TC02715

Appeal number: LON/2000/765

VAT – zero rating – caravans- removable contents –Item1 group 9 Sch 8 and Note(a)- apportionment of consideration for supply. Decision in principle.

FIRST-TIER TRIBUNAL
TAX CHAMBER

COLAINGROVE LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER
TYM MARSH

Sitting in public at 45 Bedford Square WC1 between 2 and 5 April 2012

Roderick Cordara QC instructed by PwC Legal LLP for the Appellant

Jeremy Hyam, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

I. Introduction

1. Among other activities, Colaingrove sells static caravans. This decision concerns the scope of the zero rating afforded by group 9 schedule 8 VAT act 1994 to such caravans, and the proportion of their sale price which is to be treated as standard rated.

2. The appellant has appealed against decisions of HMRC to reject voluntary disclosures of overpaid VAT for periods between 03/07 and 06/07 and also against a number of VAT assessments for quarters encompassed in the same period. The total VAT at issue is some £38 million. The dispute between the parties reflected in those appeals relates to the extent of the zero rating provided by Group 9 in two respects: (1) the extent of the exemption from zero rating for the "removable contents" of a caravan, and (2) the proper VAT treatment of verandahs attached to caravans. This is a decision in respect of the principles to be applied in relation the first issue only; thus formally it is decision on a preliminary issue.

3. The first issue divided into qualitative and a quantitative questions. The qualitative issue was the meaning and effect of Group 9 Schedule8 VATA – the scope of the zero rating of caravans. We were provided with a schedule of 20 items which were included in caravans sold by the appellant. These included fitted cupboards, corner units, mirrors and sofas. We were asked to bear these items in mind and to apply our conclusions on the legislation and the evidence to some of these 20 items.

4. A quantitative issue arose as well. It was how to apportion the sale price between the standard and zero rated items. The arguments on this issue depended to some extent on our conclusions on the qualitative issue.

5. The remainder of this decision is divided as follows:

II Qualitative issues
- 1. The Legislation
- 2. Findings of Fact
  - (a) Caravans and Colaingrove
  - (b) Munufacture of caravans
  - (c) Ease of removal
  - (d) Structural Stability
- 3. Our Conclusions:
  - (a) Removable contents:
    - (i) policy and parity,
    - (ii) the words in context,

(iii) ordinary meaning,

(iv) summary

(b) Goods of a kind

(c) Ordinarily

(d) Fitted Furniture

4. Summary

III Quantitative Issue – apportionment

1. Background

3. Evidence from the valuers

4. The competing methods of apportionment

IV. Rights of appeal

II. The Qualitative issue

1. The relevant legislation

6. The legislative framework is beset by exceptions to exceptions to exceptions. Caravans are zero rated. But this zero rating does not include their "removable contents". Removable contents in turn does not include goods which are of a kind with what we shall call "ordinary building materials"; "ordinary building materials" does not include certain items such as furniture, gas appliances or carpets and in turn these are subject to certain exceptions for fitted kitchen furniture and space heaters.

7. In Schedule 8 VAT Act 1994, which sets out items to which zero rating applies, Group 9 currently provides:

" Item No

"1. Caravans exceeding the limits of size the time being permitted for use on roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2030 kg. [These are the static caravans to which this appeal relates.]

"2. Houseboats being boats or other floating decked structures designed or adapted for use solely as places of permanent habitation and not having means of, or capable of being readily adapted for, self -propulsion.

"3. ...

"Note: This Group does not include --

(a) removable contents other than goods of a kind mentioned in item 3 of Group 5; or

(b) ..."

8. It was common ground that the reference in Note (a) to Item ***3*** was wrong. It should have been changed to "Item 4 Group 5", when Group 5 was amended in 1995 by the addition of a new Item 3 which displaced the old Item 3 to Item 4..

9. The issue before us related primarily to the extent of the "removable contents" in Note (a). In this decision we use "Note (a)" to refer to Note (a) Group5 Schedule 8.

10. Group 5 of Schedule 8 provides a description of the following supplies which are zero rated by virtue of their inclusion in that Group:

"Item:

"1. The first grant by a person constructing a building designed as a dwelling…of a major interest in …the building or its site.[For present purposes this is the sale of a dwelling by its builder].

"2. The supply in the course of construction of…a building designed as a dwelling…of any services related to the construction other than [certain professional services].

"3. [The supply of services to certain persons in the course of conversion of buildings into such dwellings or buildings].

"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 includes the incorporation of materials into the building (or its site) in question.

"NOTES...

"(22) "Building materials", in relation to any description of building, means goods of a description ordinarily incorporated by builders in a building of that description, (or its site) but does not include --

(a) finished or prefabricated furniture, other than furniture designed to be fitted in kitchens;

(b) materials for the construction of fitted furniture, other than kitchen furniture;

(c) electrical or gas appliances, unless the appliance is an appliance which is --

(i)designed to heat space or water (or both) or to provide ventilation, air cooling, air purification, or dust extraction; or

(ii) intended for use in a building designed as a number of dwellings and is a door entry system, a waste disposal unit or a machine for compacting waste; or

(iii) a burglar alarm, a fire alarm, or fire safety equipment or designed solely for the purpose of enabling aid to be summoned in an emergency; or

(iv) a lift or hoist;

(d) carpets or carpeting material.

"(23) For the purposes of Note (22) above the incorporation of goods in a building includes their installation as fittings."

11. We should introduce some shorthand: Item 1 is broadly the sale of a house by its builder. We use the shorthand “the sale of a ready made house” for this supply, although there may well be cases in which the house purchaser specifies the kind of house he wishes to buy. Item 2 embraces two types of supply of building services. The first is that made to a person who owns a piece of land who commissions a builder to build a house on it; we use the shorthand “commissioned housebuilding services” for this supply. The second type of supply is that made by a subcontractor to a builder constructing a house – either to sell ready made or as a supplier of commissioned building services. Item 4 embraces both the supply of building materials to the commissioning house owner by his builder, and also the supply of building materials to a constructor by a subcontractor.

12. In this decision we use “Note (22)” to refer to Note (22) Group 5 Schedule 8, "ordinary building materials" to refer to the goods within Note (22)'s opening words before the exclusions (a) to (d); "excluded building materials" to mean ordinary building materials which are excluded by (a) to (d); and "building materials" to mean those items zero rated by virtue of Item 4.

