



TC07240

Appeal number: TC/2017/07964

VALUE ADDED TAX – DIY House Builders Scheme – construction of a dwelling and a garage – claim of input VAT refund under s 35 VATA – occupation for over 8 years before sale – Certificate of Completion applied for in order to sell the home property – whether the claim time-barred – determination of ‘completion’ for the purposes of reg 201 of the 1995 Regulations – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STUART FARQUHARSON

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE HEIDI POON
IAN MALCOLM**

Sitting in public at George House, Edinburgh on 8 February 2019

Mr Farquharson in person for the Appellant

Mrs Nikki Griffin, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. Mr Farquharson ('the appellant') appeals against HMRC's decision which refused his claim for a refund of VAT incurred during the construction of a new dwelling under the Refunds for DIY Housebuilders Scheme ('the DIY Scheme').
2. The issue the Tribunal is required to determine concerns whether the claim has breached the statutory time limit. This decision does not concern the quantum of the VAT refund claimed in the sum of £15,764.48.

Evidence

3. Mr Farquharson gave evidence in relation to the VAT refund claim. We find Mr Farquharson to be credible and straightforward as a witness, and we accept his evidence without qualification as to matters of fact. Mr Farquharson's views or interpretation of the legislation which he included during oral evidence did not pertain to matters of fact, and are incorporated into his grounds of appeal where relevant.

Relevant legislation

4. The primary legislation providing for a claim of VAT refund is under s 35 of the Value Added Tax Act 1994 ('VATA'):

'(1) Where –

- (a) a person carries out works to which this section applies,
- (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
- (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works,

the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.

[...]

(2) The Commissioners shall not be required to entertain a claim for a refund of VAT under this section unless the claim –

- (a) is made within such time and in such form and manner, and
- (b) contains such information, and
- (c) is accompanied by such documents, whether by way of evidence or otherwise.

as may be specified by regulations or by the Commissioners in accordance with regulations.'

5. By virtue of reg 201 of the Value Added Tax Regulations 1995 ('the 1995 Regulations'), the method and the time-limit for making a claim under the DIY Scheme are specified as follows:

'201 Method and time for making claim

A claimant shall make his claim in respect of a relevant building by –

(a) furnishing to the Commissioners no later than 3 months after the completion of the building the relevant form for the purposes of the claim containing the full particulars required therein, and

(b) at the same time furnishing to them –

(i) a certificate of completion obtained from a local authority or such other documentary evidence of completion of the building as is satisfactory to the Commissioners,

(ii) an invoice showing the registration number of the person supplying the goods, whether or not such an invoice is a VAT invoice, in respect of each supply of goods on which VAT has been paid which have been incorporated into the building or its site,

(iii) in respect of imported goods which have been incorporated into the building or its site, documentary evidence of their importation and of the VAT paid thereon,

(iv) documentary evidence that planning permission for the building has been granted, and

(v) a certificate signed by a quantity surveyor or architect that the goods shown in the claim were or, in his judgment, were likely to have been, incorporated into the building or its site.'

6. Regulation 201A of the 1995 Regulations stipulates the relevant form for the purposes of a claim to be:

'(a) form VAT 431 NB where the claim relates to works described in section 35(1A)(a) or (b) of the Act; and

(b) form VAT 431 C where the claim relates to works described in section 35(1A)(c) of the Act.'

7. The relevant form VAT 431 NB was completed by Mr Farquharson, and the Guidance Notes in relation to question 14 on VAT 431 NB state as follows:

'14. Has a Building Regulation Completion Certificate been granted by the local authority or by an approved inspector registered with the local authority building control?

You should send the certificate to us with your claim form.
[emphasis original]

If you do not have a Completion Certificate yet, we will accept one of the following documents:

- a habitation letter from the local authority (in Scotland, a temporary habitation certificate)

- in England and Wales, a VOA: Notice of making a New Entry into the Valuation List
- in Northern Ireland, a District Valuer's Certificate of Valuation
- in Scotland, a Joint Valuation Board Notice of Tax Banding, or
- a letter from your bank or building society saying "This is to certify that the ... Bank/Building Society released on ... (date) the last instalment of its loan secured on the building at ... because it then regarded that building as complete."

