

## **A VAT conundrum(Lecture B1150 – 7.31 minutes)**

National Car Parks Ltd (NCP) are the largest car park operator in the UK with more than 600 sites and it was recently announced that the company makes almost £690,000 a year from automatic ticket machines which do not give change to motorists who use their parking facilities.

Between June 2009 and December 2012, NCP retained more than £2,400,000 in overpayments on which they accounted for VAT. During this period, the rate of VAT was 15%, rising to 17.5% and then going up to 20% in January 2011. The company went to court to try and recover what they claimed was an excessive VAT charge on the ground that they had not provided any services in return for this cash!

NCP lost their argument before both the First-Tier Tribunal and the Upper Tribunal and so the latest instalment of this long-running dispute has seen them doing battle with the tax authorities before three Court of Appeal judges in *National Car Parks Ltd v HMRC* (2019).

The leading judgment was delivered by Newey LJ who cited the following hypothetical scenario:

‘A customer enters an NCP pay and display car park wishing to park for one hour. She parks her car in an available space and locates the pay and display ticket machine. The prices stated on the tariff board next to the pay and display ticket machine are:

Parking for up to one hour – £1.40

Parking for up to three hours – £2.10

The pay and display ticket machine states that change is not given but overpayments are accepted and that coins of a value less than 5p are not accepted.

The customer finds that she only has change of a pound coin and a 50p piece and puts these into the pay and display ticket machine. The machine meter records the coins as they are fed into the machine, starting with the pound coin. When the 50p piece has been inserted and accepted by the machine, the machine flashes up “Press green button for ticket” which the customer does. The amount paid is printed on the ticket, as is the expiry time of one hour later. The customer displays the ticket in her car and leaves the car park.’

It is important to emphasise that, where an overpayment is made, the machine does not recognise any additional parking time. As a result, it was NCP’s contention that overpayments should be regarded as *ex gratia* amounts and therefore outside the scope of VAT.

In a unanimous decision, the Court of Appeal, agreeing with the rulings in the lower tribunals, dismissed NCP’s claim. Newey LJ and his colleagues held that it is necessary to adopt an objective approach when determining what has been agreed in a contractual context.

The Court considered that the tariff board and the clear notice that overpayments were accepted with no change being given indicated that NCP were willing to provide parking for either the price as per the tariff board or a higher price. The contract was essentially brought into being when the customer pressed the button for the ticket, thus accepting the offer made by NCP to provide parking for the actual price paid. The customer could not claim a refund and so the contract price was the amount paid. There was no question of the price being uncertain in any individual case – it was whatever sum, equal to or in excess of the tariff price, which the customer had paid into the machine.

The decision in favour of HMRC will be disappointing news for a number of car park operators who have substantial claims outstanding in relation to the VAT liability for parking overpayments. Note, in this context, the comment of the AA President (Professor Edmund King):

‘The best way out of this would be to give motorists change in the first place.’

Drivers who have wanted to pass left-over parking time to another motorist but who were prevented from doing so by these arrangements which have been deliberately designed to stop tickets being transferred will undoubtedly give a wry smile when they read about the Court of Appeal’s judgment. The good news is that most car park operators nowadays offer a credit card option.

*Contributed by Robert Jamieson*