13. At this stage we should refer to the input tax blocking order. In its current form (Article 6 of the Value Added Tax (Input tax) Order 1992 SI 1992/3222) it provides that a builder selling a ready made house is not entitled to recover input VAT on the supply to him of goods which are incorporated into that building unless they are what we have called “building materials”. The object of the blocking order is clear: it is to ensure that a person who buys a new ready made house which includes excluded building materials is put broadly in the same position as regards VAT borne on those excluded building materials as a person who commissions a house to be built for him and receives separate supplies of building services and materials. It does this by causing the VAT on the ready made builder's acquisition of excluded building materials to be a cost which may only be recovered from the charge made to the person to whom the ready made house is sold.

14. Although the object of the blocking order is plain, it is a blunt instrument and does not necessarily ensure that the same burden of tax is suffered by the final consumer in each of the two situations. That is because the excluded building materials supplied to the purchaser of commissioned housebuilding services will bear a VAT on the price charged by the builder which may include his mark up; whereas the blocked VAT born by the ready made house purchaser will be limited to that on the cost price paid of the excluded building materials paid by the builder of that house.

15. In the preceding two paragraphs we have described the effect of the blocking order in relation to supplies made by the builder who sells the house or provides his services to the commissioning owner. But for completeness we should also describe its effect where there are subcontractors. If a ready made builder subcontracts, the subcontractor’s supply of excluded building materials to the main builder will be standard rated by virtue of Item 4: the subcontractor is not affected by the blocking order since it is not the seller of the house. The main builder is then subject to the blocking order in respect of the VAT which it suffers on the charge made for those

materials by the subcontractor. Thus the amount of VAT eventually borne by the consumer is increased by the margin the subcontractor makes on the supply of those materials. In the case of the commissioning of building services, neither the builder nor the subcontractor is affected by the blocking order but the builder must charge the consumer VAT on the excluded building materials including any it received from the subcontractor: VAT thus being borne on the main contractor's charge. The overall effect where a subcontractor is involved is thus not materially different from that described in the preceding paragraph.

16. To some extent the provisions of Group 5 relating to commissioned houses reflect a pre *CPP* view of VAT (*Card Protection Plan v CCE*, C-349/96 ("*CPP*")). The supply by a builder of building services would, in a post *CPP* world, normally be taken to be a single supply which included the materials used. Items 2, 3, and 4 of Group 5 appear however to view the services supplied by the builder as separate from the supply of the building materials. If it is correct for the purposes of Group 5 to dissect a single supply of commissioned housebuilding services in this way, then when a builder builds a new house for a customer, the customer will bear VAT on the excluded building materials. If on the other hand the supply by the builder were a single indivisible supply of services the builder would charge no VAT on the element of those services comprising the excluded building materials, and his input that would not be blocked by the blocking order since the order applies only where a builder supplies an ready made house, rather than building services. Mr. Hyam argued that, understood in the light of *Talacre Beach Caravan sales Ltd v Commissioners of Customs & Excise*, C-251/05, a single supply of building services had to be treated as divided into the separate the component parts indicated by items 2 and 4 of group 5. Mr Cordara did not dissent from that. We do not have to decide that question but we note the difference between Group 9, which contains an express exclusion of removable contents which was relied upon by the ECJ in *Talacre*, and group 5 which at best contains an implied division.

17. In *Talacre*, the ECJ held that even if under the principle in *CPP* the supply of a caravan and its contents were a single supply for VAT purposes, the specific exclusion of removable contents from a provision which was a derogation from the general principle of the Directive meant that, in the light of the objectives of the provisions permitting the derogation, the removable contents should be treated as a separate supply and standard rated.

18. The zero rating of houses was a derogation from the general principle of the EC Directive and was authorised by Article 28 (2) (a) of the Sixth Directive which permitted such zero rating as was in force on 1 January 1991 to be continued if the Member State thought it was necessary for social reasons for the benefit of the final consumer. Zero rating in a form similar to that in Group 8 had been in force at 1 January 1991.

19. The Finance Act 1972 provided zero rating for caravans in the same terms (and with the same exclusions for removable contents) as the current legislation. But the building materials exclusion from removable contents was by reference to item 3 group 8, which provided for the zero rating of: " a supply in connection with [the

supply of building services] of materials or builders' hardware, sanitary ware, or other articles of a kind normally ordinarily installed by builders as fixtures."

20. In 1994 houseboats were added to what is now group 9 and the zero rating of building materials was made subject to the exclusion of:

(1) finished or prefabricated furniture other than furniture designed to be fitted in kitchens,

(2) materials for the construction of fitted furniture other than furniture designed to be fitted in kitchens,

(3) domestic electrical or gas appliances other than those designed to provide space heating or water heating or both,

(4) carpets or carpeting materials.

21. The additional provisions in what is now Note (22) (c) for air conditioning, entry systems waste disposal, burglar and fire alarms and fire safety equipment were added from 1995.

22. A number of issues arose out of these statutory provisions. They were: (i) what was the extent of removable contents? In that context the question arises what sort of parity with houses was intended for caravans? (ii) what type of items of removable contents, having been removed from zero rating by the opening words of Note (a), could be reinstated to zero rating because they were "of a kind" with goods mentioned in Note (22); (iii) what was meant in Note(22) by "ordinarily", and (iv) how the tribunal should approach the determination of what was fitted furniture in Note (22)(b).

23. Before considering those issues we turn to the evidence in relation to the construction and contents of caravans and the VAT in dispute.

2. The evidence and our conclusions of fact.

24. We had before us bundles of documents including pictures of some of the disputed items and pictures showing the assembly of caravans by one of the manufacturers which supplied the appellant. We heard oral evidence from Dermot King who had worked for the appellant since 1989 and was its company secretary; from John Bratherton, a civil engineer instructed to give expert evidence by PwC Legal LLP; from Stefan Tietz a structural engineer instructed to give expert evidence by HMRC; from Kevin Smyth an expert valuer also instructed by PwC; and from Jeffrey Scheers of HMRC's valuation office. All produced witness statements and Mr. Bratherton and Mr. King, and Mr. Smyth and Mr. Scheers produced joint expert reports.

(2)(a) The appellant and caravans

25. Among the activities of the appellant's VAT group is the sale of new and used caravans. In the UK some 15,000 static caravans are sold each year. Colaingrove sells

about one third of those caravans. We accept Mr. King's evidence that static caravans have generally always been sold complete with fixtures and fittings.

26. The appellant purchases new caravans from a handful of manufacturers. When ordering caravans it requires them to be provided to its own specifications. Those include specifications in relation to bathrooms, floor coverings, curtains, cupboards, kitchens, cookers, seating units, furniture, beds and wardrobes. For each model of caravan so specified the appellant would order some two or three colour variations with differing colour carpets and curtains. A customer would choose a model and from the variety of colours available.