A building is normally considered to be completed when it has been finished according to its original plans. Remember that you can make only one claim no later than three months after the construction work is completed. *The three months will usually run from the date of the document you are using as your completion evidence.* If your claim is late you must send us a letter explaining the delay. [emphasis added]

[...]

Claims received without completion evidence will be closed and returned.'

The facts

Background

8. Mr Farquharson has an honours degree in Building Control and Masters in Project Management. He works as a construction project manager on projects which are publicly financed, or by public-private partnership arrangements, in value ranging from £0.5m to £20m. His work involves the drafting of construction requirements in terms of the technical specifications of the buildings and their functionalities. The documents so drafted in turn feed into the technical, legal and financial aspects of the construction projects, and the drafting process involves reading and interpreting documents such as drawings and building warrants and regulations in force governing aspects of health and safety compliance.

Commencement of the DIY housebuilding project

9. In 2006, Mr Farquharson took the opportunity to be re-located to Northern Ireland, where his wife came from, with his then employer, with the view that the couple would build their own home on a site bought and settled there.

10. In 2007, Mr Farquharson submitted the plan to the local authority which was given planning permission some time in 2007, for the building of a two-story house and a garage.

11. Construction of the new-build commenced shortly afterwards on site, while the couple rented a cottage. Mr Farquharson oversaw the project, and the foundation, drainage and electrical works were laid down in 2008.

12. In December 2008, the Farquharsons were given a month's notice to move out of the cottage as the owner wanted to sell. Instead of looking for a new place to rent, the decision was taken to convert the garage in the submitted plan into a habitable flat, since the main house was still very far from being habitable. Apart from saving on rent, the decision to occupy the garage while the construction of the main house continued was thought to help deter robbery. Mr Farquharson explained that there were incidents of robbery of unoccupied self-build houses, by stripping off copper pipes, lead roofs, granite worktops, and kitchen appliances already installed.

13. For the three years from 2009 to 2011, Mr Farquharson said that works on the main house continued intermittently as funds allowed. On 16 February 2012, he was notified by his employer that he was made redundant with three months' notice; Mr Farquharson recalled that it was a memorable day, as the redundancy notice was given the day as after he had taken the delivery of 7,000 floor tiles, which was the largest single VAT invoice to date. His employment ended in May 2012.

14. For the six months after May 2012, Mr Farquharson was unemployed. He then worked as a self-employed for the next three years, but his earnings fell dramatically. 'Any savings were used to keep heads above water,' said Mr Farquharson.

Putting the house on the market May 2016

15. In April 2015, Mr Farquharson found full-time employment in Edinburgh. He described his 'commuting' from home in Belfast to work in Edinburgh as follows: on Sunday he would fly from Belfast International airport to stay with his parents who lived in Lanarkshire; on Monday to Thursday he would commute between Lanarkshire and Edinburgh which was a 90-mile round trip; and on Friday, he would fly back to Belfast from Edinburgh after work.

16. Mr Farquharson said the commuting was simply unsustainable. In May 2016, he started renting in Edinburgh. However, it meant that the Farquharsons were paying the costs associated with two properties: (a) mortgage, rates, and utility bills for the Northern Ireland home; and (b) rent, council tax and utility bills for the rental property in Edinburgh. There was also the regular cost at four to six weeks' intervals to return to Belfast to check on the property, plus car hire costs. The approximate costs for these outlays were around £2,400 per month.

17. In May 2016, the decision was taken with reluctance to put their beloved home on the market, even though the main house was not yet complete. In June 2016, the Estate Agent put the property on the market and advertised it as an 'incomplete house', which was intended to be a selling point for potential buyers to take it on as a project and put their own stamp on the house.

18. For 12 months, there was no offer to buy the property. During this period, Mr Farquharson said he was under the constant worry that no buyer would be found with rooms in the conditions as they were; that he would be required to find the funds to complete the house before he could sell it.

19. There were seven rooms within the property that had not been completed to the original plan and would require an additional £30,000 to £40,000 to complete. Mr Farquharson gave some examples of aspects of the additional work as follows:

- (1) Living room: tiled floor finish, fireplace and hearth; estimated costs of £3,000 plus VAT of £600.
- (2) Bedrooms 1 and 2: tiled floor finish estimated cost of £5,000 plus VAT of £1,000, and built in wardrobes;
- (3) En-suite bathrooms to bedrooms 1 and 2: tile finish to walls;
- (4) Walk- in dressing room: built in wardrobes;
- (5) Master bedroom en-suite: sanitary appliances and tile finish to floor and walls. The quotation dated 10 June 2008 for sanitary appliances alone was in the sum of £9,050, and VAT thereon was £1,810; tiles estimated at £4,000 plus VAT of £800.

