



Excerpt from VAT 2019/20 – Chapter 9 – ‘So what is a reduced rate?’

INSTALLATION OF ENERGY-SAVING MATERIALS – SCH 7A GROUP 2

9.4 *Group 2* covers both supplying the materials and installing them in residential accommodation. Up to 1 August 2013 it also applied to a building intended for use solely for a relevant residential purpose.

Energy-saving materials (ESM) does not just mean insulation and draught stripping. It includes central heating and hot water system controls, solar panels, wind and water turbines, ground source heat pumps and, from 7/4/05, air source heat pumps and micro combined heat and power units.

From 1 January 2006, boilers designed to be fuelled solely by wood, straw or similar vegetable matter were added.

The scope of the reduced rate is very tightly drawn, and is only applicable to the supply and installation (as a single supply) of certain specified materials whose primary purpose is energy saving.

The installation of materials whose energy-saving potential is only secondary to their primary purpose does not qualify for the reduced rate. For example, the supply and installation of a condensing boiler is not included in this relief, as its primary purpose is to provide heat.

In *Revenue and Customs Brief 9 (2018): VAT – damp proofing products*, HMRC clarified its policy on the VAT liability of damp proofing products like paints, creams and gels from 1 September 2018. These products are not eligible for reduced rating as energy-saving materials and are therefore subject to standard rated VAT from 1 September 2018.

This group should not be confused with *Group 3* under which, for instance, a central heating system must be grant funded.

Residential accommodation means dwellings, including caravans permanently lived in and houseboats, together with buildings used for a relevant residential purpose. The latter is as defined in *Group 1*. That is to say it is the same definition as in *Sch 8, Group 5* re constructing buildings—as is also the definition of *relevant charitable purpose*. See [Chapter 26](#) on *Property*.

Beware of the distinction between the supply and installation of the materials in an existing building, and work which creates something new. In *BECO Products Ltd/BAG Building Contractors* (MAN/01/4 No

18638), the construction of extensions to houses using *Wallform* polystyrene building blocks was held to be standard-rated because the nature of the contract was construction work. To qualify for the reduced rate as insulating materials, the blocks had to be supplied separately.

In the case of *Pinevale Limited v Revenue & Customs* [2014] UKUT 0202 (TCC), the Upper Tribunal found for HMRC on the issue of whether roof panels manufactured and installed in conservatories qualified as energy-saving materials.

The roof panels were used to form the roof of a conservatory, either replacing or constituting the entire roof, or replacing parts of an existing roof. Their purpose was to achieve much higher levels of insulation than would be the case with a conventional conservatory roof, including a double glazed roof.

Pinevale argued that the panels were 'insulation for roofs' because they provided insulation by forming a barrier to reduce or stop heat loss or, in summer, heat gain. HMRC's case was that the panels are not 'insulation for roofs', but were the roof itself. So, if an entire existing roof is replaced, the panels constitute the new roof, not just insulation for a roof. Likewise, the replacement of individual panels with Pinevale's panels was the supply of new roof panels, not the supply of insulation for a roof.

The Upper Tribunal agreed with HMRC and their appeal was therefore allowed.

However in the case of *Wetheralds Construction Ltd v HMRC* [2016] UKFTT 827 (TC) a Solid Roof System was applied to the exterior of the roof which was covered by heat reflective plastic tiles which give the impression of a tiled roof. The Tribunal decided that what the appellant provided to its customers was a system to make a conservatory far more useable and liveable in for a much longer time in the year and from the evidence that was presented a customer wanted a fully insulated conservatory and not a replacement roof.

The Tribunal decided that since the entire supply by the appellant of the Solid Roof System was a single supply, and it was a single supply of insulation for roofs, it followed that the entire supply fell to be reduced-rated, so the Tribunal found in favour of the appellant. On 21 June 2012, the EC published a Reasoned Opinion which is the first public step in the process of taking infringement action against the UK in respect of its reduced rate for ESM (whether installed in residential accommodation or in buildings intended for use solely for a relevant charitable purpose). HMRC's view is that the reduced rate for the installation of ESM in residential accommodation is consistent with the VAT Directive and it will be defending this. However, from 1 August 2013 the reduced rate for ESM installed in a building intended for use solely for a relevant charitable purpose has been withdrawn subject to certain transitional rules.

On 4 June 2015, the European Court of Justice (CJEU) published its decision (C161/14) *European Commission v United Kingdom* and found against the UK and Ireland. The result of this is that the UK will now have to change the law and remove the 5% reduced rate of VAT from the installation of most energy-saving materials. Among the items affected will be microcombi boilers, insulation and solar panels.

This case was brought by the EU Commission who viewed the UK and Ireland's approach as overly generous. The CJEU agreed with the EU Commission and ruled that the reduced rate on both installation services and the energy saving materials themselves should be removed if the sales are not part of either 'the provision, construction, renovation and alteration of housing, as part of a social policy' or the 'renovation and repairing of private dwellings'.

In addition to this, even if the sales are part of the renovation and repair of private dwellings, the reduced rating should not apply if those sales include materials that account for a significant part of the value of the services supplied, which would certainly adversely affect the installation of solar panels.

The UK had defended the application of the 5% VAT rate, stating that its application of the reduced VAT rate was for 'social policy' purposes and linked to the UK's Green Deal to improve the energy efficiency of buildings.

In December 2015 HMRC released a policy paper detailing the proposed legislative changes and will effect supplies made after 1 August 2016. The measure amends the reduced rate of 5% VAT on the installation of certain energy saving materials retaining as much of the relief as permissible under EU law following a judgement of the CJEU. The changes:

- retain the remainder of the relief in full (subject to the second bullet point below):
 - for all existing customers except where the cost of the goods installed is greater than the labour cost of installing those goods. In that situation, the labour only will be subject to the reduced rate and the goods installed will be subject to the standard rate (VAT at 20%);
 - the goods installed will still be subject to the reduced rate irrespective of whether its cost is greater than the labour cost if the customer is over 60 years of age, on certain benefits, is a building used solely for a relevant residential purpose or a relevant housing associations;
- withdraw the reduced rate from the installation of solar panels, wind turbines and water turbines.

See VAT Notice 708/6 for details.

For more information about VAT 2019/20:

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