

## Evidence of 'distortion of competition'

### [Isle of Wight Council and others v HMRC \[2010\] UKFTT 264 \(TC\)](#)

*The First Tier Tribunal has set out its views on the evidential requirements in the continuing 'Isle of Wight' litigation concerning the VAT treatment of off-street parking fees of local authorities and the evidence which would determine whether non-taxation would give rise to 'significant distortions of competition'. This case is highly significant to the treatment of supplies by local authorities.*

#### **Background**

This case had been remitted to the First Tier Tribunal (FTT) following a previous reference to the ECJ's. In this hearing, the FTT was asked to determine what the appropriate tests would be for the existence of 'significant' actual or potential distortions of competition.

HMRC sought to argue that it would be necessary only to evidence that there was more than negligible competition between local authority and commercial car parks. In order to evidence that, HMRC considered that it would be sufficient to show the scale of provision of UK off-street parking as a whole, the degree to which off-street parking was provided by local authorities and "at a high level of abstraction – and expressly not at the level of each individual, local economic market" that the provision by private operators was in actual or potential competition with the local authority provision.

The Appellants argued that the FTT should consider, in the event that HMRC was able to show that competition existed, whether non-taxation of their supplies would give rise to significant distortion of competition. The Appellants considered that they would be able to produce evidence to show that motorists are not price-sensitive to parking charges to the extent of being influenced by the VAT price differential, and that the legal and policy framework within which local authorities operated had the effect that they would not or could not alter their pricing or affect market behaviour as a result of non-taxation.

#### **Held**

The FTT accepted the Appellants' arguments. The FTT agreed that, as the Appellants had accepted the existence of a significant scale of local authority provision (c.70%) and that there was competition, the High Court could itself have decided the matter on the facts before it if HMRC's analysis were correct. The fact that the case had been remitted showed that the Appellants were entitled to bring evidence in support of the contention that non-taxation would

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not lead to cheaper pricing by the local authority or that, if cheaper pricing was the result, it would not have the effect of distorting competition because drivers' selection of parking facilities could be influenced by factors other than price.

The parties will now be required to propose a timetable for the conduct of the remainder of this case.

***Comment***

A finding in favour of HMRC could effectively have handed HMRC success on the off-street parking issue so this is a significant victory for the appellant.

This case will also be of relevance to those local authorities which have submitted claims for VAT overpaid on other supplies, such as trade waste collections. All claims should be kept up to date pending the outcome of this case.

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