20. From the photographs of the selling particulars included in the bundle, we note:

- (1) Living room: the walls of the living room were plastered, with fitted windows; the chimney breast was built leaving a hole (for the fireplace insert) and hearth.
- (2) Bedroom 2 en-suite: a section of the walls was in bricks with pipe connections for a shower unit; electric cables were pulled through the wall but no light fittings; the pipework was laid for a sink unit, but no sink installed.; the floor was uncovered.
- (3) The Master bedroom en-suite was a shell with no fixtures or fittings; there were pipe connections in place for the sanitary appliances, the bath and the shower, and cables for electricals. The walls were finished in plaster, and one wall still entirely in bricks; the floor was uncovered.

The application for the Certificate of Completion

21. The selling solicitors advised that a certificate of completion would be needed in order to sell the house. Mr Farquharson was sceptical whether an application for a completion certificate given the stage of the house as it could have been successful, as in his view, the house remained unfinished.

22. In any event, a Certificate of Completion was issued by Newry, Mourne & Down District Council in relation to the property on 26 May 2017.

The sale of the house

23. The sale of the house was completed on 1 July 2017 for £325,000.

24. A valuation report commissioned in October 2008 valued the property at £350,000 as it stood at the time, and at £550,000 if it was completed to the plan.

The VAT refund claim

25. On 7 August 2017, Mr Farquharson submitted a claim for the VAT incurred in relation to the construction of the new dwelling in the sum of £15,764.48.

26. On 22 August 2017, HMRC wrote to Mr Farquharson, rejecting the claim on the basis that the claim was made more than three months after the completion of the building. HMRC's decision was made solely on the basis that the relevant time limit for making such a claim had expired, with reference to the date the building being completed according to HMRC's interpretation of 'completion'. As HMRC considered that the claim was time-barred, no consideration had yet been given to the quantum of the claim, or to the evidence in support of the claim.

27. On 30 August 2017, HMRC received a letter from Mr Farquharson, (dated 24 May 2017), in which he stated that the works on the house were not yet completed:

‘... the works at the house were not actually complete when the Building Control Completion Certificate was issued and indeed when our house was sold. There were 7 rooms for where the works were incomplete ...

... We delayed applying for the Building Control Completion Certificate until we had received a formal offer for the house ...

28. Mr Farquharson's letter enclosed photographs of the various rooms within the property, as well as a copy of the sales brochure produced by the estate agent marketing the property. It also requested a review of HMRC's decision to reject the VAT refund claim.

HMRC's review conclusion decision

29. By letter dated 6 October 2017, the Review Officer upheld the decision to reject the VAT refund claim for the following reasons:

‘Whilst you consider that the building was not complete, even at the point that you applied for the completion certificate, HMRC considers that a building is normally completed when it has been finished according to its original plans. No evidence has been provided to indicate that any of the work outlined in the original plans remains outstanding and the photographic evidence that has been provided shows that the building is a fully functioning dwelling and that any *remaining work is of a cosmetic or minimal nature*. As a result I can only conclude that the building was completed when it was occupied, 23 December 2008, or at the very latest, 29 April 2016, the date of the last invoice that forms part of the claim. As such the DIY VAT refund claim has not been made within 3 months of the completion date and the decision to reject it, notified to you on 22 August 2017 is correct and will be upheld.’ (emphasis added)

The Alternative Dispute Resolution ('ADR') procedure

30. On 12 March 2018, Mr Farquharson applied to HMRC to use the ADR process, which was accepted by the respondents on 29 March 2018. The parties were unable to

resolve the dispute, and the exit agreement signed by the parties on 10 and 18 June 2018 stated the point at issue to be:

‘HMRC are unable to agree a completion date of [address of the property] later than 2 June 2016 based on the facts and information provided by Mr Farquharson to date. Therefore they cannot accept his VAT claim under the DIY scheme at this time.’