27. The available caravans were offered to the customer completely fitted and furnished. It was rare for customers to ask for specific changes to a standard model or to succeed in acquiring a model with such changes. Colaingrove preferred to sell caravans with its own specifications.

28. Caravans were delivered to sites run by Colaingrove. On some sites a caravan needed to be installed on its pitch by a crane. Once in place the caravan would be levelled, connected to the necessary services and, nowadays, was anchored to the ground by chains.

29. Customers rented the pitch of a caravan from the appellant. The caravans Colaingrove sold were installed on these rented pitches.

30. As well as selling new caravans, the appellant sold caravans which it had used for rental and caravans which had been sold back to it.

(2)(b) Manufacture of caravans

31. The caravans are manufactured thus: a steel chassis is covered with joists. Pipes cables and conduits are run through the joists and a deck is laid on top. Carpet with a protective covering is laid on the deck. Internal walls and a shower pod are fitted. The external wall frames are fitted. (Carpets may then cut and where necessary replaced by other floor covering). Fixtures and fittings are installed (cupboards, corner units, bedheads etc). The roof frame is lowered onto the unit and fixed. The wiring is finished and the frame insulated. The exterior is clad and roof covering added together with windows and doors. Cookers and appliances are plumbed in and sofas and chairs are put in place.

(2)(c) The ease and effect of the removal of fixtures.

32. Some fixtures may be simply unscrewed or unfastened from Velcro fastenings. Others are bolted on and some are fixed by secret fixings. Floorcoverings are glued down. Most items require some tools to affect removal. Most removal will leave a hole in a wall or varying degrees of damage to the carcass of the caravan. In his evidence Mr Bratherton described the removal of some items as involving wrenching them from the caravan. That might have been the case for example if they were affixed with screws fitted from the outside of the van before the cladding was put on. He conceded that a skilled workman might be able to remove some of these items

with less damage to the caravan than would be expected by wrenching them off. His witness statement indicated that the mode of removal for some items was to "unscrew/wrench off". One such item was a storage unit over a bed. We saw in the pictures of the assembly of Willoughby caravans a similar unit being screwed to the wall. It seemed to us that we should treat Mr Bratherton's description, "unscrew/wrench off" as meaning: "either unscrew or unbolt where that could be done by a skilled carpenter, or where it could not be so done, remove with a crow bar". Correspondingly the effect on the fabric of the caravan as a result of removal would differ.

(2)(d) Structural Stability

33. Mr. Tietz defined structural stability thus: a caravan was structurally stable if it was able to resist prescribed or normally accepted vertical or horizontal forces safely and without undue distortion or, in the extreme, failure of the whole of its parts. Mr. Tietz referred to the British Standards which apply to caravans. These specified that a caravan should be capable of transmitting the dead and imposed a load to which it is to be subject in normal service to the foundation, and required that the caravan must be able to support a snow load. All these seemed to us to be well encapsulated in Mr. Tietz' expression: it was structurally stable if it was able to withstand statistically predictable forces. Such forces must, it seems to us, include those applied to the caravan whilst transporting it, moving it into position, and from wind and weather when in position.

34. Mr. Bratherton said that some fixtures (for example corner cupboards) would, and Mr. Tietz said that some could, contribute to the structural stability of the caravan, making it stronger and better able to withstand the stresses of being moved and to withstand wind, rain and snow. Mr. Tietz' opinion was that if such fixtures, with the possible exception of the shower cubicle, were removed a caravan would remain structurally stable: he described the contributions they made as bonuses. Mr Bratherton regarded at least some of them as necessary for structural stability.

35. Neither Mr. Bratherton nor Mr. Tietz had carried out any calculation to show whether the removal of any of the fixtures attached to the caravan would cause it to cease to be structurally stable. Nor had they access to any calculations carried out by caravan manufacturers. Thus although they could say that certain fixtures were or were not in their opinion likely to be necessary for structural stability, they could not be sure. Both based their opinions of what was likely on the practice of the manufacturer. Mr. Bratherton worked from the premise that the manufacturer would try to limit the costs and weight of materials used in the frame of the caravan and empirically would have found that after having done so and with the fixtures in place the caravan was structurally stable. Thus empirically it was likely that the fixtures were needed to enable the caravan to withstand the rigours of transport and use. Mr. Tietz on the other hand considered that these fittings were not necessary because (1) had they been necessary for structural stability he would have expected some warning against removal to be given to the owner, and it was not; and (2) a manufacturer would expect to change the type and style of the fixtures with time and for different

customers. The manufacturer would not want to recalculate or change the basis of the structure of the caravan every time that happened.

36. It seemed to us likely that the fixtures in the schedule were not necessary for structural stability. We thought it likely that the manufacturer would strive to reduce weight as Mr. Bratherton suggested, but that it would not rely on fittings whose change could adversely effect the structural stability of the caravan.

3. Our conclusions on the Qualitative Issues

(3)(a) "Removable contents"

37. Mr. Hyam says:

(1) What Note (a) means is “other than standard fixtures and fittings found in new dwellings, this Group does not include contents which can be removed”.

(2) "removable" is an ordinary word. It means capable of being removed. It does not carry a limitation on the means of removal. Wisdom teeth may be removed, even though the process is unpleasant, requires specialist tools, leaves the patient afflicted, and is irreversible.

(3) Note (a) speaks of “removable contents other than goods of a kind mentioned in item [4] group 5”. That is to say other than building materials. Building materials are items incorporated into the building. The exclusion from removable contents of items incorporated into a structure indicates that "removable content" includes the full range of items which may be incorporated into the structure.

(4) The words and their context thus indicate that removable contents means everything other than the shell of the caravan. Thus all fitted furniture and fixtures were removable contents.

(5) The object of Note (a) was to secure parity between the VAT born by the purchaser of a dwelling which was a house, and the purchaser of a caravan to dwell in. The declared intention of the provision at the time of its original enactment in 1972 was "to treat caravans intended as residential accommodation in the same way as houses": see *University of Kent v Commissioners for Revenue & Customs* 2004 UK VAT 18624 at 32-50. That parity meant that excluded building materials in a house on which standard rated VAT was borne as a result of Note (22) and the blocking order should also be standard rated when in a caravan. Thus removable contents must be construed to include anything which was excluded builders materials (and so for example fitted non-kitchen furniture and gas or electric cooking equipment).

38. The Appellant says:

(1) the object of the provisions is to zero rate a caravan not a bare unfinished shell of a caravan devoid of the normal appurtenances of domestic life.

