

Insights**BUSINESS RATES WIN FOR RETAILERS IN UK SUPREME COURT**

Jun 05, 2020

SUMMARY

The UK Supreme Court has given judgment on the rateability of the sites of ATMs hosted by retail outlets. It has ruled that ATMs operated by a company other than the store operator should be assessed as part of the host store. Separate assessments of ATMs sites, which resulted in significantly increased rates, were incorrectly made. There are wide ranging implications for retailers, both in relation to ATMs and in-store concessions.

Background

A selection of nine lead appeals were appealed to the Valuation Tribunal by supermarket retailers Tesco, Sainsbury's and the Co-Operative Group, and by Cardtronics (who operate their own ATMs in shops and other premises). Appeals relating to some 10,000 other sites in England and Wales (amounting to some 34,000 appeals in all) had been stayed pending the Supreme Court decision.

The appeals related to the 2010 Rating List and the action taken by the VOA in 2014 to create separate rating list entries in respect of the sites of ATMs at the stores concerned. This resulted in additional rates being levied in respect of ATMs, but without any corresponding reduction to the valuations of the host stores. In each case, the retailer operating the store was a different legal entity from the bank operating the ATM.

Different conclusions were reached at each level below. In 2016, the Valuation Tribunal decided that in each case the sites of the ATMs were in separate rateable occupation. In 2017, the Upper Tribunal (Lands Chamber) upheld that decision in respect of all the "external" machines (facing onto the street), but not the "internal" machines (facing into the store). In 2018, the Court of Appeal held that none of the machines, external or internal, were separately rateable.

The Valuation Officers obtained permission to appeal to the Supreme Court and the case was heard on 11 and 12 March 2020 before Lord Reed, Lord Kerr, Lord Carnwath, Lady Black and Lord Kitchin

Key questions

The two questions before the Supreme Court were:

1. Were the sites of the ATMs properly identified as separate hereditaments from the stores or shops?
2. If so, who was in rateable occupation?

Decision

In a unanimous decision, the Supreme Court dismissed the appeals by the Valuation Officers and upheld the order of the Court of Appeal.

In 2018 the Court of Appeal held that none of the alterations to the 2010 Rating List should have been made by the Valuation Officers, or sustained on appeal to the Tribunal. It was wrong to distinguish between internal and external facing ATMs.

The Court of Appeal held that the retailers remained in occupation or possession of the ATM sites in their stores. The banks who operate the ATMs had not been given exclusive possession for their own purposes; the relevant purpose of the banks and the retailers was the same. Therefore, the retailers retained “general control” over the ATM sites, and they were not to be valued as separate hereditaments.

The Supreme Court agreed that the Court of Appeal’s analysis reflects the existing case law applied to the relevant facts. In his judgment (with which the other four Justices agreed), Lord Carnwath analyses the legal issues including the case law, both in England and Wales and Scotland, relevant to the rateability of the sites of ATMs in retail stores.

In all cases, the ATM operator relies on the active assistance of the retailer in operating its ATM from a site and, accordingly, the retailer has not parted with possession of the ATM site. It retains sufficient control in contractual, physical and functional terms to be regarded as being in rateable occupation of it.

The critical question is one of “general control” not “dominant” or “primary” purpose. Lord Carnwath agreed with the Court of Appeal that the Upper Tribunal erred in law by taking an unduly narrow approach. The Tribunal had to consider whether the retailer, as “owner” of the site, retains sufficient “control” over the ATM site to be treated as being in rateable occupation.

This is a welcome outcome for retailers that will have wider implications beyond the sites of ATMs in convenience stores. There are a whole host of smaller sites and concessions that the Valuation Office Agency have sought to separately assess that will now need to be removed from the rating list.

The Supreme Court press summary and the judgment can be viewed [here](#).

Roger Cohen, Rebecca Campbell, Jessica Hopewell and Phil Spencer of Bryan Cave Leighton Paisner acted for Tesco from the VTE stage up to the Supreme Court.

If you have a question or would like to learn more, please do get in touch. Email us at:
Roger.Cohen@bclplaw.com; Rebecca.Campbell@bclplaw.com; Jessica.Hopewell@bclplaw.com;
Phil.Spencer@bclplaw.com

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Rebecca Campbell

Co-Author, London

rebecca.campbell@bclplaw.com

[+44 \(0\) 20 3400 4791](tel:+442034004791)



Jessica Hopewell

Co-Author, London

jessica.hopewell@bclplaw.com

[+44 \(0\) 20 3400 3732](tel:+442034003732)



Phil Spencer

Co-Author, London

phil.spencer@bclplaw.com

[+44 \(0\) 20 3400 3119](tel:+442034003119)

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