The appellant’s case

31. The Notice of Appeal was dated 31 October 2017 against the review conclusion decision, and was the basis for the ADR procedure that was entered into by the parties in March 2018. Mr Farquharson’s stated grounds of appeal are:

(1) That he had complied with every known requirement stated on the application form; provided a Certificate of Completion; applied within 3 months of the date of the Certificate of Completion, and made only one claim.

(2) HMRC in their review conclusion letter refer to a document VATCONST02530, which was not known or mentioned in the application form or the accompanying notes. A search on the internet or on HMRC’s own website does not yield any results. It seems unreasonable to expect a layman to have knowledge of a document that was never listed on the application form or the accompanying notes and cannot be found on the internet.

(3) HMRC also stated in the review conclusion letter that detailed plans were not provided with the original application, which is wrong. Approved detailed plans were provided as signed off by Building Control.

(4) HMRC’s review conclusion used the fact that there was a time gap between the date of the last invoice and the date on the Certificate of Completion. The delay in applying for the Certificate of Completion was due to the redundancy which caused Mr Farquharson to take a different job far away from the DIY home.

(5) The house was on the market for almost one year and he was unsure if the house would sell. His fear was that he would have to complete the house (at significant cost) in order to sell the house. He therefore delayed applying for the Certificate of Completion until he had received a signed offer for the house.

(6) He had no option but to make one claim for VAT, because that is one of the requirements.

(7) The house was not ‘fully functioning dwelling’ as stated in HMRC’s review conclusion letter. There were three bathrooms and rooms that were just a shell. The material cost to complete these works would be around £25,000 plus VAT of a further £5,000. This is a large sum of money and contradicts the conclusion in HMRC’s letter that the remaining work is of a ‘cosmetic or minimal nature’.

HMRC's case

32. From HMRC's amended Statement of Case lodged in August 2018 (after the exit of ADR), the basis for rejecting the VAT refund claim is summarised as follows:

- (1) The time limit detailed in reg 201(a) of VAT Regulations 1995 is an absolute and does not allow for any discretion to be exercised in the application of this time limit.
- (2) HMRC consider that that time a dwelling is completed is not necessarily determined by the obtaining of a certificate of completion from the relevant local authority.
- (3) The time at which a building is 'complete' is the stage at which it has the facilities required to function as a dwelling that is toilet/bathroom, kitchen, bedroom and living area. The building is occupied and built in line with the planning permission.
- (4) HMRC believe that the sale of the property was a major factor in the obtaining of the Building Control Completion Certificate.
- (5) From the information provided by the appellant on the claim form dated 7 August 2017, the building was completed on 23 December 2008, being the date given on the claim form for the building to be occupied.
- (6) HMRC also consider the statement made by the appellant in Box 16 of the claim form: 'we had to reluctantly sell the property in June 2017 after living their [sic] for 8 ½ years.'
- (7) The claim was therefore submitted more than 3 months after the 'completion' of the building.

33. In the alternative, HMRC contend that the latest date of completion which they would accept was 2 June 2016, as there were no further works being carried out to the property as evidenced by the purchase invoices, and that the property was up for sale by then. Referring to the ADR exit agreement, which stated:

'Invoices submitted show an end to "substantial purchases" in 2013. Purchases recommenced in February 2016 until May 2016; these were mainly for decorative materials. The property was advertised for sale in June 2016. At this point the property would be deemed completed to the specification of the plans and planning consent. The property brochure available online reflects a fully completed property. The brochure does refer [sic] all bar one ensuite is "plumbed". This in isolation would not deem a property incomplete. The property had also been occupied for 8 years prior to being advertised for sale.'

34. In any event, HMRC submit that they cannot accept the point of completion to be the date of the Certificate of Completion, as the certificate was obtained much later than when the actual completion of the property occurred, by reference to the date of occupation, or at the latest, the date of the last invoice furnished.

Discussion

The issue of 'completion' for determination

35. On the face of it, the issue behind the appeal is whether the claim for VAT refund under the DIY Scheme is time-barred.

36. It is common ground that Mr Farquharson submitted the VAT refund claim on 7 August 2017, which was within the three-month time limit as reckoned from 26 May 2017, being the date of issue of the Certificate of Completion.

37. HMRC's contention is that the date of 'completion' was much earlier than 26 May 2017, and that the date of completion was:

- (1) Either 23 December 2008, as stated on the VAT refund claim form, which was the date when Mr and Mrs Farquharson started to occupy the property; or
- (2) 2 June 2016, as the date of the last batch of invoices included in the claim.

