

Economic activity and public bodies
The Chancellor, Masters & Scholars of the University of Cambridge

Cambridge University has lost its appeal to the High Court. The High Court upheld the Tribunal decision.

Essentially Cambridge was arguing three things:

1. That it was a body governed by public law
2. That it engaged in its activities of providing higher education as a public authority
3. Therefore on that basis EU law provided that the provision of higher education by the University became a non economic activity

As a result, although the University accepted that the provision of education was a business activity, it argued that if it was a public body acting as such then the provision of education by it would be outside the scope of VAT not exempt, and would become a non economic activity, not carried out in the course or furtherance of a business. The University would be able to obtain reduced rate VAT on fuel and power used by it in academic buildings (and zero rate VAT on the construction of new academic buildings), as this would be used for a relevant charitable purpose as defined. Input VAT incurred in the cost of providing the education would however remain irrecoverable. To succeed the University had to show all three points above were correct.

As the University had conceded the activity was business it first had to show that EU law on public bodies (Article 13 of the VAT Directive) deemed it not to be carrying on a business if it fell within Article 13. The Tribunal did not accept that the EU law worked in that way. Article 13 only provides that public bodies who are taxable persons shall not be regarded as taxable persons in respect of some activities, in certain circumstances. It does not make business activities non business. However even if it did work as the University suggested, the Tribunal also did not accept that the University was a public body and finally the Tribunal concluded that even if the University was a public body it did not engage in its activities as a public authority.

The High Court supports all the Tribunal's findings which were reached after a detailed analysis of several ECJ cases looking at the meaning of public bodies. The University was too independent to be a public body, which are "part of the public administration - creatures of the state". The public funding it received and the regulatory framework it operated within was not sufficient. Fiscal neutrality/distortion of competition was also an issue as other universities operated under a different framework – not all universities are governed by statute or amenable to judicial review. The question of classifying what is a body governed by public law is not a matter of domestic law or a matter for the national court to decide, it is a Community concept and an EU

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issue. Even if it had been a public body the University had not shown that Article 13 worked in the way the University argued, to make the business activity non business rather than deeming a taxable person to not be a taxable person.

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