



## Press Summary

8 November 2023

### **Skatteforvaltningen (the Danish Customs and Tax Administration) (Respondent) v Solo Capital Partners LLP (in special administration) and others (Appellants)**

**[2023] UKSC 40**

*On appeal from [2022] EWCA Civ 234*

**Justices:** Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Briggs, Lord Hamblen, Lord Richards

#### **Background to the Appeal**

Skatteforvaltningen (“SKAT”), the Danish Customs and Tax Administration, has issued claims in England and Wales against a number of parties, including the appellants in this appeal. In its claims, SKAT alleges that these parties have submitted fraudulent applications for tax refunds to which they were never entitled.

Non-residents of Denmark who receive dividends from Danish companies are liable to pay 27% tax on the dividends, which SKAT withholds when the dividends are first paid out. It is possible to apply for a refund of that tax in certain circumstances. SKAT alleges that the appellants owned no shares in any relevant Danish companies, received no dividends on any such shares and therefore could not have owed any tax or been owed any refunds: yet nevertheless they applied for and were paid tax refunds. SKAT claims that it has been induced to make payments to a value of about £1.44 billion as a result of these fraudulent applications.

When SKAT brought proceedings in the Commercial Court in England and Wales, the appellants defended the claims on the basis that they were protected by a principle of private international law, under which claims which seek to enforce the tax law of a foreign state, whether directly or indirectly, are inadmissible before courts in this jurisdiction. This principle is known as the revenue rule.

The Commercial Court considered as a preliminary issue whether the revenue rule applied. In April 2021, it held that SKAT's claims fell within the scope of the rule and were therefore inadmissible. SKAT appealed to the Court of Appeal.

In February 2022, the Court of Appeal reversed the decision of the Commercial Court. It held that SKAT's claims did not fall within the scope of the revenue rule. This was because the money sought by SKAT was not unpaid tax or tax at all, but rather money which SKAT alleged had been taken by fraud.

The appellants appealed to the Supreme Court.

## **Judgment**

The Supreme Court unanimously rejects the appellants' appeal. It holds that the revenue rule does not apply to SKAT's claims. This means that SKAT's claims against the appellants can proceed to a trial in the Commercial Court. Lord Lloyd-Jones gives a judgment with which the other members of the Court agree.

## **Reasons for the Judgment**

### **The Revenue Rule**

There is a well-established and almost universally applied principle that the courts of one country will not enforce the tax laws of another country. In general terms, the rule prevents direct enforcement, where a foreign state seeks to rely on its own law or rules to obtain the money or property sought, as well as indirect enforcement. Indirect enforcement includes claims where the foreign state seeks a remedy which is not formally based on foreign tax law, but is in substance designed to give that law effect outside the foreign state itself. [21]

The Court accepts the argument made by SKAT that the revenue rule only applies to proceedings where there is an unsatisfied demand for tax which the foreign tax authority seeks to recover directly or indirectly. [36]

Applying that conclusion to the facts of this case, SKAT's claim is not for unpaid tax nor is it a claim that the appellants are liable to SKAT because they have cheated SKAT out of tax which was due to it. SKAT's case is that the appellants have never been liable to pay any tax in Denmark. Instead, the substance of its claims is that the appellants defrauded SKAT to obtain refunds to which they were never entitled, and SKAT has brought its claims as a victim of fraud. Accordingly, SKAT's claims fall outside the revenue rule. The fact that there are no taxes due from the appellants is a complete answer to their argument that the revenue rule applies. [37]–[39].

### **The Sovereign Authority Rule**

The appellants also argued that SKAT was barred from bringing a claim by virtue of the "sovereign authority rule". This rule holds that the enforcement of a public law of a foreign state, whether directly or indirectly, is also inadmissible [53]. The Court also rejects the argument that SKAT's claims involve acts of a sovereign or governmental character and that they should be dismissed for that reason [54]. While Denmark has exercised sovereign power in creating and operating its tax system, this merely provides the context for the present

claims. The substance of the claims does not involve any act of a sovereign character, any exercise or enforcement of a sovereign right, or any vindication of sovereign power. SKAT, in seeking to recover money of which it alleges it has been defrauded, is following a course that would be open to any private individual who has been similarly defrauded [58].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**