38. Both sides referred in some length the contents of HMRC Guidance Notes *VAT 431 NB Notes* entitled 'VAT refunds for DIY housebuilders: Claim form notes for new houses'. Parties made submissions on their respective interpretations of the guidance notes, especially in relation to question 14 (see §7). It is settled law that guidance notes represent the interpretation of HMRC of the relevant statute and have no force in law. The Tribunal's duty is to interpret the statutes and apply to the facts in question to determine the appeal. For this reason, we make no reliance on the guidance notes or HMRC's internal manual VATCONST02530 in reaching our decision; nor do we find it helpful to relate the parties' interpretation of the guidance notes and manual in turn.

39. The issue of whether the VAT refund claim is time-barred is referential to the timing of 'completion' of the building, and the meaning of 'completion' is the one specific to the DIY Scheme. The real issue in this appeal is therefore to determine the meaning of 'completion' as provided under reg 201 of the 1995 Regulations.

Statutory interpretation of 'completion'

40. The primary provision under s 35 VATA concerns the basis upon which the Commissioners are empowered to make a refund of VAT. The validity of a VAT refund claim is referential to the specific legislative provision to which the claim relates. A VAT refund claim under the DIY Scheme has to comply with the stipulations under reg 201 to be valid. The time limit of a valid claim is provided under reg 201(a) as:

'(a) ... no later than 3 months after the *completion* of the building the relevant form for the purposes of the claim containing the full particulars required therein, ...' (emphasis added)

41. Regulation 201(b) goes on to specify the documents that are required to be furnished to make a claim, of which the first item in a list of five is stated to be:

- (1) a certificate of completion obtained from a local authority; or
- (2) such other documentary evidence of completion of the building as is satisfactory to the Commissioners.

42. From the statutory wording, the Tribunal finds that the meaning of ‘completion’ under reg 201(a) is to be given the plain meaning as referential to a certificate of completion for the following reasons:

(1) Applying the ordinary rules of statutory construction, the plain meaning of ‘completion’ under reg 201(a) is to be defined by the issue of a certificate of completion under reg 201(b)(i). It is a clear-cut definition for ‘completion’ that enables the claimant and the Commissioners to establish the common ground, and for the efficient administration of the refund scheme so that there is no cause for ambiguity or dispute such as the present case.

(2) The primacy given to a certificate of completion is evident in the statutory wording; it is the *sine qua non* for the purposes of a VAT refund claim under the DIY Scheme. The statutory wording makes it clear that the preferred document is a certificate of completion, and it is only in the absence of which that the alternative should be provided in substitution.

(3) It is only in the absence of a certificate of completion that the Commissioners would entertain a claim based on the alternative. What is satisfactory as an alternative is not specified by the statute in like manner as a certificate of completion. HMRC’s guidance notes in relation to question 14 of the claim form then come in to fill the gap.

(4) ‘If you do not have a Completion Certificate *yet*, we will accept one of the following documents’, states the guidance notes (see §7). From the word ‘yet’, it can be inferred that the alternative documentation is one that can be obtained before the house builder is able to obtain a completion certificate. In other words, the alternative documentation to a completion certificate has the effect of enabling the house builder to bring forward the claim ahead of the issue of a completion certificate.

(5) Per the guidance notes, the alternative documentation that is satisfactory to the Commissioners are: a habitation letter or a Joint valuation Board Notice of Tax Banding (Scotland); a VOA (England and Wales); a District Valuer’s Certificate of Valuation (Northern Ireland); or a letter from a certified lender in relation to a loan secured on the new-build.

(6) The alternative documentation is to serve as evidence of completion, to enable a claim for a VAT refund to be made *before* a new build has obtained its completion certificate.

(7) The provisions under reg 201(b)(ii) to (v) concern the validity of the input VAT being claimed, by reference to the valid invoice from a registered supplier, in relation to the goods being imported, and in relation to whether the goods so claimed are genuinely used in the making of the supply of a new dwelling. None of these provisions pertain to the meaning of ‘completion’ for any further possible meaning of completion to be drawn after reg 201(b)(i).

43. In conclusion, the statutory interpretation of reg 201(a) is that ‘completion’ is referential to the issue of a certificate of completion. For the purposes of a VAT refund claim under the DIY Scheme, the only definition in terms of ‘completion’ is by reference to the documentation stipulated to evidence completion under reg 201(b)(i).