(2) "Caravan" in normal parlance means a finished, inhabitable caravan; "contents" is normally taken to be that which can be carried out or, perhaps, be easily unscrewed or unbolted and removed.

(3) The intention that "caravan" means something habitable is shown by its conjunction with Item 2: houseboats "designed or adapted for use solely as places of permanent habitation". It cannot have been contemplated that so much could be removable as to make the caravan uninhabitable.

(4) "Removable contents" is thus limited to that which is easily removable and replaceable and which does not play any structural role in the caravan.

(5) "Removable" must add something to "contents". If all contents are removable and what does "removable" mean? If the removable contents meant everything but the caravan shell (as HMRC maintain) then the words "removable contents" were otiose: Note(a) would be equivalent to "this group does not include any goods which were not of a kind with building materials". That was not the formula Parliament had chosen (removable contents other than building materials).

(6) What is excluded is the contents of the caravan. The fabric of the caravan was not the "contents" the caravan. Things which formed an integral part of caravan (such as fitted furniture) were not the contents of a caravan. If a fixture made a contribution to the structure of the caravan it could not be contents even if it was not essential to the structural integrity of the caravan.

(7) "Removable contents" naturally meant what you would remove not what you could remove. What you would remove included that which was easily removable and could not include the fabric of the caravan.

(8) There may be an argument that "removable contents" is limited to those things which, when removed ,were recognisable items, not piles of wood.

(9) Any limitation of non-removable items to things which were part of the structure of the caravan was impracticable and absurd. It would mean that (1) the exterior cladding the caravan; (2) roof insulation; and (3) windows (probably on Mr. Tietz evidence) were "removable contents". It would mean that one would need a structural engineer's report (backed up by calculations of the sort Mr. Tietz described as expensive) in relation to every part of the van in order to decide whether it was removable contents.

(10) Although both caravans and houses provided dwellings to which a general policy of tax exemption applied, caravans were different from houses. Parliament recognised this in the drafting of group 8. A form of parity with houses was intended but because caravans were different, different words were used which were more generous. Those words recognised that unlike house purchaser a caravan purchaser did not have a choice about fixtures. The intention had been to zero rate basic fixtures. That is why Note (a) did not say simply that the group did "not include goods which were not of a kind with building materials". If it had, HMRC would be right.

(11) The 1972 notes on clauses to the Finance Bill explained that zero rating for caravans was given because they were akin to houses. These notes record

that the "NCC made representations about the special case of fixtures in caravans ... it is likely that they will say that relief should be given on all fixtures ... The answer is that it is necessary in order to maintain parity of treatment between houses and caravans, to exclude from the scope of the relief for residential caravans items which would be taxable if supplied *with* a house." [Mr Cordara's emphasis]. The notes showed that caravan fixtures were considered and a legislative regime constructed which took out of zero rating only those items sold with a house rather than as part of it. Note 8 of the notes on clauses made this clear:

> "The Note – excludes from the zero rate, removable contents other than materials, and builder's hardware, sanitary ware and articles of a kind ordinarily installed by builders as fixtures in houses. This is to keep the treatment of caravans in line with new houses. Caravans leave the production line fully furnished including items such as cookers, refrigerators, and even in some cases three-piece suites. The effect of the zero rate will be that such items will be taxable even if sold as part of the caravan's contents."

39. Mr Hyam asks what fixtures could be "removable" if Mr Cordara is right: if no fixtures are "removable" then what purpose is served by the exclusion of building materials from removable contents?

40. We consider first whether there is any evident purpose of the provisions which would illuminate their interpretation, then whether the internal linguistic logic of the provisions assists in their interpretation, and finally the ordinary meaning of the words.

(i) Removable contents - Policy and Parity

41. We have noted that Group 5 zero rates two different types of acquisition of a new house:

> (1) one is where the customer engages a builder to build a house for him. Here the exclusion from zero rating of excluded building materials removes them from zero rating where those items are the subject of a separate supply (or where a *Talacre* analysis requires a single supply of building services to be split so that the excluded building services become separately taxable); and
>
> (2) the other is where the consumer buys a finished house from the builder. Here the blocking order provides a rough form of VAT parity with the commissioned acquisition in respect of such items

42. We accept that the caravan and houseboat provisions are designed to provide VAT relief for the purchasers of caravans and houseboats which is similar to that provided for new houses. That much is plain from the nature of the caravans to which group 9 applies and the linking of the two sets of provisions. But although what is purchased is a completed caravan or houseboat - so that one would expect zero rating to apply to the whole price but with a blocking provision applicable to input tax suffered by the caravan seller on the goods akin to excluded building supplies - what

the legislation provides for in Group 9 is the taxation of the supply to the consumer of those supplies, that is to say a treatment parallel with the supply of commissioned services rather than a ready made house.

43. That means that the VAT borne by the eventual consumer of a caravan may, as is the case with the purchaser of commissioned housebuilding services, be greater because VAT will also be born on the builder's (Colaingrove's) margin rather than simply on the input VAT suffered by the builder (Colaingrove) of the caravan. (It is for these purposes irrelevant that the supplier of a ready made house to the end consumer may mark-up the blocked VAT he suffers and that the consumer may have to bear that mark up as well. That is because what is at issue is the VAT borne by the customer: that is the VAT collected by HMRC, not the economic burden falling on the consumer. Where VAT is assessed at a later stage in the supply chain it may be a greater amount of VAT by virtue of the mark ups on the intermediate supplies.)

44. Mr. Cordara says that Colaingrove are in the position of a builder of ready made houses not a commissioned provider of services and its customers should not suffer a greater comparative VAT burden as a consequence. Mr. Bailey of PwC suggested in correspondence with HMRC that the solution would be simply to assess output tax on the cost price of the standard rated items to Colaingrove rather than on that part of the related sale price otherwise properly attributable to those items .

45. We agree with Mr Cordara that if one was seeking to draw an exact parallel between the acquisition of a caravan and the acquisition of a new house, a ready made house would be a better parallel. But it seems to us that this is not an area in which principle or policy can or should be precisely applied. From an abstract policy perspective the question of what should be the proper VAT burden borne by the consumer of a house would be determined by two principles: (1) that certain elements of the house should bear VAT and others should not, and (2) that the VAT should be borne on the price paid for those items by the consumer. On that basis there is a fault in the system for new houses, namely that the off-the-peg house purchaser bears VAT only on his builder's cost of supply rather than on the relevant part of the charge made to him by his builder. That is no argument for extending that fault so that it also applies to a caravan purchaser.

