



## Press Summary

22 February 2023

### **News Corp UK & Ireland Ltd (Appellant) v Commissioners for His Majesty's Revenue and Customs (Respondent)**

**[2023] UKSC 7**

***On appeal from: [2021] EWCA Civ 91***

**Justices: Lord Hodge (Deputy President), Lord Kitchin, Lord Hamblen, Lord Leggatt, Lord Burrows**

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

Under the Value Added Tax Act 1994 (the “**VAT Act**”), “newspapers” are “zero-rated”, meaning Value Added Tax (“**VAT**”) is not charged on them. The question in this case is whether, between 30 August 2010 – 4 December 2016 (the “**relevant period**”), zero-rating extended beyond print newspapers to digital editions of newspapers, such as editions for e-readers, tablets, smartphones and websites. The decision will be applicable to the period up to 1 May 2020, after which there can be no dispute because Parliament has extended zero-rating from then on to newspapers “when supplied electronically”, subject to exceptions.

News Corp UK & Ireland Ltd (“**News Corp**”) is the publisher of *The Times*, *The Sunday Times*, *The Sun* and *The Sun on Sunday*. News Corp argues that the digital editions of these publications were subject to zero-rate VAT for the relevant period, as they are “newspapers” for the purposes of the VAT Act. Commissioners for His Majesty’s Revenue and Customs (“**HMRC**”) found that News Corp was not entitled to supply these digital editions at zero-rate VAT. News Corp appealed these decisions. The First-tier Tribunal found that digital editions are not “newspapers” for the purposes of the VAT Act, and so rejected News Corp’s claim for recovery of over £35 million. The Upper Tribunal allowed News Corp’s subsequent appeal. HMRC appealed to the Court of Appeal, which allowed its appeal. News Corp now appeals to the Supreme Court.

## Judgment

The Supreme Court unanimously dismisses the appeal. Lord Hamblen and Lord Burrows give the lead judgment, with which Lord Hodge and Lord Kitchin agree. Lord Leggatt gives a concurring judgment.

## Reasons for the Judgment

Lord Hamblen and Lord Burrows hold that the issues in this case require the Supreme Court to apply principles of statutory interpretation and European Union (“EU”) law. The withdrawal of the UK from the EU has no impact on the issues in this case, since the relevant EU law has become “retained EU law”, and in any event the relevant period in this case expired before EU law would otherwise have ceased to apply [7].

The modern approach to statutory interpretation requires the courts to ascertain the meaning of the words used in light of their context and purpose [27]. In general, a statute should be interpreted taking into account changes that have occurred since it became law, even if those changes could not have been reasonably foreseen at the time the statute was enacted. This is known as the “always speaking principle”. Such changes might include technological developments, changes in scientific understanding, changes in social attitudes and changes in the law. Exceptionally, the always speaking principle will not be applied where it is clear, from the words used in the statute in the light of their context and purpose, that the relevant provision is tied to a historic interpretation [29-30].

With regard to EU law, it is well established that zero-rating provisions must be interpreted strictly, because they constitute exemptions to the general principle that supplies of goods and services by taxable persons should be subject to VAT [38]. The need for strict interpretation is particularly marked where, as in this case, it does not involve mandated EU exemptions, but rather national law exceptions [39]. The interpretation is also constrained by Article 110 of the Principal VAT Directive 2006/112 (the “standstill provision”), which requires that, so far as this appeal is concerned, categories of zero-rating cannot be expanded or extended beyond those which existed on 31 December 1975 [21, 40].

With these principles in mind, the starting point is the ordinary meaning of the word “newspapers” in its context as at 31 December 1975. At that date, “newspapers” referred only to printed newspapers. Those were the only kind of newspapers which existed at that time and digital editions lay many years in the future [44].

As for the purpose of the zero-rating of newspapers, the First-tier Tribunal found as a matter of fact that the social policy behind the zero-rating of newspapers was the promotion of literacy, the dissemination of knowledge and democratic accountability [45]. However, while that social purpose might also extend to digital editions, that finding is of limited assistance in determining the correct interpretation of “newspapers” because that same purpose could equally apply to many items that cannot possibly be covered by the word “newspapers”, for example an online rolling news service [46]. From the perspective of EU law, the purpose of the standstill provision permitting the maintenance of zero rates in effect under national law as at 31 December 1975 was to prevent social hardship likely to follow from the abolition of existing national law exemptions. No social hardship could follow from the exclusion of digital editions from the ambit of the standstill provision as, at the time, nobody had access to them. Moreover, zero-rating for newspapers was seen as a transitional phase with the ultimate purpose being harmonisation across the EU with no

VAT exemptions at all. This purpose, consistently with the strict approach to exemptions and the effect of the standstill provision, indicates that a narrow meaning should be given to the word “newspapers” [47].

In this case the always speaking principle must be applied having regard to the EU law constraints imposed by the standstill provision, the principle of strict interpretation of VAT exemptions and the harmonising purpose of the law on VAT. These constraints significantly limit the always speaking principle and mean that it should not be applied liberally [48-49]. As at 31 December 1975, the defining characteristics of a newspaper included: that it was news communicated through the medium of print in a physical form; and that the buyer of the newspaper obtained complete access to the news in that paper. There was no requirement of connectivity, so that access did not depend on owning or buying something else, such as a device [52-53]. Those characteristics reflect a conceptual difference between newspapers, which are goods, and digital editions, which are services. The difference is one of kind, not merely degree [54]. Given the significant difference, it cannot be said to be irrational to distinguish between the VAT treatment of printed newspapers and digital editions [55], and the rationality of such a distinction is borne out by the fact that it is drawn in EU VAT law [56]. Having regard to the constraints of EU law, the always speaking principle cannot be applied to interpret “newspapers” as covering digital editions [58].

The principle of fiscal neutrality, which requires that similar goods and services be treated the same way for VAT purposes, does not support News Corp’s case, since the Court has not found that some forms of digital edition were to be zero-rated while others were not [61-63].

For these reasons, Lord Hamblen and Lord Burrows conclude that the term “newspapers” in the VAT Act is not to be interpreted as including digital editions [60]. They therefore dismiss the appeal [64].

Lord Leggatt agrees that the appeal should be dismissed, but differs in his approach. Lord Leggatt considers that the always speaking principle has been stated at too high a level of generality. Different types of changes may occur after a statute is enacted, to which different considerations apply [80]. When technology develops, the proper approach is simply to ask whether the newly invented object falls within the meaning of the statutory language, interpreted in the light of the legislative purpose [96]. The fact that digital editions did not exist at the relevant time makes no difference to whether they fall within the meaning of the term “newspapers” in the VAT Act [74, 96-97]. Nevertheless, Lord Leggatt agrees that the term “newspapers” cannot be taken to have included digital editions in light of: the requirement to interpret VAT exemptions strictly [106-107]; the nature and purpose of the legislation [103-105, 108-113]; and the relevance of the method of delivery of news content to consumers [115-119].

*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](#)**