44. The stipulation cannot be clearer; it is either by way of ‘a certificate of completion obtained from a local authority’ or by alternative documentation as specified in the guidance notes. The proof of ‘completion’ for the purposes of reg 201 is by way of documentation, and documentation alone.

45. There are no extraneous definitions to the meaning of ‘completion’ within reg 201 that can be extracted from the statutory wording as pertaining to the date of occupation, or to the date of the last invoice being included in the claim. We therefore reject both of HMRC’s interpretations of ‘completion’ as without any basis in law.

46. It is plain from the statutory wording that a bright-line definition is to be given to ‘completion’ by reference to the stipulated documentation alone. The definition of ‘completion’ is not to be founded on circumstantial factors, which are in turn subject to different documentation to establish. The date of occupation, or the date of last purchases are not provided as possible alternative points of completion in the statute, not to mention that these are facts that need to be established by evidence that has no reference in the statute whatsoever.

47. If two different dates of completion as reckoned by HMRC were indeed possible according to the statute, then the relevant provision would seem to us flawed in its conception because: (a) it would promote ambiguity in establishing ‘completion’ subject to arbitrary documentation as evidence, and (b) it would allow such wide margin of difference, with the range of some 8 years between the possible date of 23 December 2008, and a later date of 2 June 2016. Such ambiguity and wide margin in establishing ‘completion’ cannot be desirable in providing for an efficient scheme for administering refund, and cannot be the intention of the legislature.

The purpose of the DIY Scheme

48. The literal interpretation that ‘completion’ in reg 201 has to be given a clear-cut definition as referential to the date of a completion certificate alone is further supported by a purposive construction of the provision.

49. The supply of new dwellings is a zero-rated supply. For this reason, a VAT-registered developer in the business of building new dwellings can apply for a zero-rated certificate so that no VAT is borne on the purchase of materials for building new homes. On a purposive construction of reg 201, a VAT refund is to compensate a DIY house builder for the input VAT he has borne in making the self-supply of a new dwelling, and to put him in the same position as a developer who is VAT registered.

50. Regulation 201 is a mechanism to give effect to the EU principle of *fiscal neutrality*, so that a DIY house builder eventually can obtain the supply of a new build dwelling at zero-rate.

51. The purpose of the scheme is to enable all input VAT borne in relation to the building of a dwelling to completion to be fully refunded. We note, however, the following differences in the VAT position of a DIY house builder when compared with a VAT registered developer:

(1) Unlike a VAT registered developer, a DIY house builder is unable to obtain his supplies at zero-rate upfront, and has to wait till the completion of the dwelling to make a VAT refund claim, as stipulated by reg 201.

(2) There is no mechanism for a DIY house builder to stage a refund claim by making periodic claims as input VAT accumulated either. To that end, a DIY housebuilder suffers a cash flow disadvantage when compared with a developer who can obtain his supplies at zero-rate upfront.

(3) It is clear from the context of the DIY scheme, that it envisages only one claim to be entertained by reference to a certificate of completion as the end-point, so that the VAT for all related expenses in supplying a building as a new dwelling can be gathered up as a single claim.

(4) The normal point of completion is when a certificate of completion is issued. However, if a house builder wants to bring forward the ‘completion’ point, he can do so by applying for alternative documentation as stipulated in the guidance notes. As related earlier, the alternative documentation has the effect of allowing a VAT claim to be made *before* a new build can obtain a certificate of completion.

(5) If a DIY house builder decides to bring forward the completion date by alternative documentation before a completion certificate can be issued, he gains in terms of timing in the VAT refund of the input VAT on costs to that date. However, he loses in terms of foregoing the claim he could have included on further expenses to be incurred to complete the dwelling to the point of the issue of the certificate of completion.

(6) For these reasons, the timing of ‘completion’ is to be optimised at the latest possible point to allow *one and only one* claim to capture as many expenses in relation to supplying a new dwelling.

(7) The timing of ‘completion’ is in the control of the DIY house builder, since it is the decision to apply for the relevant documentation (a certificate of completion, or alternative documentation) that triggers the ‘completion’ of a new dwelling for the purposes of reg 201.

