HMRC - VATSC47000 - Other Cases

The following Tribunal case precedents are often quoted and support the arguments for seeing supplies where tenants undertake improvement works and refurbishment works, otherwise the responsibility of the landlord, on the property.

Gleneagles

In this case of Gleneagles Hotel [1986] VATTR 196, the appellant, the new tenant of a London hotel, was paid £1.4m by the landlord mainly to be used in paying for the repair and re-equipment of the property. The tenant already intended spending more than this in repairing and updating the hotel to improve its status from that of three-star to five-star by an agreed date. Nonetheless, the Tribunal found the payment was consideration for a supply of services to the landlord - namely, providing more valuable benefits under the contract. Without the payment, the change to five-star status may have taken longer and the rents paid, based as they were on profits, could have been less. It is not considered that the ECJ findings in paragraph 26 of the ECJ’s Mirror Group decision (VATSC46400) affect this old decision. The tenant had agreed to do more than simply enter the lease and conform to the obligations in it.

Neville Russell

In the case of Neville Russell [1987] VATTR 194,one of two payments by the landlord to the appellant tenant involved £400,000 in relation to refurbishment of part of the demised premises newly acquired by the landlord and in need of such work. By a deed with the landlord, four partners of the tenant firm covenanted to carry out the works in consideration for the £400,000 payment. The works were specified in a schedule to the deed and also in the lease. The Tribunal was content that this payment was consideration for the tenant undertaking the works which otherwise were prima facie the responsibility of the landlord. This part of the decision is also unaffected by the ECJ findings in paragraph 26 of the ECJ’s Mirror Group decision (VATSC46400).

However, this was the precedent case that found the act of simply taking a lease in return for payment is a taxable supply. Clearly, this part of the decision is overturned by paragraph 26.

A further aspect to this case involved a rent rebate by the landlord. The Tribunal did not regard this as consideration for a supply by the tenant, relating as it did to the tenant taking two extra floors and the problems of sub-letting them in view of the works that needed to be done. This decision is reflected in the guidance on rent-free periods in VATSC48000.

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