46. It seems to us that the regime for caravans is patently different from that for houses. The house regime does not contain an exemption for removable contents from which building materials are carved out. We note in particular that the language chosen did not simply exclude from a caravan anything which was excluded building materials. It is a different regime. Parliament has chosen a subtly different way to give relief to caravans. It cannot be the task of this tribunal to treat different regimes as being the same or to try to undo what Parliament has done.

47. The tax treatment afforded to second hand houses is also different from that for second hand caravans. The sale of a second hand house is exempt (Group 1 Schedule 9) rather than zero rated, while the sale of a second hand caravan remains within the zero rating regime in Schedule 8 (complete with the removable contents exclusion)

and may be subject to other provisions relating to the sale of used chattels such as the margin scheme.

48. As a result we do not see any reason for attempting to construe the provisions so that a caravan purchaser should be in the same position as the purchaser of either an ready made house or commissioned building services.

49. There is a separate policy point. It seems to us that one cannot simply argue from a policy of parity with finished dwellings that the two words “removable contents” must be construed so that the removal must not to leave behind something which was not a finished dwelling with the appurtenances of modern domestic life. That is because, if the effect of the later phrase (“other than etc”) is to put back into the zero rated bundle those things which are needed to make it a finished dwelling with those appurtenances, the policy has the desired effect by a different route. Thus if, say, a burglar alarm is considered such an appurtenance it matters not for the purposes of policy that it may be removable contents if it is restored to zero rating by Note 22(c) (ii): if an ordinary domestic item would be excluded by a wide definition of removable contents that on its own does not call the width of that definition into question from a parity perspective if the item is reinstated by being building materials.

50. In summary all we can take from a consideration of the apparent purpose of the provisions is that a similar, but not identical, relief is to be afforded to caravans as is afforded to houses.

(ii) Removable contents - The words in context.

51. First, the use of the words "other than" in the phrase "removable contents other than [building materials]" indicates that some overlap between building materials (or strictly things of a kind with building materials) was intended. Since building materials are goods incorporated into a building (including fixtures) “removable contents” must include some incorporated items. Thus “removeable contents” cannot be limited to (what in a house would be called) chattels.

52. Second, even those "removable contents" that are fixtures cannot have been intended to be a subset of "building materials". That is because building materials in relation to a house include the bricks and cement supplied to build the house, and the materials for the walls, roof and partitions of the house. The removal of items of that kind in the case of a caravan would leave behind something which was not a caravan: they cannot therefore be removable contents. Therefore not all items of a kind with building materials are removable contents.

53. Thus the words of the Act indicate that there will be some items incorporated into a caravan which are not removable contents and some such items which are. And because removable contents clearly includes loose chattels there will be items which are removable contents which are not of a kind with items ordinarily incorporated into a house.

54. We next ask which incorporated items (or fixtures) can in context be treated as removable contents.

55. The exclusion by Note (a) is of "removable contents", not “removable items”. The word "contents" indicates that after removal what is left behind must recognisably be a caravan. Thus "removable contents" is narrower than “anything which can be removed”. That gives meaning to "contents".

56. The use in ordinary speech of the word caravan, and the adjacent description in group 9 of a houseboat as a place of habitation indicates that caravan is intended to mean something capable of habitation and that its "removable contents" must therefore be restricted to those things whose removal does not make it unfit for habitation.

57. Mr Hyam says that we can be led up the garden path by asking “is this part of the caravan or is it something which can be removed?”: all the items at issue, because they are affixed to the caravan are part of it – the issue is whether they are removable. It seems to us however that there is a difference between the question: “is this item part of this caravan?” and the question “is what is left behind after the removal of this item still a caravan?”

58. As a result we conclude that the logic of the language of the provisions means that it is a necessary (but not sufficient) condition for something to be removable contents that, after its removal, what is left behind is a caravan fit for habitation. Thus we would not regard as removable contents: lavatories, washbasins, kitchen sinks, walls, partitions, windows, doors, lighting fixtures and items which were necessary for safety and structural suitability (whether or not they were of a kind with building materials).

(iii) removable contents -The ordinary meaning of “removable contents”

59. One starts perhaps with impressions. A marble fireplace would not generally be considered part of the removable contents of a room; car seats might be considered part of the removable contents of a car; fitted hi fi speakers might be considered part of the removable contents of a room.

60. It seems to us that "removable contents" does not mean contents which is removable by any means whatsoever. As a matter of ordinary English usage one would regard the words "removable contents” as limited by the degree of a fixation of an item -- so that one would not regard the wiring of the house or its paintwork or wallpaper as removable. The words to our minds carry the connotation of removable with simple tools such as a screwdriver rather than a sledgehammer and chisel, and of being removable without significant damage to the structure: that means damage of the sort which would perturb an ordinary reasonable person using the caravan.

61. That approach is not contraindicated by a consideration of parity or by the analysis of the provisions set out above: although for the reasons above the words must include some fixtures (things which require unfixing in some way) they need not include all fixtures.

62. Last we do not think that the words “removable contents” carry the connotation that after removal one must have an identifiable item rather than a pile of pieces of

wood or chip board. The focus of the words is not on what happens after removal but on the act of removal and the place whence the removal is.

(iv) Removable contents - Summary : The items on the schedule.

63. On this basis we come to the following conclusions:

(1) The corner TV cupboard and a display unit. The absence of this unit would not deprive the caravan of "structural stability" nor would its absence cause it to be unfit for habitation. It is thus capable of being removable contents. Mr. Bratherton said removal would require it to be wrenched off the walls leaving significant damage. If it is not possible to remove an item of this nature simply by unscrewing or unbolting it so that its removal would result only in screw or bolt holes in the walls of the caravan then it would not be removable contents. But in our view if a skilled carpenter could remove it in a way such as leave only screw and boltholes in our view it would be removable contents.

(2) The Venetian blinds. Removing the blinds would not prevent the caravan from being a caravan. They are removable by unscrewing which would leave behind only holes. In our view they are removable contents.

(3) The headboard. The headboard was not necessary for structural stability. Removal would not prevent what was left being a caravan. It is affixed by Velcro fittings and its removal would leave only untidy patches of Velcro in view. It was removable contents.

(4) The headboard fitted in the bedroom unit. The absence of this headboard would not in our view prevent the caravan from being a caravan. Mr. Bratherton said that its removal would be by unscrewing or wrenching off and would leave damage to the wall. If with care it can be unscrewed it is, in our view, removable contents. If it cannot be removed by a skilled carpenter without significant damage to the walls then, in our view, it is not removable contents.