52. On a purposive construction of reg 201, we reject HMRC’s interpretation that the date of completion can be arbitrarily set as the date of occupation: ‘Usually a property isn’t occupied until it is complete’ (per ADR exit document). Not only is this interpretation non-permissible as a matter of statutory construction, but in the context of the DIY Scheme, it is not unusual that a DIY house builder starts to inhabit the building while works continue towards completion. For reasons as those related by Mr Farquharson, it is not uncommon for occupation of a new dwelling to take place before its ‘completion’ to plan; reasons such as to save the costs of running and renting an alternative home, or to take care of the property in its continual course of

construction. In the present case, the occupation was the garage in the first instance anyway, and not of the main house.

53. We also reject HMRC's interpretation that in the alternative, the date of completion should be set as the date of the last invoice being included for the refund. In *B Bowley v HMRC* [2015] UKFTT 0683 (TC), the appellant's VAT refund claim was allowed, where the planning permission was granted in July 1982 and the completion certificate in June 1994. In the context of a DIY new build, construction often happens in bursts of activity, punctuated by periods of inactivity, as was in *Bowley* and in the present case. The timing of an invoice is often dictated by when funds become available for a purchase.

54. The date of the last invoice cannot be determinative as the date of completion, since the timing of when to draw a line by triggering 'completion' in the meaning of reg 201 is for a house builder to decide. It is reasonable to assume that in the normal course of event, a house builder will make a claim at the earliest possible juncture for cash flow reasons. It is then for a DIY house builder to decide when that earliest possible juncture should be, since by precipitating 'completion' through obtaining the relevant documentation, a DIY house builder is effectively foregoing the opportunity of making any future claim of what may turn out to be legitimate expenses.

As a matter of fact

55. In the instant case, if Mr Farquharson had stayed on in the new-build as he had intended to be his permanent home, he would have incurred further expenses in completing the dwelling to the original plan. From the photographs shown, we find seven rooms were incomplete in so far as a developer building a new dwelling to sell on to a home owner would not have been able to sell the property in that state as being 'complete'. To that extent, HMRC have noted in the ADR exit document that one bathroom had no plumbing in place: a developer simply cannot sell a dwelling with a room specified as bathroom without any plumbing, let alone other essential features and fixtures required to make a room a bathroom, which were absent as noted above.

56. Mr Farquharson was in the invidious situation of not knowing whether he should precipitate the issue of a completion certificate, thereby foregoing any further claim of VAT refund on costs in completing the house to the plan (if he were to be required to do so) in order to sell the house.

57. As a matter of fact, the issue of the Certificate of Completion in the present case was brought forward before the dwelling was fully completed in order to make the sale of the house possible. In the final analysis, the incoming owner of the property who would have to complete the building works which would have qualified for the DIY Scheme, would no longer be able to make any claim for the input VAT borne in completing those unfinished rooms.

58. Finally, we need to highlight the arbitrariness of HMRC's own interpretation by reference to invoice dates. In the review conclusion letter, HMRC stated that 'the building is a fully functioning dwelling and that *any remaining work is of a cosmetic*

or minimal nature’, which is to say that the remaining work is of a nature that is ‘post-completion’. In the ADR exit document (and at the hearing), HMRC somehow seem to have conceded that the invoices in May 2016 in relation to ‘*decorative materials*’ before the sale of the house were ‘pre-completion’ for setting the completion date as immediately after these invoices. If the May 2016 invoices were for ‘decorative materials’, then the invoices were ‘of the cosmetic and minimal nature’ that should have been ‘post-completion’. The inconsistency within HMRC’s own interpretations is indicative of the arbitrariness of the respondents’ approach. To describe the ‘remaining work’ as of ‘a cosmetic or minimal nature’, while noting from the sales brochure that one en-suite bathroom had no plumbing seems to us, not only arbitrary, but a travesty in semantics. HMRC’s interpretation of completion by reference to the date of last invoices has no statutory basis; is self-contradictory; and is contrary to the principle of legal certainty.

Disposition

59. For the reasons stated, the appellant’s VAT refund claim of 7 August 2017 was made within the three-month time limit of completion of the dwelling for the purposes of reg 201 of the 1995 Regulations. The appeal is accordingly allowed.

60. 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.

DR HEIDI POON

TRIBUNAL JUDGE

RELEASE DATE: 28 JUNE 2019