

Substantial reconstruction for zero rating***UKFTT 118 Cheltenham College Enterprises Ltd***

Cheltenham College (the college) is an educational charity which runs a public school. The college decided to carry out works to some of its listed boarding houses where boarding children attending the school are lodged in term time. It entered into an arrangement whereby it sold a long lease to a wholly owned (non-charitable) subsidiary. That subsidiary carried out the works and sought recovery of the VAT on its return. The subsidiary then sold the lease back to the college. It is this supply which is at the centre of the dispute, with the taxpayer arguing that this is zero rated under Item 1 of Group 6 of Schedule 8 of VATA 94. This provides for the zero rating of “the first grant by a person substantially reconstructing a protected building, of a major interest in, or in any part of, the building or its site”. Note 4 of the group then adds a qualification to Item 1, which lays down two conditions, one of which must be met. However, following much procedural debate including the admissibility of evidence, the Tribunal considered that it could only look at the preliminary point of whether the supply fell within the meaning of Item 1. The Note 4 issue would have to be separately addressed if the taxpayer was successful in the preliminary point.

The Tribunal came to the conclusion that the building was substantially reconstructed. It was of the view that a large part of the building was substantially reconstructed and parts wholly reconstructed. This was supported by the fact that the works cost nearly as much as a new build. Therefore, the grant of the long lease of the building was a grant by a person who had substantially reconstructed a protected building and was entitled to zero rating under Schedule 8 Group 6 Item 1, subject only to the question of whether the lease is excluded from zero rating because of Note 4.

Click [here](#) to read the case in full.

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