HMRC - VATSC82220 - The Lower Mill Estate Limited (Upper Tier Tribunal FTC 10/2009)

This case concerned the supply of new holiday homes which would ordinarily have been standard-rated. The developer adopted a supply splitting arrangement where customers were required to enter into separate contracts for the land (with the landowning company) and for construction services (with an associated company). The former was treated as a standard-rated supply and the latter was treated as a zero-rated supply. HMRC argued that there was a single supply of completed holiday homes made by the two entities and, in addition, that the arrangements were abusive.

However, the UT held that there were two, separate supplies stating “in our judgment, apart from any abuse or sham, it is not possible to combine supplies by two suppliers under two contracts so as to result in one supply for VAT purposes” (para.43). The judgment referred to Telewest VATSC82150 as a precedent.

The UTT also held that the first limb of the two-part test for abuse was not met as, in the particular circumstances of the case, the tax advantage was not contrary to purpose.

We regard the UTT finding on abuse to be specific to the facts and context of this case and so it does not have a wide-ranging impact. Anti-avoidance colleagues will provide advice on the potential application of abuse in other cases.

Previous page

Next page