The VAT toolkit

Indirect Tax



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Ann Humphrey explains the DIY builder’s and converter’s VAT refund scheme

Key Points

What is the issue?

The DIY builder’s scheme allows a person carrying out qualifying building work to reclaim the VAT incurred on particular supplies of goods and services

What does it mean to me?

The object is to put a DIY builder in a similar VAT position to a person who bought the finished building from a developer

What can I take away?

VAT is not recoverable if the goods are incorporated after the construction or conversion work has been completed

The DIY builder's scheme is one of three that allow the refund of VAT incurred on particular types of building work. The other two are the listed places of worship grant scheme and the memorial refund scheme.

Under the first of these, a person can carry out qualifying building work (a 'DIY builder') to reclaim the VAT incurred on particular supplies of goods and services. The purpose is to put a DIY builder in a similar VAT position to someone who bought the finished building from a developer.

Scheme conditions

The refund scheme is not limited to individuals, however, to qualify, the DIY builder must be acting in a non-business capacity. Under VATA 1994 s 35 a DIY builder is entitled to a VAT refund when four additional conditions are satisfied.

Condition 1 – the works are one of three 'qualifying works':

- The construction of a building 'designed as a dwelling', or a 'number of dwellings'.
- The construction of a building for use solely for a 'relevant residential purpose', or a 'relevant charitable purpose'.
- The conversion of a 'non-residential' building, or a 'non-residential' part of a building into a building designed as a dwelling or number of dwellings; or intended to be used solely for a relevant residential purpose; or into a building that would be a dwelling; or a building to be used for a relevant residential purpose if different parts of it were treated as separate buildings. This is referred to as a 'residential conversion'.

VAT is not chargeable on land to be used for the construction of a dwelling by a DIY builder who is an individual and intends to use the property themself. If the seller has opted to tax the land, the option is disapplied. If the land is to be used for the construction of a building to be used solely as a relevant residential or relevant charitable purpose, any option to tax will be disapplied should the appropriate certificate be given. The supply is therefore exempt from VAT. The first and second types of works – other than those of an architect, surveyor, consultant or person acting in a supervisory capacity – would normally be zero-rated under VATA 1994 Sch 8 Grp 5 Item 2. The third would normally be chargeable at the reduced rate of 5% under VATA 1994 Sch 7A Grp 6.

Condition 2 – the qualifying works are lawful at the time they are carried out.

Condition 3 – VAT must be chargeable on the supply to the DIY builder of goods they use for the qualifying works.

Condition 4 – a claim is made on the prescribed form and in the manner required by HMRC.

Under VATA 1994 s 35(1C), a DIY builder who carries out a residential conversion by arranging for any of the work to be done by a contractor is entitled to a refund of any VAT chargeable on the work as long as it is lawful and the contractor is not acting as an architect, surveyor, consultant, or in a supervisory capacity.

The notes to Sch 8, Grp 5 apply in construing s 35 save that the meaning of 'non-residential' is that given by note (7)A, *not* note (7). Para (b)(iii) of that note is to be disregarded and references to item 3 in that note are to be read as references to s 35.

In *Irene Susan Jennings v HMRC* [2010] UKFTT 49 (TC) the tribunal decided that Sch 8, Grp 5, note 13 (which denies relief if residence throughout the year is not permitted) did not apply to cases falling within s 35. As a result, HMRC accepted that the scheme applied to the construction of new holiday homes and also to the conversion of non-residential buildings into holiday homes.

After the decision of the Court of Appeal in C & E *Commrs v Jacobs* [2005] All ER 326 on the construction of Sch 8, Grp 5, note (9) in its application to s 35, HMRC accepted that the conversion of a building that contains a residential part and a non-residential part comes within the DIY builder's scheme if the conversion results in an

additional dwelling. VAT recovery under the scheme is restricted to the tax attributable to the conversion of the non-residential part.

In *HMRC v Clark* [2010] UKFTT 258 (TC), a converted building comprised a residential part (a garage) and a non-residential part (a stable and tack room). The result of the conversion was to create an additional dwelling. Applying *Jacobs*, the fact that the increase was from zero to one was no less apt than any other increase. An apportionment was required to exclude from the DIY builder's claim that VAT was attributable to the conversion of the garage area. Details of the method of apportionment are set out in *J Clark (No. 2) v HMRC* [2010] UKFTT 458 (TC).

Amounts qualifying for refund

VAT charged on supplies of 'building materials' to a DIY builder is eligible for refund as long as they are incorporated in the building or its site during qualifying works. if qualifying goods are bought by a DIY builder and given to a contractor to use or install, the VAT can be reclaimed. The claim can include an amount equal to VAT chargeable in another EU member state.

HMRC will not refund VAT to a DIY builder if it has been incorrectly charged. The DIY builder's remedy in such a case (if any) is against the supplier in contract.

VAT is not recoverable if the goods are incorporated after the construction or conversion work has been completed. In *McElroy v C & E Commrs* (1977) LON/77/289 (unreported) VAT decision 490, the tribunal considered when construction works end:

> 'Without the work required to complete the dwelling to a habitable standard, the building does not appear to us to be a dwelling. It follows that, until that work is done, the construction of the dwelling is not complete.'

Form of claims

Claims must be made within three months of completion of the conversion or construction of the building using form VAT431NB, if the qualifying works consists of construction, or form VAT431C, if the qualifying works form a conversion. All goods purchased and any eligible services must be listed and quantities given.

If a prefabricated kit is purchased, its details can be given with a copy of the manufacturer's specification. HMRC will accept a spreadsheet or listing in the same format as the form.

Claimants must also include:

1. A certificate of completion from the local authority or if one is not available:

   - a habitation letter from the local authority,
   - a VOA (Valuation Office Agency) 'Notice of making a new entry into the valuation list in England and Wales', or
   - a letter from a bank or building society stating: 'This is to certify that the [name] bank/building society released on [date] the last instalment of its loan secured on the building at [address] because it then regarded that building as complete.'

2. Original invoices for goods supplied to the claimant showing the supplier's VAT registration number. If the goods were obtained from other EU member states, invoices for the goods with the VAT converted into sterling. If the goods were imported, proof of importation and evidence of VAT paid.

   Since the person making the refund claim will not normally be a taxable person the invoices provided need not be for VAT. In *IS Jennings v HMRC* [2011] UKFTT 298 (TC) the tribunal held that, for these purposes, an invoice was 'a statement identifying a supply of goods or services, the amount payable for them and the time when payment is to be made'.

3. Planning permission documents.

4. A certificate signed by a quantity surveyor or architect stating that the goods shown in the claim were or, in his judgment, were likely to have been incorporated into the building or site.

HMRC will acknowledge the claim within five working days of receipt and, if no enquiries are to be made, will usually deal with it within 30 working days.

A DIY builder can appeal to a tribunal against an HMRC decision on the amount of any refund.

Further information

For more information, read Ann’s book ‘VAT and Property’.