

Case Alert

Supreme Court rules against Investment Trust Companies on VAT claims

Summary

The law of unjust enrichment is a strand of the law of obligations. In simple terms, where a person has suffered a loss and someone else has benefitted from that, the party suffering the loss is entitled to restitution.

Here, the taxpayer had paid VAT to its fund manager when the supply of fund management services were actually exempt from VAT.

The ITC's attempted to claim restitution from HMRC in periods where the fund managers were 'out of time' to make a claim themselves.

The Court has found that the ITC's are not entitled to such restitution as they did not have a direct relationship with the State. Their remedy is against their fund managers in the law of contract.

Supreme Court

The Supreme Court has issued its judgment in the case of HMRC v Investment Trust Companies (the ITC's). The question to be resolved was whether HMRC was under any UK or EU legal obligation to repay VAT charged to the ITC's by various investment fund managers. Following earlier litigation, (the JP Morgan case), it was established that fund management services should not have been subject to VAT but should have been exempt from VAT. In due course, the fund managers submitted claims to HMRC for repayment of the VAT that it had charged the ITC's. These claims were repaid with interest but HMRC retained an amount of the output VAT so paid to offset the amount of input tax that the fund manager had erroneously reclaimed. The fund managers repaid these amounts on to the ITC's. However, there were certain periods where the fund managers were 'out of time' to make a claim against HMRC and so, following litigation in a different case (Reemtsma) the ITC's sought a claim directly against HMRC.

In its unanimous judgment the Supreme Court has held that the ITC's claim (based on the law of unjust enrichment for which restitution is generally the remedy) must fail on the basis that they (the ITC's) did not have a direct relationship with HMRC. VAT due on supplies of fund management services were paid by the ITC's to the fund managers on the basis of obligations under contract law. The law of unjust enrichment requires the ITC's to have suffered a loss to the benefit of HMRC. Here the Court considers that that was not the case. The ITC's suffered a loss as a result of its contractual relationship with and payment made to the fund managers. The Court also confirmed that the ITC's did not have any claim based on EU law either. It is only in cases where it is impossible or excessively difficult that a claim for overpaid tax can be asserted against a tax authority. Here, the ITC's had contractual remedies against the fund managers and, as such, it would neither have been impossible nor excessively difficult for the ITC's to make such a claim.

Comment - This is a significant and important judgment which sets the record straight in terms of the law of unjust enrichment and restitution in a VAT sense. It seems clear that only in exceptional circumstances will taxpayers be entitled to make a claim directly against the State (such as in cases of insolvency of the supplier). Payment of VAT to a supplier is a contractual obligation and, where necessary, any claim for overpaid VAT is a contractual issue between the parties.

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