Press Summary

29 October 2025

Northumbria Healthcare NHS Foundation Trust (Respondent) v Commissioners for His Majesty's Revenue and Customs (Appellant)

[2025] UKSC 37

On appeal from: [2024] EWCA Civ 177

Justices: Lord Hodge (Deputy President), Lord Hamblen, Lord Burrows, Lord Richards and Lady Simler

Background to the Appeal

This appeal concerns whether value added tax ("**VAT**") should have been charged on the supply of car parking by Northumbria Healthcare NHS Foundation Trust ("**the Trust**").

Ordinarily, VAT is charged on the supply of goods and services. However, article 13 of the Principal VAT Directive ("**PVD**") and section 41A of the Value Added Tax Act 1994 ("**VATA**") provide for an exception for public bodies when they are acting as public authorities. A body is "acting as a public authority" when it acts under a "special legal regime" ("**SLR**"). There is an SLR either when the public body is required by law to carry out the activity in a certain way which does not apply to a private operator or when the public authority is using a specific public law power to carry out the activity. If the exception applies, the public authority is not treated as a taxable person and so does not have to charge VAT on its supply of relevant goods or services, unless treating the public authority as non-taxable would lead to "significant distortions of competition".

The Trust provided paid-for car parking at various sites between May 2013 and March 2016. It argued that it was acting under an SLR because there was guidance from the Department of Health regarding its car parking operations, and it was under the general public law obligation to follow such guidance unless there was a good reason not to. Alternatively, the Trust argued that its provision of car parking was closely linked to its functions of providing healthcare. For these reasons, the Trust argued that it was not a taxable person when it supplied car parking. On this basis, the Trust made a claim for overpaid VAT. HMRC rejected both arguments and hence the Trust's VAT reclaim. Both the First-Tier Tribunal (Tax Chamber) ("**FTT**") and the Upper Tribunal (Tax & Chancery Chamber) ("**UT**") dismissed the Trust's appeal. The Trust did not maintain the alternative argument in its appeal to the Court of Appeal, which allowed the Trust's appeal on the first argument. HMRC now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Hodge and Lady Simler give the judgment, with which Lord Hamblen, Lord Burrows and Lord Richards agree.

Reasons for the Judgment

The question when determining whether a public body is acting under an SLR is whether there is a legal obligation that governs or materially affects the way that the activity must be carried out. The law in question must also have the legal certainty that is fundamental to the VAT system. The question is not the source of the obligation, but its substance and effect **[78]**.

The Court of Appeal was wrong to conclude that external guidance, combined with the general public law obligation to adhere to it in the absence of good reason, was sufficient to amount to an SLR **[77]**. This is because guidance does not impose legal obligations. The existence of a general public law duty to follow guidance does not change this, because a body can still choose not to follow the guidance **[79-80]**. There is no real distinction between internal and external guidance in this context **[81]**, although treating internal guidance as amounting to an SLR would also be inconsistent with the principles of legal certainty and fiscal neutrality required by the VAT regime, as the potentially taxable body could simply decide its own tax status **[82]**.

More generally, the first condition in article 13(1) is that the body is a public body subject to public law. All public bodies are under general good practice obligations, which include the obligation to comply with policies and guidance. If the general obligation to comply with guidance were sufficient to meet the second requirement of article 13(1), then all public bodies would automatically satisfy it. This would deprive the second requirement of any meaningful effect **[84]**.

Moreover, the Court of Justice of the European Union ("**CJEU**") has established that the exception in article 13(1) must be applied strictly **[86]**. The CJEU has repeatedly emphasised that the determining factor is whether the activity is governed by the ordinary legal conditions that apply to private suppliers or whether it takes effect under an SLR applicable to that body **[87]**. When the public body does not qualify for one of the specific public interest exemptions in the PVD, then it cannot argue that the activity in question is "closely linked" to its functions as a public body. This would extend the scope of the general exception in article 13(1) too far **[88]**. For these reasons, the Supreme Court considers that the Court of Appeal was wrong to identify an SLR based on nothing more than an obligation that every public body has **[89]**.

The second subparagraph of article 13(1) requires (as a second condition) that the public body's treatment as non-taxable would not lead to significant distortions of competition. Although strictly speaking this ground of appeal did not arise because no SLR was established, the Court addresses it nonetheless **[91]-[92]**. The aim of this condition is to guarantee fiscal neutrality by ensuring that two similar supplies of services are taxed in the same way and that private operators are not placed at a disadvantage because they are taxed when public bodies are not **[92]**.

As informed by decisions of the CJEU, the question to be answered is whether the different treatment of public and private bodies in respect of the same or similar activity for VAT purposes would lead to a distortion of competition that is more than negligible. This includes distortion of potential competition, provided that there is a real not just hypothetical possibility of a private operator entering the market [**106**]. The inquiry requires an analysis of the facts of each case, and what evidence may be relevant will depend on the circumstances of the individual case **[109]-[110]**.

In this case, the service provision is car parking for reward at or near hospital sites. It is not a service provided solely to visit the hospital, and there is no finding that the parking is restricted to hospital users only **[116]**. Therefore, when considering competition, the comparison would be between hospital car parking and private car parking near the hospital **[117]**.

The FTT concluded that there was actual competition between the Trust's car parks and parking provided by private operations in or near those areas **[119]**. It held that to treat the Trust as non-taxable would lead to actual or potential distortion of competition which was more than negligible **[121]**. The UT agreed with this finding **[122]**. The Court of Appeal acknowledged that the Trust participated in the market and that there was actual competition between its car parks and parking provided by private operators. The Court of Appeal also agreed that there was significantly greater demand for car parking than was available in the Trust car parks **[124].** It is therefore difficult to understand the Court of Appeal's conclusion that this does not support the finding that non-taxation of hospital car parking would not distort competition **[125]**. The FTT was correct in this regard **[126]**. The important point is whether disadvantage follows from the different tax treatment of identical or similar activities meeting the same needs, even where the public body chooses to maintain its pricing but retain a higher profit **[127]**.

Here, the two activities are similar and meet the same needs so as to be in competition. There was a finding of actual competition in any event, together with substantial unmet demand. Further, if the two activities are treated differently for the purposes of VAT, there will be a distortion of competition. This is because the treatment of one body as non-taxable is likely, by itself, to discourage potential competitors from entering the market **[129]**.

Assessing whether the distortion of competition is significant must be by reference to the activity in question and an analysis of the national market. It does not require an assessment of the effect of non-taxation on the pricing or retained profit decisions of the public body in question. The analysis of the FTT was sufficient and there was no error of approach in this regard **[131]**. There was sufficient evidence for the FTT to find a more than negligible distortion of competition in this case. There is no requirement to carry out a detailed analysis of the competitive conditions of the specific local market or markets in which the Trust provides car parking. The analysis conducted by the FTT was an economic assessment with reference to the activity in question. The conclusion was one that the FTT was entitled to reach on the evidence before it, and the Court sees no error in the FTT's approach to that evidence **[133]**.

References in square brackets are to paragraphs in the judgment.