(5) The bedroom storage unit. This did not seem necessary for the caravan to be a caravan. Even if it had a structural function it was not necessary for structural stability. Mr. Bratherton said that the process for removal was unscrewing or/wrenching off, and that it would leave holes or damage. If it could be unscrewed or unbolted by a skilled person leaving only screw or bolt holes in the walls or minor damage to the walls it would be removable contents; otherwise not.

(6) Three piece suite. This was removable contents.

(7) Fitted wall mirror. This performed no structural function and its absence would not prevent caravan being a caravan. If it could be removed without leaving substantial holes in the walls then in our view it was removable contents.

(8) Three door double cupboard. We had some difficulty marrying the photographs and the cross references in Mr Bratherton's report in relation to this item. It may be they were muddled with the following item.

(9) 2 single door cupboard wardrobe. This was a walk-in wardrobe inside which were shelves and drawers as well as hanging space. The walls and doors of the wardrobe were, in our view, not removable contents although the hanging rails within it were, and the shelves and drawers would be if they could be removed without significant damage.

(10) Garment storage unit. If this could be unscrewed without significant damage to the caravan it would be removable contents.

(11) Indesit washing machine. This was something whose removal would leave a caravan and which could be removed moderately easily and without damage. It was removable contents.

(12) Wall mounted picture. Mr. Bratherton said it would require unscrewing/wrenching off and leave holes and possible damage. If it can be removed without significant damage then it would be removable contents.

(13) Bathroom storage cupboard. Wall mounted cupboard with concealed lights. In the presence of the lights suggest that removal would leave bare wires and a room without lighting. If that is the case it could not be called removable contents.

(14) Carpet flooring. This was stuck down and was not removable without removing the walls. It could not be removable contents

(15) Headboard and above bed storage. As with item (4) above whether this was removable contents depended on whether it could be fairly simply unscrewed.

(16) Double bed with hydraulic lifting arms. We thought that a caravan without fitted beds would remain a habitable caravan. Thus, if it was removable by unscrewing or unbolting it from the floor, this was removable contents.

(17) Fitted Settee. Clearly removable contents

(18) Double oven and four ring hob. This was a single unit. Its removal, like that we suspect of any cooker, would leave as Mr Bratheron said exposed pipes. We had some difficulty in reaching a conclusion on this item. On the one hand we thought that a caravan probably needed some cooking apparatus to be a habitable caravan, on the other, a cooker could, in our experience, be fairly easily removed although it would leave exposed pipework. On balance we concluded that it was not removable contents.

(19) Wall mounted to corner television unit. Removable contents

(20) Kitchen work surface. This included the unit supporting the sink. It seems to us that one would expect a caravan to have a kitchen with sink and worksurfaces. Their removal would prevent it from being a place of habitation. It was not removable contents.

(3)(b) "Goods of a kind mentioned in item 4."

64. Mr. Cordara says that these words must be considered in the world of caravans; they ask the question: what kind of goods are ordinarily installed in caravans? Thus he

says that many of the fixtures within a caravan, even if removable contents, are let back into zero rating since they are ordinarily installed in caravans.

65. Mr. Hyam on the other hand says that these words specify materials which are ordinarily incorporated into a building. He takes us to *Rialto homes plc v Commissioners of Customs and Excise* [1999] V & DR 477. There the tribunal said, in relation to the question of what was “ordinarily incorporated”, at [23]:

> "the question whether the goods are of a description ordinarily incorporated in a building or its site is to be answered having regard to the qualification that it is a "building of that description". That takes one back, applying the statutory hypothesis in the blocking order, to a building of a kind described in items 2 or 3 of group 5 and for present purposes that is a "building designed as a dwelling or a number of dwellings." ... In our judgement one cannot just confine one's attention to the particular development in question and ask whether [goods of a particular sort] are ordinarily incorporated in developments of that kind ..."

66. Mr. Hyam says the words ask whether a particular item would ordinarily be included in a building of a generic type. He says that the generic type of building of which caravans are a species is a "dwelling". The question thus he says is not: is this ordinarily included in a caravan? But, is this ordinarily included in a dwelling?

67. We asked ourselves first what purpose the words "of any kind" had in Note (a). If they had been omitted there would have been a straight reference to the building materials described in item [4] of group 5.

68. The note provokes the question: what is the kind of goods mentioned in note (22)? Being "of a kind" indicates a degree of similar function and purpose or description. The words "of a kind" also appear in Item 1 Group 1: "Food of a kind used for human consumption". There they clearly have the effect of preventing the item applying only to food which is actually consumed: the words act to provide a description more than an indication of function. But Note (22) speaks of "goods of a description ..." and Note (a) speaks of "goods of a kind". The contrast in the Act’s use of "kind" and "description" in two cross referring related provisions suggests that "kind" was not used in Note (a) with the meaning of "description", but was used with the meaning of having a comparable function or purpose.

69. Thus it seems to us that these words indicate that the homologue of building materials is intended to be reimported into zero rated caravan content by this phrase. The words do not import solely those goods are ordinarily installed in buildings, nor do they require "buildings" to be replaced by "caravans" in the application of Note (22). Instead they require the identification of those things which fall into Note (22) and their translation into the caravan world. Thus walls made of bricks become wooden walls with cladding; slate roofs become caravan roofs; extensive electricity and plumbing becomes the type of such installation found in caravans with the necessary adaptations. This may mean that some items ordinarily found in caravans are not included in “items of a kind”: for example caravans may normally have wheels but there is no homologue for wheels in the goods mentioned in note (22): wheels are not of a kind with building materials.

70. We agree with Mr Hyam that the type of Note (22) building materials is the type relevant to a dwelling, but what Note (a) requires is the identification of the removable contents which is homologous with the materials ordinarily incorporated into such a dwelling.

(3)(c) Ordinarily

71. In *Rialto* the tribunal said that "ordinarily" does not mean "invariably and the fact that something may not be a requirement in some circumstances does not mean that such goods are not "ordinarily incorporated" giving those words their natural meaning. There was no dispute about this. We agree.

72. We had no direct evidence as to what was ordinarily incorporated by builders into a house. But on the basis of para 13.8.1 of HMRC's Notice 708 (November 2011) which we think is likely to reflect HMRC's understanding of current practice , it seems that, of the items on the schedule which we regard as removable contents, the following would be of a kind with ordinary building materials:

(1) The fitted cupboards and furniture;

(2) Mirrors; and

(3) Light fittings.

73. Of these only those fitted cupboards which are (of a kind with) fitted furniture would be excluded from zero rating. Therefore we now turn to consider fitted furniture.

