

Challenging VAT payments on council off-street parking

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Local Government analysis: Etienne Wong, barrister at Tax Chambers (15 Old Square), considers the decision in *Isle of Wight Council and others v Revenue and Customs Commissioners*, a case in which local authorities challenged HMRC regarding VAT payments on off-street parking provided by them.

Original news

Isle of Wight Council and others v Revenue and Customs Commissioners [2015] EWCA Civ 1303, [2015] All ER (D) 192 (Dec)

The Court of Appeal, Civil Division, dismissed an appeal by the local authorities against a determination that, if they were treated as a non-taxable person for VAT purposes, within the meaning of article 4(5) of Council Directive 77/388/EEC (the Sixth VAT Directive), then that would distort competition in the off-street car parking market.

What did the Court of Appeal decide in this case and what will the decision mean for local authority car parking charges?

The Court of Appeal dismissed the councils' appeal, affirming the decision of the First-tier Tribunal (FTT) that local authorities are required to charge VAT on off-street car parking (in the same way that commercial car park operators are so required).

The Court of Appeal judgment is the latest chapter in a long-running saga.

Until 2000, local authorities had proceeded on the basis they were required to charge VAT on off-street car parking.

Then, on 14 December 2000, the Court of Justice of the European Union (CJEU) delivered its ruling in C-446/98: *Fazenda Pública v Câmara Municipal do Porto* (to the effect that the provision of car parking by a body governed by public law (such as a local authority) is carried out by that body qua a public authority—and thus potentially outside the scope of VAT—provided it is carried out under a special legal regime applicable to that body).

Following that ruling, some 127 local authorities sought repayment of the VAT they had previously accounted for to HMRC (which VAT was in the region of £129m). Four test cases were brought (by the Isle of Wight Council, the Mid-Suffolk District Council, the West Berkshire District Council and the South Tyneside Metropolitan Borough Council).

They were initially successful (see [2004] UKVAT V18557). On HMRC's appeal to the High Court (see [2007] EWHC 219 (Ch)), the High Court referred three questions to the CJEU. When the matter came back to the UK, HMRC's appeal was allowed (and the order of the VAT Tribunal was set aside). The case was remitted to the FTT for a re-hearing and the FTT found in HMRC's favour.

What was the case about?

The case concerns whether local authorities should or should not be treated as taxable persons (in the same way that commercial car park operators are taxable persons) when providing off-street car parking. They would be required to charge VAT on such parking if they were treated as taxable persons, but not if they were not.

The key issue was whether treating them otherwise (ie as non-taxable persons) in the provision of such parking would lead to significant distortions of competition (see the Sixth VAT Directive, art 4(5), now art 13(1) of Directive 2006/112/EC (the Principal VAT Directive)).

The FTT found that it would. The consequence of this is that local authorities are taxable persons when providing off-street car parking, and are required to charge VAT on such parking.

The councils appealed to the Upper Tier Tribunal, arguing that the FTT had made a significant error of law. This appeal was dismissed.

They then appealed to the Court of Appeal. This appeal has now also been dismissed.

Does the decision take us any further in the interpretation of ‘significant distortion of competition’?

When the case was in Europe, the CJEU ruled as follows (C-288/07: *Revenue and Customs Commissioners v Isle of Wight Council and others*; Order):

- o the question whether treating a body governed by public law as a non-taxable person would lead to significant distortions of competition is to be determined by reference to the activity (and not in relation to any particular local market)
- o the expression ‘would lead to’ refers not only to actual competition, but also potential competition (provided that the possibility of competition is real, and not purely hypothetical), and
- o the word ‘significant’ means simply that the actual or potential distortions of competition must be more than negligible

The FTT applied this guidance in reaching its decision, which has now been affirmed by the Court of Appeal.

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Interviewed by Emily Jones.

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