ‘constructing a building’ when you ‘infill’ in a row of terraced houses provided the pre-existing house is demolished completely to ground level apart from the party walls shared with the adjoining houses either side.

But if you’re re-developing adjoining houses in a terrace, the party wall between the houses being redeveloped will also need to be demolished before you’re seen to be ‘constructing a building’ for VAT purposes.

A party wall need not separate a building from another building, a party wall can also be the wall of a building. On one property and a boundary or garden wall for the adjoining property. If such a wall is retained, the building in question cannot be said to have been demolished completely to ground level.

Answer: When you want to construct a new dwelling on a site where a property already exists you need to meet the conditions in Note 18, Group 5, Schedule 8 of the VAT Act:

*(18)A building only ceases to be an existing building when:*

*(a)demolished completely to ground level; or*

*(b)the part remaining above ground level consists of no more than a single facade or where a corner site, a double facade, the retention of which is a condition or requirement of statutory planning consent or similar permission.*

When you have terrace houses it is right that when demolishing one of the properties within the terrace you cannot knock down the party walls on either side as the properties still being used as dwellings or existing buildings and must be retained for the structure integrity of the existing properties. The front and rear of the property (subject to the façade condition) would need to be demolished to meet this demolition test.

If you are rebuilding two properties within the terrace which are side by side the party wall that adjoins to the two properties will need to be demolished to meet the demolition test. Regardless of the rebuild being on the same footprint as this particular party wall is no longer required for the integrity of any existing building.

So if you have 6 dwellings in a terrace and you are demolishing all 6 of the dwellings all party walls will need to be demolished to meet the demolition test regardless of the new dwellings being constructed on the same footprint. This is still subject to the façade conditions, for example if the planning consent instructs that the front façade of the 6 dwelling must be retained then all other walls including the party walls must be demolished.

If different persons own each of the properties and planning consent has been given for each dwelling then the same principals above will ably to the party walls of an existing property.