(3)(d) Fitted Furniture

74. *Commissioners of Customs and Excise v McLean Homes (Midlands) Ltd* (1993) STC 335 was an appeal by HMRC against a Tribunal decision that the supply of materials for wardrobes was zero rated and did not constitute the supply of materials for fitted furniture. In that case, Brook J said (at page 342j) that the correct approach was to consider the

> "natural and ordinary meaning of [the] simple English words "fitted furniture". It [was] for the Tribunal of fact to determine whether the wardrobes in question … constitute fitted furniture or not". He continued: "there may well be…borderline cases as to whether something is furniture or not furniture" and "however inconvenient this may be…there may be a possibility that different Tribunals of fact may [reach] different conclusions."

75. The difficulty with the simple English words "fitted furniture" is that they contain within them a contradiction. The ordinary meaning of furniture is something moveable. Dictionaries provide meanings such as "movables, either for use or ornament, with which a house is equipped"; "movable articles in a dwelling house, place of business or a public building"; and "the moveable equipment of a house, room etc". But Note (22) adds the somewhat contradictory requirement that it be fixed, and the context that it be incorporated into a building. It seems to us that for

something to be "fitted furniture" it must retain the characteristics of furniture other than that it be movable.

76. Some consideration therefore of whether, if an item were liberated from its fixings, it would be furniture, may illuminate whether, when fixed the item is fitted furniture. Thus, for example, a door into a room would not in our view be fitted furniture because a freely movable door would not be; and, because a movable bed would be furniture, a fitted bed could be fitted furniture. (This is not however the same as asking whether, if the relevant items were ripped from their fixings and looked at on their own, they would be furniture: Brooke J cautioned against this in McLean (at page 340e) where he said that the Tribunal would be adopting a wrong approach if they asked whether the materials, if put together before they were installed, could be categorised as furniture).

77. In forming their impressions tribunals have not enunciated any single touchstone, but it seemed to us that the following factors (which may overlap) are relevant to the formation of that impression although none may be determinative.

78. First, if an item is part of the building rather than something attached (however firmly) to it is less likely to be fitted furniture. Thus in *McLean* the tribunal found that the wardrobes were cupboards forming part of the fabric of the building adapted by the insertion of a shelf and hanging for the storage of clothes were not furniture. In another case (*Simon Leon*) not cited to us, the tribunal held that the wardrobes were fitted furniture inter alia because the "installations were designed as a complete whole, without regard to the characteristics of the room in which they were to be installed".

79. Second, the type of function which the item performs. Furniture normally performs some particular function. In relation to a living room, it normally enhances the ability to use the room. In *Edmond Homes* the Tribunal referred to the functions of furniture as including providing convenient places to hang or store things, to decorate a house, providing a pla*ce* to sit or to take meals, or for the preparation of food or work. The Tribunal in *Edmund Homes* found that the basin units at issue did not function as cupboards or worktops but enabled people to use the facilities of the wash hand basin; that was not a function within the ordinary and popular meaning of furniture.

80. Third, the greater the complexity or sophistication of the design or construction of the item, the more likely it is to be fitted furniture. In *Stuart Henry Wade* VAT 13164 the Chairman described a wardrobe with a large number of shelves as "well constructed and elaborate units… in reality elaborate items of furniture… fitted into Mr Wade's bungalow.": they were found to be fitted furniture. In *Simon Leon* the wardrobes were "carefully–joined and extremely smart" and provided a "commissioned version of storage space": they were found to be fitted furniture. We thought that shelves put up on brackets in a garage (for example to store paint pots) would not be fitted furniture.

81. Fourth, an item which furnished a room was not necessarily furniture. Thus picture rails and carpets would not be fitted furniture although they would furnish the room.

82. Fifth it seems to us that is that the impression of whether an item is fitted furniture must be given from looking at the item in situ, i.e. fully constructed and in its final place. Thus we do not believe that the fact that the items under consideration would, if moved, or before fitting, be simply a number of pieces of wood is relevant to our decision. Rather one relevant question is whether, in situ, they look more like a few pieces of wood than a piece of furniture.

83. In applying these indicators in the context of Group 8 we recall that the test is whether removable content was of "a kind" with building materials, and thus ask whether the particular items were of a kind with what in a house would be fitted furniture.

84. Applying these tests to the items in the schedule which we have found may be removable contents but which appeared, on the basis of HMRC's Notice 708, to be of a kind with those ordinarily incorporated by builders, we came to the following conclusions on the basis of the pictures of those items:

(1) The corner TV cabinet (item (1) and TV corner storage unit (item(19)) were of a kind with fitted furniture: they did not look like part of the caravan, fulfilled the function of moveable tables and cupboards, and were of a sophisticated design.

(2) The bedroom storage unit (Item5) was not of a kind with fitted furniture. It looked like part of the caravan, it fulfilled the function of a free standing wardrobe but was of a simple construction which used part of the walls of the caravan, it resembled shelves more than furniture. Likewise Item (10).

(3) The fitted wall mirror (Item(7)). This looked like a piece of furniture; it fulfilled the function of a mirror hung on a wall; it was an elegant bevelled mirror in a frame. It was of a kind with fitted furniture.

(4) The bathroom cupboard unit (Item 13) was not of a kind with fitted furniture. Although of fairly elaborate design it did not look like furniture, looked like part of the caravan and did not fulfil the function of a piece of furniture.

(5) The over bed storage unit with the light beneath (Item (15)): looked like part of the caravan and fulfilled the function of enclosed shelves. We could think of no ordinary item of furniture with which it was of a kind. We could not see the extent to which it used the walls of the caravan. We tended to the view that it was not fitted furniture. Likewise Item (4) and (9). (We have assumed in the table below that closer examination of these items would give rise to the conclusion that they were not fitted furniture.)

4.Qualitative Issues – Summary- application to items on the schedule

Item	Removable contents?	Of a kind ordinarily incorporated?	Fitted furniture?	Standard rated? S or “0”
1. Corner TV cupboard	y/n	Y	Y	S if easily removable
2. Venetian Blind	Y	N		S
3. Headboard	Y	N		S
4. Above bed Bedroom unit with headboard	N	Y	N	0
5. Bedroom storage unit	y/n	Y	N	0
6. 3 piece suite	Y	N		S
7. Wall mirror	y/n	Y	Y	S if easily removable
8. three door cupboard	?	y		?
9. Two door cupboard	y/n	Y	N	0
10.Garment storage	y/n	Y	N	0
11. Washing machine	Y			S
12. Picture	Y	N		S
13. Bathroom cupboard	y/n	Y	N	0
14. Carpet	N			0
15. Headboard and above bed satorage	y/n	Y	N	0
16. Fitted bed	Y	N		S

17. Settee	Y	N		S
18. Oven and Hob	N			0
19. TV corner unit	y/n	Y	Y	S if easily removable
20. Kitchen work surface	N			0

85. Note: “y/n” in the second column reflects our conclusion that the difficulty of and damage caused by removal needed to be carefully assessed.

