

Supply of parking spaces to tenants found to be standard rated***Civilscent Ltd TC00070***

This appeal concerns the liability of parking spaces provided on the same site as new flats. Because of space restrictions there were a limited number of car parking spaces. There were 97 apartments but ultimately there were only 22 car parking spaces, only half of which were available when the flats were sold between late 2005 and mid 2006. These first 11 were sold with the flats and HMRC accept there were correctly zero rated. The dispute concerns the liability of the remaining 11 spaces. After becoming available these were sold to owners of the flats in 2007. The later leases for the spaces were essentially identical to the earlier ones. The key difference was the initial car park leases were given a nominal value of a £1 compared to the full consideration charged (around £11,000) for the later leases. Civilscent had zero rated these leases as being closely connected to the leases of the apartments. HMRC argued the later leases were separate standard rated supplies of parking facilities.

Both parties referred to Henriksen (C-173/88). The Henriksen case concerned the supply of exempt land and parking facilities. The Tribunal pointed out that this case concerned exempt land under Article 13B(b) as opposed to the UK's zero rating under Article 28(2), but was happy the same principles applied. There was a difference of opinion between the parties as to the exact interpretation of the key parts of Henriksen but the Tribunal considered the correct test was that the degree of linkage must be sufficient that there must be a single economic transaction.

The Chairman also relied upon other established case law such as CPP and Levob and concluded that the proper test was "were the grants of the parking space leases sufficiently closely linked to the grants of the apartment leases as to constitute a single economic transaction". To establish this, the Tribunal undertook to weigh the links between the flat and parking leases compared to factors that separated them.

The factors linking the grants are fairly self-evident and are detailed in the decision. However the factors moving away from a close link were sufficient for the Tribunal to conclude the supply of the second tranche of 11 car parking spaces was a separate taxable supply. These included the fact there were two separate legal contracts, there was no legal right, expectation or certainty that a space would be provided when the flat leases were granted and there was separate consideration and time had passed between the transactions. The Tribunal was careful to stress that none of these factors were determinative. The Chairman concluded the mere possibility of a parking space when the grant for the lease of a new apartment is made is not a sufficient enough link to make the later supply of the parking space part of the same economic transaction as the flat lease. The Tribunal dismissed the taxpayers appeal.

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Comment

All organisations supplying car parking spaces to residents on an exempt basis should consider the possible ramifications of this case on their business. Exempt provision of parking to tenants may now be open to challenge.

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