

The option to tax and the meaning of “occupation”

The Principal and Fellows of Newnham College in the University of Cambridge (Respondents) v HMRC (Petitioners) [2006] EWCA Civ

Summary

The House of Lords has given HMRC leave to appeal the Court of Appeal's decision in *The Principal and Fellows of Newnham College in the University of Cambridge* case to the House of Lords.

Implications

This case concerns a so-called 'library scheme', whereby the college sought to recover input tax incurred on the rebuilding and refurbishing of its library. The Court of Appeal overturned the Tribunal's decision, holding that the use of the library by fellows and students of the college (which had leased the building to a subsidiary), did not mean that the college was in 'occupation' of the library building for the purposes of Schedule 10 VAT Act 1994. Therefore, the college's option to tax was not disapplied and it could recover VAT which it had paid on the cost of rebuilding and refurbishing the library. As such, the case is important in terms of the clarification of the meaning of 'occupation' in Schedule 10 and will be of interest to businesses in the property, education and sports/leisure sectors.

Businesses which have entered into similar arrangements, especially those which have been challenged by HMRC on the basis of 'occupation', should be keeping a close watch for future developments in the case.