III. Apportionment: quantification

1. Background

86. The manufacturers' invoices to the appellant divided the price of the caravan between a portion which was zero rated and a portion which was standard rated - thereby they treated a portion of each caravan sold as removable contents outwith the zero rating of Group 9. The detailed nature of the portion treated as standard rated was not disclosed to Colaingrove (we understood that this was for commercial reasons; nor could HMRC compel disclosure). One supplier described the standard rated content on its invoice as "cooker/carpets/furniture/curtains" but no division between these items or breakdown of "furniture" was supplied.

87. Colaingrove sold certain items of replacement fixtures and fittings at a profit of about 20%. That was materially less than the markup at which it sold complete caravans.

88. The appellant has accounted for VAT attributable to the standard rated contents on various bases over time. From 1996 to 1999 it operated under a method agreed with HMRC under which treated its sale price as containing a standard rated element which was 120% of the standard rated element shown on the invoices it received from the manufacturers; from 1999 until the *Talacre* decision it treated the supply of caravans as a single zero rated supply; after the *Talacre* decision it reverted to previously agreed methods and made voluntary disclosures claiming that the VAT properly due was less than that determined by those methods. (In 1995 a method was also agreed for the apportionment of the sales prices of used and margin scheme caravans broadly based on the relative value of the contents and the caravans when sold).

89. As well as selling new caravans, the appellant sells caravans which it has used for rental and caravans which have been sold back to it. The VAT attributable to the standard rated element of such sales (or to the relevant margin where the second-hand

goods margin scheme applied) was calculated using a valuation method agreed with HMRC.

90. The amounts of the voluntary disclosures made by the appellant and the assessments made by HMRC result from apportionment of the selling price of the caravans on the basis agreed in 1995 between HMRC and the appellant. We note that this method reflects to some extent our finding that the Appellant sells replacement items for caravans at a profit of 20%

2. The evidence from the valuers.

91. Mr. Smyth provided us with a report evaluating the replacement cost of items in the appellant's caravans. Mr. Scheers gave evidence of what, in his opinion, where acceptable methods of apportioning the price of a caravan between component parts. Mr. Smyth made his valuation on the basis of estimating the cost of replacing the items with identical or substantially similar items at current prices. In the case of fitted items for which there was no high street replacement cost he estimated the cost of materials necessary to make them, but did not include anything for the costs of assembly and installation.

92. There was no dispute about the values Mr. Smyth had produced on the basis which he had estimated them, but Mr. Scheers considered that that basis of valuation of purpose-built items and fixtures could not be used for a just and reasonable apportionment of the price of the caravan to those items because it failed to take account of the cost of assembly, alteration and installation.

93. Mr. Smyth agreed that the value of these purpose built or fitted items could (although he did not say “should”) be arrived at by including such costs.

3. The competing methods of apportionment.

94. A number of possible methods of apportionment were canvassed before us; they included: (1) the "agreed" method, (2) the method in HMRC's notice 701/20, (3) a variation of the agreed or notice method in which the manufacturer's cost allocation was split between truly zero rated and truly standard rated portions; (4) treating the replacement value of the removable items as the amount apportionable to them; (5) treating the replacement value plus an amount reflecting assembly or all or part of the fitting costs as the amount apportionable to them; (6) valuing every item comprising the caravan and apportioning by reference to the ratio of the value of standard rated to zero rated items; (7) the same but with an allowance in the valuation for assembly or installation. We gave detailed consideration to each. Each method appeared to us to suffer from difficulties of principle or practice.

95. Mr. Hyam had argued that the principle in *Victoria and Albert Museum trustees v Commissioners for Customs and Excise* [1996] STC 1016 precluded the appellant from seeking to move from the 1995 agreed method. He asked us to find that the valuation method proposed by the appellant is not fair. In his skeleton argument Mr Hyam argued that if *V&A* does not prevent the appellant from arguing for a different method from that used then it is for the appellant to demonstrate that there is a fairer

method than the agreed one: if the newly proposed method is flawed or unreliable, the default position must be that the voluntary disclosures should be rejected. But he accepts that if the tribunal adopted a view of removable contents which was substantially different from that advocated by HMRC it would be a matter of assessment as to whether the agreed method was fair. Before us Mr Hyam put it thus: if we were with him on the removable contents issue we should hold that the agreed method applies; if we find that only moveable chattels are standard rated, the valuation method should be applied, but that if we came to a half way position (which he argued was not possible) we should adjourn for further argument on the method to be applied.

96. It did not seem to us that the *V&A Case* was conclusive. It related to a claim under section 24 (5) of the Finance Act 1989 where VAT had been paid to the Commissioners "by reason of a mistake", and turned on a regulation which provided that "if a person makes an error in accounting for tax he shall correct it in such manner as the Commissioners may require". In the High Court, Turner J said that "No error of fact or law had been made [by the taxpayer], simply an incorrect assessment of what would have been most advantageous to the trustees". The appellant's voluntary disclosures in this appeal are under section 80, and therefore under regulation 37 of the current regulations which contain no reference to "error". Therefore it does not seem to us that the reasoning in that case prohibits a claim made in this one or that the wrong amount of VAT has been accounted for. Mr Hyam was careful not to say that *V&A* governed the position in this case. But we cannot see how the reasoning in that case can be applied to this one. Even if it were it could not have effect in relation to periods after the appellant started treating the caravan as wholly zero rated, the period after it had started submitting voluntary disclosures, or to the periods in which there were assessments. Thus we were not able to determine the issue on this basis.

97. Given that to some extent the position of each party was not fully developed on this issue because their view of what would be proper apportionment depended upon which items were standard rated and their submissions were framed in the light of those arguments, we considered that we should accede to Mr Hyam's suggestion and that it would be just to invite the parties to make further submissions in the light of our findings on the qualitative issue.

98. If the parties wish to make further submission on the quantitative issue we direct that they shall be made within 28 days of the release of this decision setting out their comments on each method of apportionment. We shall then determine whether a further hearing is necessary.

99. If no such submissions are received in that time, we shall release a further decision on the issue.

Rights of Appeal

100. In relation to the preliminary issue of the nature of the zero rating of the contents of caravans, 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 6 August 2012